

November 13, 2012 after failing annual hearing tests given by the employing establishment. Appellant advised that he was awaiting retirement.

By letter dated July 15, 2014, OWCP notified appellant of the type of evidence needed to establish his claim.

In an August 1, 2014 statement, appellant advised that his friends and family began to notice his hearing loss in late 2012. He provided a comprehensive history of his federal and nonfederal employment and detailed his noise exposure at each position. Appellant advised that he began at the employing establishment on August 16, 1999 and that he was exposed to noise from jet engines, pneumatic power tools, and mobile support equipment. He stated that the use of hearing protection was mandatory and that he was exposed to the hazardous noise eight hours a day.

Appellant provided a November 27, 2013 report from an audiologist who advised that appellant related that his hearing loss was due to noise exposure at the employing establishment. The audiologist diagnosed mild-to-moderately severe high frequency sensorineural hearing loss. An accompanying audiogram testing decibel losses at 500, 1,000, 2,000 and 3,000 hertz and recorded losses of 0, 10, 5, and 25 in the left ear. Testing at the same levels for the right ear recorded decibel losses of 0, 20, 10, and 35. A November 18, 2014 audiogram from the same audiologist recorded losses of 5, 10, 0, and 25 in the left ear and 10, 15, 15, and 45 in the right ear. The employing establishment also submitted audiometry findings from October 14 and 20, 2014.²

On January 27, 2015 OWCP referred appellant, together with a statement of accepted facts, to Jeffrey Kunkes, a Board-certified otolaryngologist, for a second opinion. In a February 2, 2015 report, Dr. Kunkes reviewed the statement of accepted facts and opined that appellant had sloping bilateral sensorineural hearing loss. He opined that appellant's workplace exposure was sufficient in time, intensity, and duration to cause his hearing loss. Dr. Kunkes recommended bilateral hearing aids. An accompanying January 29, 2015 audiogram tested decibel losses at 500, 1,000, 2,000 and 3,000 hertz and recorded losses of 10, 15, 20, and 35 in the left ear. Testing at the same levels for the right ear recorded decibel losses of 10, 10, 20, and 50.

By report dated February 10, 2015, an OWCP medical adviser, after reviewing the record, opined that appellant's hearing loss was causally related to his federal employment. He found that appellant's hearing impairment was not ratable for schedule award purposes. The medical adviser also opined that hearing aids should not be authorized.

On February 11, 2015 OWCP accepted appellant's claim for bilateral sensorineural hearing loss.

On February 22, 2015 appellant filed a claim for a schedule award.

² None of these audiograms were signed by a physician nor were they ratable under OWCP standards. *See infra* notes 5, 6.

By decision dated March 3, 2015, OWCP denied appellant's claim for a schedule award because hearing loss was not sufficiently severe to be considered ratable. It also found that the weight of medical evidence established that he would not benefit from hearing aids.

On appeal appellant argued that his audiologist opined that there was enough permanent hearing loss to warrant hearing aids and compensation.

LEGAL PRECEDENT – ISSUE 1

The schedule award provision of FECA and its implementing regulations 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. FECA, however, does not specify the manner in which the percentage of loss of a member shall be determined. The method used in making such determination is a matter which rests in the sound discretion of OWCP. For consistent results and to ensure equal justice, the Board has authorized 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* (6th ed. 2009) (hereinafter A.M.A., *Guides*),³ has been adopted by OWCP for evaluating scheduled loss and the Board has concurred in such adoption.⁴

OWCP evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*. 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. 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.⁵ The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss. 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 and then added to the greater loss and the total is divided by six to arrive at the amount of the binaural hearing loss.⁶ The Board has concurred in OWCP's adoption of this standard for evaluating hearing loss.⁷

ANALYSIS -- ISSUE 1

The Board finds that the evidence of record does not establish that appellant sustained a ratable hearing loss.

OWCP medical adviser properly applied OWCP's standardized procedures to the January 29, 2015 audiogram obtained by Dr. Kunkes. The January 29, 2015 audiogram certified by Dr. Kunkes does not establish a ratable hearing loss. According to OWCP's procedures,

³ A.M.A., *Guides* (6th ed. 2009).

⁴ *R.D.*, 59 ECAB 127 (2007); *Bernard Babcock, Jr.*, 52 ECAB 143 (2000); *see also* 20 C.F.R. § 10.404.

⁵ *See* A.M.A., *Guides* 250.

⁶ *Id.* at 251.

⁷ *E.S.*, 59 ECAB 249 (2007); *Reynaldo R. Lichtenberger*, 52 ECAB 462 (2001).

testing at frequency levels of 500, 1,000, 2,000, and 3,000 hertz revealed hearing losses in the right ear of 10, 10, 20, and 50. These totaled 90 decibels which, when divided by four, produced an average hearing loss of 22.5 decibels. The average of 22.5 decibels when reduced by 25 decibels (the first 25 decibels are discounted as discussed above), equals zero and which, when multiplied by the established factor of 1.5 produced a zero percent hearing loss in appellant's right ear.

Testing for the left ear at frequency levels of 500, 1,000, 2,000, and 3,000 hertz revealed hearing losses in the left ear of 10, 15, 20, and 35. These totaled 80 decibels which when divided by four, produced an average hearing loss of 20 decibels. The average hearing loss of 20 decibels, when reduced by 25 decibels (the first 25 decibels are discounted as discussed above), equals zero which, when multiplied by the established factor of 1.5 produced a zero percent hearing loss in appellant's left ear. Consequently, appellant does not have a ratable hearing loss under OWCP's standardized procedures for rating hearing loss.

On appeal appellant argues that an audiologist opined that there was enough permanent hearing loss to warrant compensation.⁸ OWCP accepted that appellant sustained bilateral hearing loss due to noise exposure from his federal employment. For schedule award compensation, the issue is whether he sustained any ratable impairment in accordance with the A.M.A., *Guides*. OWCP medical adviser properly computed the percentage of appellant's hearing loss based on Dr. Kunkes' audiograms of January 29, 2015 using the formula contained in the A.M.A., *Guides*. The Board finds that OWCP properly applied the audiometric test of January 29, 2015 for determining appellant's impairment and eligibility for a schedule award. Although appellant submitted audiograms from audiologists, these audiograms have no probative medical value because an audiologist is not a physician as defined under FECA.⁹

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.

LEGAL PRECEDENT -- ISSUE 2

Section 8103 of FECA provides that the United States shall furnish to an employee who is injured while in the performance of duty the services, appliances, and supplies prescribed or recommended by a qualified physician, which OWCP considers likely to cure, give relief, reduce the degree of the period of disability, or aid in lessening the amount of monthly compensation.¹⁰ OWCP must therefore exercise discretion in determining whether the particular service, appliance, or supply is likely to affect the purposes specified in FECA.¹¹ Following medical

⁸ Appellant also asserted on appeal that he should be entitled to hearing aids. Entitlement to hearing aids is addressed in Issue 2, *infra*.

⁹ 5 U.S.C. § 8101(2); *M.P.*, Docket No. 13-1790 (issued December 17, 2013) (an audiologist is not a physician under FECA and the audiologist's opinion regarding the medical cause of a claimant's hearing loss is of no probative medical value). *See supra* note 2.

¹⁰ 5 U.S.C. § 8103. *Thomas W. Stevens*, 50 ECAB 288 (1999).

¹¹ *Id.*

evaluation of a claim, if the hearing loss is determined to be nonratable for schedule award purposes, other benefits such as hearing aids may still be payable if any employment-related hearing loss exists.¹²

ANALYSIS -- ISSUE 2

The Board finds that this issue is not in posture for decision on whether appellant is entitled to hearing aids.

The Board has held that, following medical evaluation of a claim, if the hearing loss is determined to be nonratable for schedule award purposes, other benefits such as hearing aids may still be provided if any causally related hearing loss exists.¹³ Dr. Kunkes' report indicated that appellant's hearing loss was due to his federal employment and recommended bilateral hearing aids. OWCP medical adviser recommended that OWCP not authorize hearing aids. However, he did not offer any basis to explain why he disagreed with the recommendation of Dr. Kunkes. Based on this, OWCP found that appellant was not entitled to hearing aids based on the weight of the medical evidence. It did not explain the reasons why the weight of the medical evidence supported that appellant was not entitled to hearing aids. OWCP must provide appellant with a statement of reasons why his claim is being denied.¹⁴ The Board finds OWCP abused its discretion in denying appellant hearing aids. A mere statement in an OWCP decision that the weight of the medical evidence establishes that hearing aids would not be of benefit is insufficient where an OWCP second opinion physician provides a contrary finding.¹⁵ Even if OWCP medical adviser opines that hearing aids are not necessary, it must develop and weigh the opinions.¹⁶

Accordingly, the case will be remanded to OWCP for further development on the question of whether appellant is entitled to hearing aids for his employment-related hearing loss. Following this and such other development as deemed necessary, it shall issue an appropriate merit decision regarding appellant's entitlement to hearing aids.

CONCLUSION

The Board finds that appellant did not establish that he had a ratable hearing loss entitling him to a schedule award. The Board also finds that the case is not in posture for decision regarding whether OWCP should authorize hearing aids.

¹² See *K.S.*, Docket No. 13-154 (issued April 17, 2013).

¹³ See *Raymond VanNett*, 44 ECAB 480 (1993).

¹⁴ 20 C.F.R. § 10.126.

¹⁵ *A.B.*, Docket No. 13-316 (issued June 20, 2013).

¹⁶ *B.P.*, Docket No. 15-813 (issued July 7, 2015).

ORDER

IT IS HEREBY ORDERED THAT the March 3, 2015 decision of Office of Workers' Compensation Programs is affirmed, in part, set aside in part, and remanded.

Issued: September 3, 2015
Washington, DC

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

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board