



of his claimed condition and first realized that it was caused or aggravated by his employment. On the same form, appellant's immediate supervisor indicated that he retired effective December 31, 2011.

In an August 29, 2013 letter, OWCP requested that appellant submit additional factual and medical evidence. It also requested that the employing establishment submit information.

Appellant submitted a detailed statement describing his federal and nonfederal employment over the years, including the type of noise exposure he experienced in each job. He indicated that in some of his federal jobs he was exposed to noise from pneumatic tools, trucks, trains, and heavy equipment. Appellant submitted a January 10, 2012 audiogram that showed mild hearing loss, but the audiogram report was not signed.

On September 10, 2013 appellant filed a claim for a schedule award (Form CA-1).

OWCP referred appellant for evaluation of his claimed hearing loss to Dr. William R. Lomax, a Board-certified otolaryngologist. In a November 6, 2013 report, Dr. Lomax reported findings of November 4, 2013 audiometric testing. He found that appellant had sensorineural hearing loss which was caused by presbycusis and acoustic trauma, but he checked a box indicating that the audiometric testing results were invalid and unrepresentative of appellant's hearing sensitivity.<sup>2</sup>

In a November 14, 2013 report, Dr. Eric Puestow, a Board-certified internist and an OWCP medical adviser, noted that a schedule award could not be calculated because Dr. Lomax had indicated that the November 4, 2013 audiometric testing results were not valid.

OWCP sent appellant to another OWCP referral physician to evaluate his claimed hearing loss. In a May 21, 2014 report, Dr. Kristen Bish, a Board-certified otolaryngologist, reported findings of audiometric testing she obtained on that date. She noted that the testing showed poor morphology and that the results were "inconclusive."

OWCP then referred appellant for additional evaluation of his claimed hearing loss. In a March 30, 2015 report, Dr. Rocco Cassone, a Board-certified otolaryngologist serving as an OWCP referral physician, reported findings of audiometric testing he obtained on that date. Dr. Cassone noted that the audiometric testing showed a moderate-to-severe sensorineural hearing loss with excellent speech discrimination of 92 percent and 96 percent in the right and left ear, respectfully. He noted that appellant was "somewhat inconsistent" comparing his pure tones to his speech scores and noted, "I do believe the pure tones were fairly reliable and are consistent testing to reach the charted numbers." In the "impression/recommendation" portion of the report, Dr. Cassone noted that appellant appeared to have a sensorineural hearing loss that was at least in part related to federal employment although there was a little inconsistency in his testing and "this had been similar over his previous testing." Appellant's pure tones were slightly worse on the present audiometric evaluation than on his earlier evaluations. Dr. Cassone

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<sup>2</sup> In his November 6, 2013 report and a supplemental report dated June 9, 2014, Dr. Lomax noted that the January 10, 2012 audiogram of record was a better indicator of appellant's hearing loss than the audiogram he obtained on November 4, 2013.

noted, “It is my feeling that he should be considered to have some possible relation to his noise exposure at work.” He noted there also was a component of presbycusis to appellant’s hearing loss and that amplification should be used.

On April 29, 2015 Dr. Puestow, an OWCP medical adviser, noted that calculation of a schedule award was not possible. He indicated that Dr. Cassone noted that sensorineural hearing loss was possible due to appellant’s employment, but that the audiometric testing results were invalid.

In a July 2, 2015 decision, OWCP accepted appellant’s claim for “a hearing loss” due to his employment-related noise exposure, but found, “After three evaluations however tests were deemed invalid and did not establish a ratable hearing loss. Therefore, you are not entitled to a schedule award of compensation under [FECA].”

### **LEGAL PRECEDENT**

The schedule award provision of FECA<sup>3</sup> and its implementing regulations<sup>4</sup> 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.<sup>5</sup>

OWCP evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.<sup>6</sup> 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.<sup>7</sup> Then, the “fence” of 25 decibels is deducted because, as the A.M.A., *Guides* points out, losses below 25 decibels result in no impairment in the ability to hear everyday speech under everyday conditions.<sup>8</sup> The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.<sup>9</sup> 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

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<sup>3</sup> 5 U.S.C. § 8107.

<sup>4</sup> 20 C.F.R. § 10.404.

<sup>5</sup> *Id.*

<sup>6</sup> A.M.A., *Guides* 250-51 (6<sup>th</sup> ed. 2009).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

six to arrive at the amount of the binaural hearing loss.<sup>10</sup> The Board has concurred in OWCP's adoption of this standard for evaluating hearing loss.<sup>11</sup>

It is well established that proceedings under FECA are not adversarial in nature, and while the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.<sup>12</sup>

### ANALYSIS

On August 28, 2013 appellant filed a claim alleging that he sustained hearing loss due to exposure to hazardous noise at work. He later filed a claim for a schedule award. OWCP developed the record by referring appellant for audiometric testing and evaluation of his claimed hearing loss. After it determined that two OWCP referral physicians obtained test findings that were unreliable, OWCP referred appellant for additional evaluation of his claimed hearing loss to Dr. Cassone, a Board-certified otolaryngologist.

Dr. Cassone submitted a March 30, 2015 report of his March 30, 2015 audiometric testing. Thereafter, Dr. Puestow, a Board-certified internist serving as an OWCP medical adviser, noted on April 29, 2015 that calculation of a schedule award was not possible. He indicated that Dr. Cassone had noted that sensorineural hearing loss was possible due to appellant's employment, but that the audiometric test results were invalid.

In a July 2, 2015 decision, OWCP accepted appellant's claim for "a hearing loss" due to his employment-related noise exposure and noted, "After three evaluations however tests were deemed invalid and did not establish a ratable hearing loss. Therefore, you are not entitled to a schedule award of compensation under [FECA]."

The Board notes that Dr. Cassone's March 30, 2015 report requires clarification as he did not explicitly indicate whether the testing results he obtained were invalid. Dr. Cassone noted that appellant was "somewhat inconsistent" comparing his pure tones to his speech scores and noted, "I do believe the pure tones were fairly reliable and are consistent testing to reach the charted numbers." In the "impression/recommendation" portion of the report, he noted that appellant appeared to have a sensorineural hearing loss that was at least in part related to federal employment although there was a little inconsistency in his testing and "this had been similar over his previous testing." Therefore, Dr. Cassone's opinion on the validity of the testing is vague and in need of clarification.

For these reasons, the case shall be remanded to OWCP in order to obtain a supplemental report from Dr. Cassone clarifying his opinion on the validity of the test results he obtained on March 30, 2015. After carrying out this development, it shall issue a *de novo* decision regarding appellant's claim for schedule award compensation.

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<sup>10</sup> *Id.*

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

<sup>12</sup> *Dorothy L. Sidwell*, 36 ECAB 699, 707 (1985); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

**CONCLUSION**

The Board finds that the case is not in posture for decision regarding whether OWCP properly denied appellant's claim for a schedule award due to hearing loss.

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 2, 2015 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to OWCP for proceedings consistent with this decision of the Board.

Issued: November 4, 2015  
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board