

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

P.D., Appellant)

and)

DEPARTMENT OF THE NAVY, MARINE)
CORPS LOGISTICS BASE, MAINTENANCE)
CENTER, Barstow, CA, Employer)

Docket No. 15-1173
Issued: September 2, 2015

Appearances:
Alan J. Sharpiro, Esq., for the appellant
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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 29, 2015 appellant, through counsel, filed a timely appeal of a February 3, 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 to consider the merits of the case.

ISSUE

The issue is whether appellant has established a ratable hearing loss in his right ear warranting him to a schedule award and more than eight percent loss of hearing in his left ear for which he received a schedule award.

FACTUAL HISTORY

On January 24 and February 24, 2011 appellant, then a 54-year-old heavy mobile equipment mechanic, filed an occupational disease claim alleging that he had developed bilateral

¹ 5 U.S.C. § 8101 *et seq.*

hearing loss and ringing in both ears making it difficult to hear normal conversation and impossible to hear with background noise. He stated that he first became aware of his condition on December 5, 2007 and first realized that this was caused or aggravated by his employment on April 7, 2009. Appellant stated that he was told by employing establishment medical staff that he was experiencing normal industrial hearing loss.

OWCP requested additional factual and medical evidence in support of appellant's claim by letter dated February 25, 2011. Appellant alleged that he began working as a civilian employee for the employing establishment on August 18, 1981 and was exposed to hammers, impact wrenches, grinders, and automotive engines and diesel engines through 1992. Beginning in 1992 he was also exposed to ship engines and engine rooms working on the Paxman Engine project. Appellant began working in an office setting in May 2004 with an occasional visit to the shop floor where he was exposed to hammers, impact wrenches, and grinders. He noted that he had filed a claim through the Department of Veterans Affairs, (VA). The VA accepted partial responsibility for the ringing in his ears, but would not cover appellant's hearing loss or provide hearing aids as the hearing loss occurred while he was a civilian employee at the employing establishment.

Appellant filed another claim for hearing loss in both ears and tinnitus before the VA on April 10, 2008. In a decision dated March 30, 2009, the VA found that he had served in the Air Force from May 27, 1976 through August 26, 1980. The VA found a service connection for appellant's hearing loss in his right ear, but denied compensation as he did not have ratable hearing loss under that system. The VA granted service connection for 10 percent impairment due to tinnitus effective June 16, 2008. The VA found that appellant's loss of hearing in his left ear was not related to his military service.

Appellant submitted audiograms from the employing establishment hearing conservation program beginning in 1986 intermittently through 2011. In a report dated September 19, 1996, Dr. John D. Amar, a Board-certified otolaryngologist, diagnosed high frequency hearing loss due to noise exposure and recommended a job in a less noisy environment. Appellant also submitted a noise survey dated January 22, 1997, indicating noise levels from 80 to 106.2 decibels and recommending hearing protection for 135 feet from the employing establishment. Testing of the Paxman engine indicated noise exposure of 118.7 decibels and with a recommended exposure time of four hours with double hearing protection. On October 9, 1998 the employing establishment noted the noise exposure at the Paxman engine testing as well as appellant's request to be removed from this assignment due to hazardous noise. Appellant's physician recommended that appellant be removed from this location from September 20, 1996 through September 21, 1998.

OWCP referred appellant for a second opinion evaluation with Dr. Natee Poopat, a Board-certified otolaryngologist, on May 13, 2011. In a report dated June 15, 2011 Dr. Poopat diagnosed noise-induced hearing loss. He found a moderate-to-severe high-frequency sensorineural hearing loss in the right and left ears. Dr. Poopat opined that appellant's hearing loss was more likely than not related to his occupational noise exposure and recommended hearing aids.

Appellant's audiogram demonstrated testing at 500, 1,000, 2,000, and 3000 Hertz and revealed on the right decibel losses of 5, 5, 30, and 50 respectively and on the left 15, 5, 45, and 55 respectively.

OWCP accepted appellant's claim for bilateral sensory hearing loss on August 3, 2011. Appellant requested a schedule award on February 8, 2012.

An OWCP medical adviser reviewed appellant's claim on March 21, 2012 and found that his average hearing loss of 22.5 decibels on the right was less than the fence of 25 decibels such that he had no ratable loss of hearing in the right ear. He averaged appellant's decibel loss in the left ear and reached 30 decibels. The medical adviser then subtracted the fence of 25 decibels and multiplied the balance of 5 decibels by 1.5 to reach 7.5 percent monaural loss of hearing in his left ear. He authorized a hearing aid and found that appellant's tinnitus was not described as impinging on activities of daily living and was not considered in appellant's schedule award.

By decision dated March 25, 2013, OWCP granted appellant a schedule award for 8 percent loss of hearing in his left ear, which it noted was rounded up to the next whole number from the computed 7.5 percent. It found that he was not entitled to a schedule award for the employment-related loss of hearing in his right ear. Counsel requested an oral hearing before an OWCP hearing representative on April 15, 2013.

Appellant testified at the telephone hearing held on April 14, 2013 that his hearing loss was worse in his right ear. Counsel stated that he would submit additional medical evidence within 30 days. However, OWCP did not receive additional evidence.

By decision dated March 13, 2014, the hearing representative found that appellant did not currently have a ratable loss of hearing in his right ear and that he had no more than eight percent loss of hearing in his left ear for which he had received a schedule award.

Counsel requested reconsideration on November 19, 2014. Appellant requested an increased schedule award on September 24, 2014. Counsel submitted additional audiograms and a worksheet calculating additional hearing loss for schedule award purposes.

By decision dated February 3, 2015, OWCP denied modification of its prior decision finding that the evidence was insufficient to establish additional impairment. It noted that appellant might be eligible for an additional schedule award based on additional employment exposures and directed him to file a new occupational disease claim, if he felt this was appropriate.

LEGAL PRECEDENT

The schedule award provision of FECA² and its implementing regulations³ set forth the number of weeks of compensation payable to employees sustaining permanent impairment for loss or loss of use of scheduled members or functions of the body. FECA, however, does not

² 5 U.S.C. §§ 8101-8193, 8107.

³ 20 C.F.R. § 10.404.

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 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. OWCP evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (A.M.A., *Guides*) (6th ed. 2009).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. 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, then added to the greater loss and the total is divided by six to arrive at the amount of the binaural hearing loss. The Board has concurred in OWCP's adoption of this standard for evaluating hearing loss.⁵

If tinnitus interferes with activities of daily living, including sleep, reading, and other tasks requiring concentration, enjoyment of quiet recreation, and emotional well-being, up to five percent may be added to a measurable binaural hearing impairment.⁶

ANALYSIS

An OWCP medical adviser reviewed the report of Dr. Poopat, whom OWCP referred appellant to for a second opinion otologic examination and audiological evaluation. Dr. Poopat determined that appellant sustained bilateral hearing loss due to his exposure to noise in the workplace. The medical adviser concluded that appellant had no ratable hearing impairment in his right ear. He properly applied OWCP's standardized procedures to Dr. Poopat's June 15, 2011 audiogram, which recorded frequency levels at the 500, 1,000, 2,000, and 3,000 cycles per second levels and revealed decibel losses of 5, 5, 30, and 50 respectively for a total decibel loss of 90 on the right. The medical adviser then followed established procedures and divided this total by 4 which resulted in an average loss of 22.5 decibels and subtracted the fence of 25 decibels to equal 0 decibels. He then multiplied this by the established factor of 1.5 to result in a 0 percent monaural hearing loss for the right ear. The medical adviser then properly followed the same procedure on the left, noting that the test results for the left ear at the frequencies of 500, 1,000, 2,000, and 3,000 cycles per second revealed decibel losses of 15, 5, 45, and 55 decibels respectively, for a total of 120 decibels. He divided this by 4, for an average

⁴ For new decisions issued after May 1, 2009 OWCP began using the sixth edition of the A.M.A., *Guides*. A.M.A., *Guides*, 6th ed. (2009); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.5a (February 2013); *see also*, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

⁵ *See D.D.*, Docket No. 15-193 (issued May 11, 2015); *R.D.*, 59 ECAB 127 (2007); *Bernard Babcock, Jr.*, 52 ECAB 143 (2000).

⁶ A.M.A., *Guides* 249.

hearing loss of 30 decibels, subtracted the fence of 25 decibels to equal 5 decibels, and multiplied this by the established factor of 1.5, for a 7.5 percent monaural hearing loss for the left ear, which OWCP properly rounded up to the next whole number of 8 percent.⁷

The Board finds that Dr. Poopat properly conducted an audiogram which showed hearing loss. The medical adviser utilized those findings and properly applied the A.M.A., *Guides* to arrive at eight percent left ear monaural hearing loss. The Board finds that the reports were thorough, detailed, and properly applied the A.M.A., *Guides*. Appellant has not established that he has more than eight percent hearing loss on the left for which he received a schedule award, or that the hearing loss in his right ear was sufficiently significant to be ratable.

Appellant may request a schedule award or increased 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 no more than eight percent permanent loss of hearing in his left ear for which he has received a schedule award. The Board further finds that he has not established that his loss of hearing in the right ear is sufficiently significant to be ratable for purposes of a schedule award.

⁷ The Board notes that it is the policy of OWCP to round the calculated percentage of impairment to the nearest whole point. See *Robert E. Cullison*, 55 ECAB 570 (2004); Federal (FECA) Procedure Manual, *supra* note 4 at Chapter 3.700.3(b) (January 2010).

ORDER

IT IS HEREBY ORDERED THAT February 3, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 2, 2015
Washington, DC

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

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

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