



related noise exposure while working at the shipyard and using power tools on the job. He first became aware of his condition and of its relationship to his employment on February 25, 2013.

The record reflects that appellant began working for the employing establishment in 1968. He worked as a boat builder from April 22, 1972 to the present. Appellant was exposed to shipyard noise from sealing, sanding, grinding, iron workings, and water blasting. He utilized earplugs and was exposed to loud noise for up to five hours per day. Appellant had no prior hearing problems and did not participate in any hobbies that involved exposure to loud noise.

An audiogram was completed by the employing establishment on February 25, 2013 which revealed the following decibel (dB) losses at 500, 1,000, 2,000, and 3,000 hertz (Hz): 5, 10, 10, and 30 for the right ear and 15, 15, 10, and 35 for the left ear.

OWCP referred appellant to Dr. Carol L. St. George, a Board-certified otolaryngologist, for a second opinion evaluation on September 3, 2014. It prepared a statement of accepted facts addressing appellant's federal work duties as a boat builder/painter and the types of employment-related noise exposures. An audiogram was completed on September 3, 2014 which revealed the following dB losses at 500, 1,000, 2,000, and 3,000 Hz: 10, 25, 20, and 35 for the right ear and 20, 20, 15, and 35 for the left ear. Dr. St. George noted that the audiogram showed bilateral high frequency sensorineural hearing loss. She opined that appellant's bilateral high frequency hearing loss was due to his workplace noise exposure and in excess of what would be predicated for presbycusis as the noise exposure was of sufficient intensity and duration to have caused the hearing loss in question. Dr. St. George further explained that appellant complained of difficulty understanding speech clearly. She opined that appellant's high frequency sensorineural hearing loss was causing him to have abnormal perception of words. Dr. St. George recommended the use of hearing aids which would amplify higher frequencies. In accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*<sup>2</sup> (A.M.A., *Guides*), her calculation of monaural and binaural impairment revealed no ratable hearing loss despite appellant's bilateral high frequency hearing loss.

By decision dated January 5, 2015, OWCP accepted appellant's claim for bilateral sensorineural hearing loss. It further found that the medical evidence revealed that he would benefit from hearing aids. OWCP also noted that the case would be forwarded to an OWCP district medical adviser (DMA) for an assessment of the percentage of permanent employment-related hearing loss.

OWCP also received an April 7, 2015 audiogram from Rebecca Book, a doctor of audiology, which revealed the dB losses at 500, 1,000, 2,000, and 3,000 Hz: of 15, 10, 15, and 55 decibels for the right ear and 5, 10, 5, and 50 decibels for the left ear.

On May 21, 2015 an OWCP DMA reviewed Dr. St. George's September 3, 2014 otologic examination and agreed that appellant developed binaural work-related hearing loss. In accordance with the A.M.A., *Guides*, the DMA applied the September 3, 2014 audiometric data to OWCP's standard for evaluating hearing loss and determined that appellant had zero percent monaural hearing loss in the left ear, zero percent monaural hearing loss in the right ear, and zero percent binaural hearing loss.<sup>3</sup> The DMA concluded that appellant had no ratable hearing loss

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<sup>2</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

<sup>3</sup> *Id.* at 252, Table 11-2.

and the date of maximum medical improvement (MMI) was noted as September 3, 2014. He further stated that hearing aids should not be authorized.

By decision dated September 22, 2015, OWCP denied appellant's schedule award claim finding that his hearing loss was not severe enough to be considered ratable. With regard to hearing aids, it noted that the medical evidence did not establish that appellant required hearing aids and denied authorization for these additional medical benefits.

### **LEGAL PRECEDENT -- ISSUE 1**

The schedule award provision of FECA<sup>4</sup> 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 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 A.M.A., *Guides* (6<sup>th</sup> ed. 2009), has been adopted by OWCP for evaluating schedule losses and the Board has concurred in such adoption.<sup>5</sup>

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.<sup>6</sup> 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.<sup>7</sup>

### **ANALYSIS -- ISSUE 1**

Appellant filed a claim for bilateral hearing loss and was referred to Dr. St. George for a second opinion examination. After reviewing the statement of accepted facts and medical file, conducting a thorough physical evaluation, and obtaining an audiogram on September 3, 2014, Dr. St. George diagnosed bilateral high frequency sensorineural hearing loss due to occupational noise exposure which she found was not ratable. OWCP's DMA concurred with this finding that appellant had no ratable hearing loss to warrant a schedule award. OWCP accepted appellant's occupational disease claim for bilateral sensorineural hearing loss. By decision dated September 22, 2015, OWCP denied appellant's schedule award claim.

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<sup>4</sup> *Supra* note 1.

<sup>5</sup> *See R.D.*, 59 ECAB 127 (2007); *Bernard Babcock, Jr.*, 52 ECAB 143 (2000).

<sup>6</sup> *See A.M.A., Guides* 250.

<sup>7</sup> *See E.S.*, 59 ECAB 249 (2007); *Donald Stockstad*, 53 ECAB 301 (2002), *petition for recon. granted (modifying prior decision)*, Docket No. 01-1570 (issued August 13, 2002).

The Board finds that OWCP properly denied appellant's schedule award claim. According to the audiometry obtained on September 3, 2014, appellant's hearing thresholds were 10, 25, 20, and 35 on the right and 20, 20, 15, and 35 on the left. These total 90 and 90 decibels, respectively, for averages of 22.50 and 22.50 decibels. Because these averages are below the fence of 25 decibels, appellant is deemed to have no impairment in his ability to hear every day sounds under every day listening conditions.<sup>8</sup> This does not mean that he has no hearing loss. It means that the extent or degree of loss is not sufficient to show a practical impairment in hearing according to the A.M.A., *Guides*.<sup>9</sup> The A.M.A., *Guides* set a threshold for impairment and appellant's occupational hearing loss did not cross that threshold. Thus, OWCP's DMA applied the proper standards to the September 3, 2014 audiogram. Appellant's hearing loss was not ratable. For this reason, the Board finds that OWCP properly denied a schedule award for appellant's nonratable hearing loss.<sup>10</sup>

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.

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8103(a) 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 the Secretary of Labor considers likely to cure, give relief, reduces the degree, or the period of any disability, or aid in lessening the amount of

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<sup>8</sup> See *L.F.*, docket No. 10-2115 (issued June 3, 2011).

<sup>9</sup> See *R.M.*, Docket No. 15-1747 (issued January 19, 2016); see also *J.S.*, Docket No. 12-0967 (issued October 12, 2012).

<sup>10</sup> The Board notes that a subsequent audiogram was completed on April 7, 2015 which revealed dB losses at 500, 1,000, 2,000, and 3,000 Hz: 15, 10, 15, and 55 for the right ear decibels and 5, 10, 5, and 50 decibels, for the left ear, these average losses were also below the fence of 25 dBs, thereby reflecting that appellant's hearing loss was nonratable. The Board also notes that OWCP has 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 must 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. A certification must accompany each audiological battery indicating that the instrument calibration and the environment in which the tests were conducted met the accreditation standards. This April 7, 2015 audiogram did meet these OWCP standards. See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirement for Medical Records*, Chapter 3.600.8 (September 1994, October 1990). *Vernon Brown*, 54 ECAB 376 (2003).

any monthly compensation.<sup>11</sup> OWCP must therefore exercise discretion in determining whether the particular service, appliance, or supply is likely to affect the purposes specified in FECA.<sup>12</sup>

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 payable if any employment-related hearing loss exists.<sup>13</sup>

### **ANALYSIS -- ISSUE 2**

The Board finds that the case is not in posture for decision on whether appellant is entitled to hearing aids.<sup>14</sup>

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.<sup>15</sup> Dr. St. George's September 3, 2014 report indicated that the noise at appellant's workplace was sufficient to cause his hearing loss and recommended hearing aids for high frequencies. By decision dated January 5, 2015, OWCP accepted appellant's claim for bilateral sensorineural hearing loss. It further found that the medical evidence revealed that appellant would benefit from hearing aids. Following the January 5, 2015 decision, the DMA determined that appellant was not entitled to hearing aids. In its September 22, 2015 schedule award denial, OWCP found that appellant was not entitled to hearing aids.

OWCP's September 22, 2015 decision denying hearing aids provided no findings for why hearing aids were not authorized. However, OWCP's previous January 5, 2015 decision had approved hearing aids. The DMA determined that appellant was not entitled to hearing aids yet failed to provide any explanation for his disagreement with Dr. St. George. Therefore, the record is unclear regarding the reason why it declined to authorize hearing aids.<sup>16</sup>

The Board notes that proceedings under FECA are not adversarial in nature. OWCP shares in the responsibility to develop the evidence and has an obligation to see that justice is done.<sup>17</sup> Accordingly, the case will be remanded to OWCP for further development on the question of whether appellant is entitled to hearing aids.<sup>18</sup> Following this and any further

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<sup>11</sup> See *Joshua A. Holmes*, 42 ECAB 231, 236 (1990).

<sup>12</sup> 5 U.S.C. § 8103.

<sup>13</sup> See *F.D.*, Docket No. 10-1175 (issued January 4, 2011).

<sup>14</sup> *R.N.*, Docket No. 13-284 (issued July 3, 2013).

<sup>15</sup> See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Services and Supplies*, Chapter 3.400.3(d)(2) (October 1995); *Raymond VanNett*, 44 ECAB 480 (1993).

<sup>16</sup> *J.B.*, Docket No. 08-1735 (issued January 27, 2009).

<sup>17</sup> *Lyle Dayberry*, 49 ECAB 369, 372 (1998). See also *VanNett*, *supra* note 14 at 483 (where OWCP began to develop appellant's hearing loss claim but did not complete such development, the case was remanded for further evidentiary development).

<sup>18</sup> *G.M.*, Docket No. 11-1295 (issued January 25, 2012).

development of the evidence, as is deemed necessary, OWCP shall issue a *de novo* decision regarding appellant's entitlement to hearing aids.<sup>19</sup>

**CONCLUSION**

The Board finds that appellant does not have a ratable hearing loss for schedule award purposes. The Board also finds that the case is not in posture for decision as to whether hearing aids should be authorized.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 22, 2015 decision of the Office of Workers' Compensation Programs is affirmed, in part, and set aside and remanded in part for further development of the medical evidence.

Issued: March 10, 2016  
Washington, DC

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

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

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

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<sup>19</sup> See *P.B.*, Docket No. 14-837 (issued August 12, 2014); see also *J.D.*, Docket No. 07-720 (issued June 19, 2007).