

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

C.M., Appellant)	
)	
and)	Docket No. 16-0529
)	Issued: December 14, 2016
DEPARTMENT OF THE ARMY,)	
MATERIEL COMMAND HEADQUARTERS,)	
Anniston, AL, 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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On January 20, 2016 appellant filed a timely appeal from a January 8, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 CFR §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he had more than 32 percent binaural (both ears) hearing loss causally related to factors of his federal employment.

On appeal appellant contends that he has a severe hearing loss causally related to his federal employment. He described his 43 years of working in a metalizing machine shop with noise exposure. Appellant notes that his previous hearing loss claim was accepted by OWCP for 32 percent binaural hearing loss in 2002. He denies that he was malingering when examined by the second opinion physician.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On April 16, 2015 appellant, then a 69-year-old machine parts inspector, filed an occupational disease claim (Form CA-2) alleging that he suffered from binaural hearing loss as a result of his federal employment duties. He indicated that he began working for the employing establishment in 1972 as a machinist in the metalizing and machining area, where he was exposed to a high level of noise. Appellant submitted a detailed history of his work experience. He indicated that he started work at the employing establishment on October 2, 1972. Appellant worked as a machinist or machinist leader until October 31, 2004. He then worked as a machine parts inspector beginning November 1, 2004 as a machine parts inspector. Appellant did not stop work. While working for the employing establishment, he indicated that he was exposed to noise from milling machines, planers, internal and external grinders, drill presses, power saws, and metalizing equipment. In support of his claim, appellant submitted audiological tests from the employing establishment dated January 15, 2004, January 10, 2006, and February 10, 2015.

Appellant filed prior claims with OWCP, including a claim for hearing loss due to noise exposure that was accepted by OWCP on February 12, 2003.² OWCP awarded 32 percent binaural hearing loss under that claim.

Appellant was examined by Dr. Aatif M. Hayat, Board-certified in preventive medicine and the medical director for the employing establishment. In a memorandum dated February 10, 2015, Dr. Hayat noted that appellant's hearing acuity had worsened significantly since his baseline was determined, and that this hearing loss affected not only his ability to hear, but more importantly, his ability to understand others. He advised appellant that it was his responsibility to wear hearing protection while posted in a noise-hazardous area.

Appellant completed a form for the employing establishment with regard to his hearing loss on April 9, 2015. He noted that he worked for the employing establishment since 1972, and that he wore earplugs since 1985. Appellant indicated that he first noticed his hearing loss on February 20, 2002.

In an April 15, 2015 memorandum, Dr. Hayat indicated that appellant's claim covered an expanse of 42 years from 1972 to 2015. He noted that claimant alleged that he wore hearing protection whenever required; therefore, his noise exposure at the inner ear where hearing damage is done would have been at least 10 dBA lower. Dr. Hayat noted that, according to the audiologist's report, the pattern of hearing loss present appeared to be consistent with noise exposure. However, he concluded that appellant's noise exposure history and hearing protection usage indicated a lack of duration of exposure to high intensity noise sufficient for a hearing loss to be proximately caused by noise from civil service employment.

By letter dated August 25, 2015, OWCP referred appellant to Dr. Dennis G. Pappas, Jr., a Board-certified otolaryngologist for a second opinion. In the statement of accepted facts (SOAF), it indicated that appellant wore hearing protection, that he was exposed to noise levels from 75 to 120 dBA intermittently for up to seven hours per day, and that appellant began using earplugs and earmuffs in 1978.

² OWCP File No. xxxxxx855.

In a report based on an October 1, 2015 consultation, Dr. Pappas diagnosed possible hearing loss. He indicated that appellant had worked since 1972 as a machinist and inspector around very loud noise and metal processing equipment and had worn hearing protection. Dr. Pappas noted that appellant has experienced hearing difficulty since 1986 and filed a previous claim for hearing loss in 2001. He noted that appellant denied tinnitus, ear infections, drainage, or previous hearing aid use.

Dr. Pappas noted that appellant's hearing tests dating to 1983 demonstrated a wide range of results. He noted, for example, that on January 18, 2011 appellant demonstrated a moderate hearing loss on the left and mild loss on the right. However, the next day, he demonstrated significant improvement with a normal result on the right and some scattered mild loss on the left. Dr. Pappas also noted that there were other previous tests that demonstrated similar changes in consistencies of loss over a short interval of time. He noted that the current audiogram demonstrated severe-to-profound pure tone loss with discrimination 52 to 64 percent bilaterally. However, Dr. Pappas determined that the validity of the test was graded as poor as his speech reception threshold (SRT) results were originally 80 to 90 dB in either ear and on retest were documented at 40 dB. He determined that appellant was not providing consistent and valid responses to his testing, that there was a wide variation in hearing results over short intervals of time, and in previous testing sessions as well. Dr. Pappas noted that appellant was able to hear the tuning fork which would be inconsistent with his pure tone result. He also noted that appellant responded inconsistently during conversation in the examination room and with the audiologist. Dr. Pappas explained that appellant seemed to hear conversation one moment and could not understand the next moment. He opined that the testing was invalid.

On December 9, 2015 Dr. Pappas evaluated appellant again and diagnosed sensorineural hearing loss. He noted that, following the December 9, 2015 audiogram, appellant continued to demonstrate marked inconsistencies and that, therefore, the testing was again considered invalid.

By decision dated January 8, 2016, OWCP denied appellant's hearing loss claim as the testing by the second opinion physician, as well as the retesting by the same physician, was insufficient to establish that he had additional hearing loss causally related to noise exposure at his federal employment.

LEGAL PRECEDENT

The schedule award provision of FECA³ 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.

³ 5 U.S.C. § 8107.

2009) (A.M.A., *Guides*), has been adopted by OWCP for evaluating schedule 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 then 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. The Board has concurred in OWCP's adoption of this standard for evaluating hearing loss.⁶ The Board has also noted OWCP's policy to round the calculated percentage of impairment to the nearest whole number.⁷

ANALYSIS

OWCP denied appellant's claim as he failed to establish that he sustained an additional hearing loss causally related to his exposure to noise during his federal employment. The Board finds that appellant failed to meet his burden of proof to establish that he had more than 32 percent binaural hearing loss for which he previously received a schedule award.

The medical evidence submitted in support of appellant's hearing loss claim is insufficient to establish an additional hearing loss causally related to his federal employment. Appellant was previously issued a schedule award for 32 percent binaural hearing loss. The record contains no medical evidence establishing that appellant sustained a greater hearing loss causally related to the accepted factors of his federal employment. Dr. Hayat indicated that, although appellant's hearing had declined significantly since his baseline audiogram, his noise exposure history and hearing protection usage indicated a lack of duration of exposure to high intensity noise for a hearing loss to be proximately caused by noise from his civil service employment.

OWCP then referred appellant to Dr. Pappas for a second opinion evaluation. Dr. Pappas opined that appellant's hearing tests were invalid due to inconsistencies. He initially examined appellant's hearing on October 1, 2015, and indicated that the validity of that test was poor as appellant was not providing consistent and valid responses to his testing. Dr. Pappas noted that there were wide variations in appellant's hearing test results in prior examinations as well. He also indicated that appellant seemed to hear conversation one moment, but could not understand conversation the next moment. Dr. Pappas did conduct a retest on December 9, 2015, but found

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

⁷ *J.H.*, Docket No. 08-2432 (issued June 15, 2009); *Robert E. Cullison*, 55 ECAB 570 (2004). *See also* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.4(b)(2)(b) (September 2010).

that retest also demonstrated marked inconsistencies in the results and was invalid. His opinion is probative as it is rationalized, based on a thorough examination, and an accurate work history.⁸

The Board also finds that appellant did not submit reasoned medical evidence showing that he had additional hearing loss causally related to employment-related noise exposure.⁹ Accordingly, appellant has not established entitlement to an additional schedule award for hearing loss.¹⁰

Appellant may request a schedule award or increased schedule award at any time based on evidence of 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 did not meet his burden of proof to establish that he has more than 32 percent binaural hearing loss that was causally related to factors of his federal employment.

⁸ See *J.M.*, Docket No. 07-2138 (August 6, 2008).

⁹ *Id.*

¹⁰ See *R.T.*, Docket No. 15-1651 (issued November 23, 2015).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 8, 2016 is affirmed.

Issued: December 14, 2016
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