

FACTUAL HISTORY

On July 29, 2004 appellant, then a 50-year-old criminal investigator, filed a traumatic injury claim alleging that participating in firearms instruction caused ringing in his ears. After an initial denial on February 8, 2005 an OWCP hearing representative found that bilateral tinnitus should be accepted. On April 29, 2005 OWCP accepted bilateral tinnitus, caused by the July 28, 2004 employment incident.

On May 3, 2013 appellant filed a recurrence claim, stating that his tinnitus had worsened and he had hearing loss.² He asked that his claim be reopened so that he could obtain testing by a certified audiologist. OWCP accepted a recurrence of medical condition on May 29, 2013.

In a June 27, 2013 report, Catherine Bieri Ryan, Au.D., indicated that appellant was seen on May 24, 2013 for evaluation of constant bilateral tinnitus. She advised that a hearing test indicated that right ear hearing levels were in a normal range except in the high frequencies at 4,000 hertz and above, which demonstrated that he had a mild loss, and that the left ear exhibited a mild loss in the low and mid-frequencies that dropped to a severe loss in the high frequencies. Speech testing indicated excellent speech discrimination in both ears. Dr. Ryan recommended a tinnitus masker hearing device.

In September 9, 2013 reports, Dr. Robert H. Nettleman, Board-certified in family medicine, noted a history of uncontrolled tinnitus for eight years. He advised that appellant was having progressive intolerance to tinnitus and was wearing masking hearing aids. Dr. Nettleman advised that appellant should avoid firearm training and teaching until further evaluated.

In a September 30, 2013 statement, appellant reported his intention to apply for disability retirement due to his deteriorating bilateral tinnitus and other health conditions. On October 30, 2013 he filed a schedule award claim.

On November 3, 2013 Dr. Morley Slutsky, who is Board-certified in occupational medicine and an OWCP medical adviser, reported his review of the case record. He advised that the date of maximum medical improvement was May 24, 2013, the date of Dr. Ryan's report. Dr. Slutsky explained that appellant's accepted tinnitus was not ratable because noise-induced hearing loss had not been accepted, and there were no audiograms provided which met criteria for rating purposes.

By decision dated November 22, 2013, OWCP found that because noise-induced hearing loss had not been accepted and there were no audiograms provided which met criteria for rating purposes, the schedule award was denied. Appellant timely requested a review of the written record. He submitted a copy of Dr. Ryan's hearing evaluation that was illegible with regard to specific hearing loss frequencies.

In a November 25, 2013 report, Dr. Katherine Heidenreich, a Board-certified otolaryngologist, noted appellant's work history as a firearms instructor and his complaint of tinnitus. She indicated that an audiogram that day demonstrated normal hearing acuity with

² The record is devoid of evidence between the April 2005 acceptance and the May 2013 recurrence claim.

speech reception threshold of 10 decibels and word recognition score of 100 percent on the right, and a mild high frequency hearing loss with a conductive component at 6,000 Hz, speech reception threshold of 10 decibels, and a word recognition score of 100 percent on the left. Dr. Heidenreich noted that she did not have prior audiograms for comparison. Dr. Heidenreich opined that appellant should refrain from additional firearm use if possible because it could exacerbate his tinnitus.

On February 24, 2014 appellant notified OWCP that he had resigned from federal employment and was moving to Florida.

In a May 12, 2014 decision, an OWCP hearing representative noted that the record did not contain a report from a qualified physician that related appellant's hearing loss to the July 28, 2004 incident. She further found that his hearing loss was not ratable under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*).³ She affirmed the November 22, 2013 decision.

LEGAL PRECEDENT

The schedule award provision of FECA,⁴ and its implementing federal regulations,⁵ 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 for all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.⁶ For decisions issued after May 1, 2009, the sixth edition of the A.M.A., *Guides* is to be used.⁷

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 and averaged.⁸ The "fence" of 25 decibels is then 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.⁹ The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.¹⁰ The binaural

³ A.M.A., *Guides* (6th ed. 2008).

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404.

⁶ *Id.* at § 10.404(a).

⁷ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (February 2013); see also Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

⁸ *Supra* note 3 at 250.

⁹ *Id.*

¹⁰ *Id.*

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.¹¹ The Board has concurred in OWCP's adoption of this standard for evaluating hearing loss.¹²

Section 11.2b of the sixth edition of the A.M.A., *Guides* provides that tinnitus, in the presence of measurable binaural hearing impairment and if the tinnitus impacts the ability to perform activities of daily living, up to a five percent rating may be granted for tinnitus.¹³ The Board has long held under this and prior editions of the A.M.A., *Guides* that where a hearing loss is not ratable a claimant is not entitled to an award for tinnitus.¹⁴

ANALYSIS

OWCP accepted employment-related bilateral tinnitus, and on October 30, 2013 he filed a schedule award claim. As noted in both the November 22, 2013 OWCP decision and that of the hearing representative on May 12, 2014, in the absence of an accepted hearing loss that is ratable, a claimant is not entitled to a schedule award.

An employment-related hearing loss has not been accepted in this case. The record does not contain an opinion by a qualified physician linking any diagnosed hearing loss to employment factors.¹⁵ FECA does not list tinnitus in the schedule of eligible members, organs, or functions of the body. A claimant may not directly receive a schedule award for tinnitus. Hearing loss is a covered function of the body, so if tinnitus contributes to a ratable loss of hearing, a claimant's schedule award will reflect that contribution. The A.M.A., *Guides* provide that if tinnitus interferes with activities of daily living, up to five percent may be added to a measurable binaural hearing impairment.¹⁶ The Board has held, however, that there is no basis for paying a schedule award for a condition such as tinnitus unless the evidence establishes that the condition caused or contributed to a ratable hearing loss.¹⁷ Moreover, even if hearing loss was accepted, the record does not support that appellant's hearing loss is ratable. The only

¹¹ *Id.* at 251.

¹² *Horace L. Fuller*, 53 ECAB 775 (2002).

¹³ *Supra* note 3 at 249.

¹⁴ *Juan A. Trevino*, 54 ECAB 358 (2003); *see R.G.*, Docket No. 14-130 (issued April 4, 2014).

¹⁵ Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee. Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship. *L.K.*, Docket No. 14-1769 (issued December 19, 2014).

¹⁶ *See supra* note 3 at 249.

¹⁷ *See Juan A. Trevino*, *supra* note 14; *T.W.*, Docket No. 13-1967 (issued February 10, 2014); *Richard Larry Enders*, 48 ECAB 184 (1996).

audiogram of record dated June 12, 2013 is incomplete. It is unsigned and does not contain any certification.¹⁸ This cannot constitute probative medical evidence as it was not certified by a physician as accurate.¹⁹ Although it is attached to the June 27, 2013 report completed by Dr. Ryan, who is a doctor of audiology, audiologists are not included among the healthcare professionals recognized as a physician under FECA.²⁰

Thus, appellant is not entitled to a schedule award for his employment-related tinnitus. He continues to be entitled to medical benefits for this condition.²¹

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 is not entitled to a schedule award for his employment-related tinnitus.

¹⁸ OWCP procedures set forth requirements for the type of medical evidence used in evaluating hearing loss. These include that the employee undergo both audiometric and otologic examination; that the audiometric testing precede the otologic examination; that the audiometric testing be performed by an appropriately certified audiologist; that the otologic examination be performed by an otolaryngologist certified or eligible for certification by the American Academy of Otolaryngology; that the audiometric and otologic examination be performed by different individuals as a method of evaluating the reliability of the findings; that all audiological equipment authorized for testing meet the calibration protocol contained in the accreditation manual of the American Speech and Hearing Association; that the audiometric test results include both bone conduction and pure tone air conduction thresholds, speech reception thresholds and monaural discrimination scores; and that the otolaryngologist's report include: date and hour of examination, date and hour of employee's last exposure to loud noise, a rationalized medical opinion regarding the relation of the hearing loss to the employment-related noise exposure and a statement of the reliability of the tests. Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirement for Medical Records*, Chapter 3.600.8(a) (September 1995); see *Vernon Brown*, 54 ECAB 376 (2003).

¹⁹ See *R.B.*, Docket No. 10-1512 (issued March 24, 2011). *Joshua A. Holmes*, 42 ECAB 231 (1990) (OWCP does not have to review audiograms not certified by a physician and it is the claimant's burden to submit a properly certified audiogram).

²⁰ *Thomas O. Bouis*, 57 ECAB 602 (2006). Section 8101(2) of FECA provides that "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8101(2).

²¹ See *R.G.*, *supra* note 14.

ORDER

IT IS HEREBY ORDERED THAT the May 12, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 12, 2016
Washington, DC

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

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

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