

as a result of noise from jet engines, aircrafts, and equipment. He advised that he first became aware of his condition and its relation to his federal employment on January 17, 2014.

By letter dated October 8, 2014, OWCP notified appellant of the type of evidence needed to establish his claim.

In a September 30, 2014 statement, appellant advised that he had been employed by the employing establishment since 1986. He indicated that he was exposed to the noise of aircrafts, commercial and private jet engines, ground equipment, generators, air compressors, air conditioners, and heaters for eight and a half hours per day, four days per week. Appellant noted that he used hearing protection. His supervisor signed to indicate that the assertions made by appellant were factual to his knowledge.

Several audiograms from the employing establishment were submitted. A March 19, 2014 audiogram recorded losses of 5, 5, 5, and 25 in the left ear and 5, 5, 15, and 30 in the right ear at the levels of 500, 1,000, 2,000, and 3,000 hertz (Hz).²

On November 19, 2014 OWCP referred appellant, together with a statement of accepted facts (SOAF), to Dr. Jack Aland, a Board-certified otolaryngologist, for a second opinion. In a December 10, 2014 report, Dr. Aland reviewed the SOAF and opined that appellant had sloping bilateral sensorineural hearing loss. He opined that appellant's workplace exposure was sufficient in length and severity to cause his hearing loss. Dr. Aland recommended bilateral hearing aids. An accompanying December 10, 2014 audiogram tested hearing at 500, 1,000, 2,000, and 3,000 Hz and recorded decibel losses of 10, 10, 10, and 40 in the left ear. Testing at the same levels for the right ear recorded decibel losses of 10, 10, 25, and 35.

By report dated January 8, 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 and opined that hearing aids should not be authorized.

By decision dated January 9, 2015, OWCP accepted appellant's claim for bilateral hearing loss. It denied appellant's claim for a schedule award, however, because hearing loss was not severe enough to be considered ratable. OWCP also found that the weight of the medical evidence established that he would not benefit from hearing aids.

On February 4, 2015 appellant requested an oral hearing which was held on September 2, 2015. Appellant advised that he had a consultation with Dr. Aland subsequent to his second opinion examination. He noted that Dr. Aland had diagnosed high frequency hearing loss and reiterated his need for hearing aids. Appellant indicated that he sought another hearing examination from a different physician who also determined that he had high frequency hearing loss.

In a September 10, 2015 report, Dr. Aland advised that appellant complained of constant tinnitus which was affecting his concentration and limiting his quality of life. He noted that

² These audiograms were not certified by a physician.

appellant had significant high frequency hearing loss that was a bit worse than when he was previously tested 10 months prior. Dr. Aland reiterated that he believed appellant would benefit from hearing aids as his hearing loss was worsening and would not improve. An accompanying September 10, 2015 audiogram tested decibel losses at 500, 1,000, 2,000, and 3,000 Hz and recorded losses of 15, 15, 15, and 45 in the left ear. Testing at the same levels for the right ear recorded decibel losses of 15, 15, 25, and 35.

A September 17, 2015 note from John Stevenson of the Pattillo Balance & Hearing Center advised that appellant underwent a hearing screening on February 19, 2015. The accompanying 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, 20, 30, and 35.³

By decision dated October 27, 2015, an OWCP hearing representative remanded the case for a *de novo* decision regarding whether appellant was entitled to a schedule award and hearing aids. It found that Dr. Aland's latest audiogram should be reviewed by a medical adviser to determine whether there was entitlement to a schedule award and that the medical advisor should also provide explanation as to why appellant's hearing impairment did not warrant hearing aids.

By report dated November 2, 2015, an OWCP medical adviser, after reviewing the record, opined that appellant did not have ratable hearing loss. Using the results from the December 10, 2014 audiogram, he found that appellant's hearing impairment was not ratable for schedule award purposes. OWCP medical adviser also opined that hearing aids should not be authorized as appellant's hearing loss was not compensable.

By decision dated November 18, 2015, OWCP denied appellant's claim for a schedule award because his hearing loss was not severe enough 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 disputes the use of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6th ed. 2009) (hereinafter A.M.A., *Guides*)⁴ as his exposure occurred prior to 2009 when it took effect and does not take into account the negligence of the employing establishment in not issuing proper personal protective equipment.

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

³ This audiogram was not certified by a physician.

⁴ A.M.A., *Guides* (6th ed. 2009).

single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by OWCP for evaluating scheduled loss and the Board has concurred in such adoption.⁵

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.⁶ 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.⁷ The Board has concurred in OWCP's adoption of this standard for evaluating hearing loss.⁸

ANALYSIS -- ISSUE 1

The Board finds that the evidence of record does not establish that appellant sustained ratable hearing loss for schedule award purposes.

The OWCP medical adviser properly applied OWCP's standardized procedures to the December 10, 2014 audiogram obtained by Dr. Aland. The December 10, 2014 audiogram certified by Dr. Aland does not establish a ratable hearing loss. According to OWCP's procedures, testing at frequency levels of 500, 1,000, 2,000, and 3,000 Hz revealed hearing losses in the right ear of 10, 10, 25, and 35. These totaled 80 decibels which, when divided by four, produced an average hearing loss of 20 decibels. The average of 20 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 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 Hz revealed hearing losses in the left ear of 10, 10, 10, and 40. These totaled 70 decibels which when divided by four, produced an average hearing loss of 17.5 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.

In its October 27, 2015 decision, an OWCP hearing representative remanded the case for evaluation of Dr. Aland's September 10, 2015 audiogram which showed worsening hearing loss. In his report November 2, 2015 report, the medical adviser failed to follow the instructions on

⁵ *R.D.*, 59 ECAB 127 (2007); *Bernard Babcock, Jr.*, 52 ECAB 143 (2000); *see also* 20 C.F.R. § 10.404.

⁶ *See* A.M.A., *Guides* 250.

⁷ *Id.* at 251.

⁸ *E.S.*, 59 ECAB 249 (2007); *Reynaldo R. Lichtenberger*, 52 ECAB 462 (2001).

remand and evaluated the initial December 10, 2014 audiogram as opposed to the September 10, 2015 audiogram. His mistake, however, amounts to harmless error, as appellant's hearing loss was still not severe enough to be considered ratable. Using the September 10, 2015 audiogram, testing at frequency levels of 500, 1,000, 2,000, and 3,000 Hz revealed hearing losses in the right ear of 15, 15, 25, and 35. These totaled 90 decibels which, when divided by four, produced an average hearing loss of 22.5 decibels. The average of 20 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 Hz revealed hearing losses in the left ear of 15, 15, 15, and 45. These totaled 90 decibels which, when divided by four, produced an average hearing loss of 22.5 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 has not established a ratable hearing loss under OWCP's standardized procedures for rating hearing loss.

On appeal appellant disputes the use of the sixth edition of the A.M.A., *Guides* as his exposure occurred prior to 2009 when it took effect. He further contends that the sixth edition does not take into account the negligence of the employing establishment in failing to issue proper personal protective equipment. On March 15, 2009 the Director of OWCP exercised his statutory authority to determine that all schedule award decisions after May 1, 2009 should reflect use of the sixth edition of the A.M.A., *Guides*. The applicable edition of the A.M.A., *Guides* is determined as of the date that the schedule award decision reached. It is not determined by either the date of MMI or when the claim for such award was filed.⁹ Based on the findings and reasons stated above, the Board finds that appellant has not established that he has a ratable hearing loss and, as such, a schedule award is not warranted.

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 evaluation of a claim, if the hearing loss is determined to be non-ratable for schedule award

⁹ See *J.D.*, Docket No. 11-427 (issued November 14, 2011); *R.W.*, Docket No. 11-456 (issued September 28, 2011); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010). Furthermore, the Board notes that the formula for rating hearing loss did not change in the sixth edition of the A.M.A., *Guides*. Compare pages 250-51 of the sixth edition of the A.M.A., *Guides*, with page 250 of the fifth edition of the A.M.A., *Guides* (5th ed. 2001) regarding the formula for rating hearing loss.

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

¹¹ *Id.*

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. Aland opined that appellant would benefit from hearing aids as his hearing was worsening and would not improve. The medical adviser in his November 2, 2015 report opined that hearing aids should not be authorized as appellant had no compensable hearing loss. He provided no other explanation for precluding authorization of hearing aids. Based on this, OWCP found that appellant was not entitled to hearing aids based on the weight of the medical evidence. As noted above, a claimant may still be entitled to hearing aids even if his hearing is determined to be nonratable for schedule award purposes.¹⁴ Therefore, OWCP did not provide an adequate justification as to why appellant was not entitled to hearing aids.

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.¹⁵ 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); *J.O.*, Docket No. 14-1359 (issued November 20, 2014).

¹⁴ *Supra* note 12.

¹⁵ See *Lyle E. Dayberry*, 49 ECAB 369 (1998). See also *Raymond VanNett*, *id.*

ORDER

IT IS HEREBY ORDERED THAT the November 18, 2015 decision of OWCP is affirmed in part, set aside in part, and remanded for further action consistent with this decision.

Issued: May 13, 2016
Washington, DC

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

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board