

**United States Department of Labor
Employees' Compensation Appeals Board**

L.C., Appellant)	
)	
and)	Docket No. 15-1560
)	Issued: November 18, 2015
DEPARTMENT OF ENERGY, OFFICE OF SECURE TRANSPORTATION, Albuquerque, NM, Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On July 27, 2015 appellant filed a timely appeal from a July 13, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established a ratable hearing loss in the performance of duty.

FACTUAL HISTORY

On September 24, 2014 appellant, then a 57-year-old supervisory intelligence operations specialist, filed an occupational disease claim alleging permanent hearing loss due to exposure at

¹ 5 U.S.C. § 8101 *et seq.*

work. He first became aware of his hearing loss on March 11, 1990 and realized that it was causally related to his employment on October 30, 2013. Appellant did not stop work and continued to be exposed to noise.

In an undated statement, appellant indicated that he served in the U.S. Marine Corps as a rifleman and infantry man from 1976 to 1979. He described the range of noise exposure that he had during his military service. From January 1988 to June 2000, appellant worked as a federal agent with the employing establishment and worked in a transport tractor trailer and in aircraft operations. He was exposed to equipment noise and radio noise in excess of 90 decibels for up to 32 hours averaging between 17 and 23 days a month for a period of 12½ years. Hearing protection was not supplied or permitted during ground transport security operations, but foam hearing protection was frequently available during flight. Appellant indicated that he was exposed to explosives and firearm noise in excess 150 decibels while attending mandatory training. He noted that the employing establishment did not mandate hearing protection during the simulated combat training exercises as necessity required agents to fully utilize all their senses in detecting opposition force movements. From 2000 to 2014 appellant worked as an intelligence operations specialist where he worked in office settings, field paramilitary training venues, and live-fire range environments. He reported supporting agent training venues by assisting as an adjunct instructor, controller and evaluator and was exposed to excessive noise levels generating levels between 150 and 180 decibels during simulated military combat tactical training exercise. On August 4, 2014 appellant's supervisor confirmed appellant's history of workplace noise exposure.

The employing establishment submitted medical records from January 15, 1987 to December 2, 1999. Appellant underwent employing establishment audiograms from January 15, 1987 to December 5, 1999 which revealed progressive hearing loss with changes and abnormalities as compared to prior audiograms.

On April 15, 2015 OWCP referred appellant, together with a statement of accepted facts, to Dr. Farhan Taghizadeh, a Board-certified otolaryngologist, for an otologic examination and an audiological evaluation. In a May 28, 2015 report, Dr. Taghizadeh noted examining appellant on April 30, 2015 and referenced appellant's exposure to workplace noise. He reviewed the employing establishment's audiometric data and noted that appellant had progressive hearing loss. Dr. Taghizadeh noted that appellant had sensorineural loss that was in excess of what would be normally predicated on the basis of presbycusis especially in the left ear. He diagnosed progressive high frequency sensorineural hearing loss.

Examination of the canals and drums were normal, drum motility was normal on the right with mild retraction on the left side. Dr. Taghizadeh noted the basic fork tests revealed left ear air conduction was greater than bone conduction. There was no indication of acoustic neuroma or Meniere's disease. Dr. Taghizadeh noted that the workplace exposure was of sufficient intensity and duration to have caused the sensorineural hearing loss. He noted that the sensorineural hearing loss was in part or all due to noise exposure in appellant's federal civil employment. Dr. Taghizadeh recommended bilateral hearing aids.

Audiometric testing was performed for Dr. Taghizadeh on April 23, 2015. Testing at the frequency levels of 500, 1,000, 2,000, and 3,000 cycles per second revealed the following: right ear 15, 15, 20, and 25 decibels; left ear 10, 10, 20, and 30 decibels.

On June 18, 2015 an OWCP medical adviser reviewed Dr. Taghizadeh's report and the audiometric test of April 23, 2015. He concluded that, in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*,² (A.M.A., *Guides*), appellant had zero percent monaural hearing loss in each ear and zero percent binaural hearing loss. The medical adviser determined that appellant's hearing loss was not severe enough to be ratable for a schedule award after applying OWCP's current standards for evaluating hearing loss to the results of the April 23, 2015 audiogram. He noted that appellant reached maximum medical improvement on April 23, 2015.

On June 22, 2015 OWCP accepted appellant's claim for bilateral sensory hearing loss due to noise exposure. It noted that the record established that he would benefit from hearing aids.

In a decision dated July 13, 2015, OWCP found that, although appellant's hearing loss was employment related, it was not severe enough to be considered ratable for purposes of a schedule award. It authorized a hearing aid evaluation and fitting bilaterally.

LEGAL PRECEDENT

The schedule award provision of FECA³ and its implementing regulations⁴ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of scheduled members or functions of the body. However, FECA does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.⁵

OWCP evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.⁶ Using the frequencies of 500, 1,000, 2,000, and 3,000 cycles per second, the losses at each frequency are added up and averaged.⁷ Then, the "fence" of 25 decibels is deducted because, as the A.M.A., *Guides* points out, losses below 25 decibels result in no

² A.M.A., *Guides* (6th ed. 2009).

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404 (1999).

⁵ *Id.* See also *Jacqueline S. Harris*, 54 ECAB 139 (2002).

⁶ A.M.A., *Guides* 250 (6th ed. 2009).

⁷ *Id.*

impairment in the ability to hear everyday speech under everyday conditions.⁸ The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.⁹ The binaural loss is determined by calculating the loss in each ear using the formula for monaural loss; the lesser loss is multiplied by five, then added to the greater loss and the total is divided by six to arrive at the amount of the binaural hearing loss.¹⁰ The Board has concurred in OWCP's adoption of this standard for evaluating hearing loss.¹¹

ANALYSIS

OWCP accepted that appellant sustained bilateral hearing loss due to noise exposure from his federal employment. The issue is whether he has proven a schedule award by establishing that he sustained a ratable impairment in accordance with the A.M.A., *Guides*.

OWCP properly referred appellant to Dr. Taghizadeh regarding his hearing loss. Dr. Taghizadeh's April 30, 2015 examination found that appellant's bilateral high frequency sensorineural hearing loss was due to his workplace noise exposure. On June 18, 2015 an OWCP medical adviser reviewed Dr. Taghizadeh's report and found that the hearing loss was not ratable for schedule award purposes. He applied their standardized procedures to the April 23, 2015 audiogram performed for Dr. Taghizadeh to determine if appellant's hearing loss was ratable for schedule award purposes.

Testing for the right ear at the frequency levels of 500, 1,000, 2,000, and 3,000 cycles per second revealed decibels losses of 15, 15, 20, and 25, respectively. These decibels were totaled at 75 and were divided by 4 to obtain an average hearing loss at those cycles of 18.75 decibels. The average of 18.75 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal zero percent hearing loss for the right ear.

Testing for the left ear at the frequency levels of 500, 1,000, 2,000, and 3,000 cycles per second revealed decibels losses of 10, 10, 20, and 30 respectively. These decibels were totaled at 70 and were divided by four to obtain the average hearing loss at those cycles of 17.5 decibels. The average of 20 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to zero which was multiplied by the established factor of 1.5 to compute a zero percent hearing loss for the left ear. Thus, OWCP concluded that appellant had no permanent impairment of his hearing that warranted a schedule award. Consequently, appellant does not have a ratable hearing loss under OWCP's standardized procedures for rating hearing loss.

On appeal appellant asserts that OWCP's decision was incorrect and he should have been awarded a schedule award since his hearing loss was accepted as work related. As explained,

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Donald E. Stockstad*, 53 ECAB 301 (2002), *petition for recon. granted (modifying prior decision)*, Docket No. 01-1570 (issued August 13, 2002).

while appellant has an accepted bilateral hearing loss, his hearing loss is not ratable for schedule award purposes under the standards used by OWCP.

Appellant may request a schedule award based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

CONCLUSION

The Board finds that appellant has not proven a ratable hearing loss in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated July 13, 2015 is affirmed.

Issued: November 18, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board