

FACTUAL HISTORY

On April 22, 2015 appellant, then a 67-year-old retired zone manager and shipfitter, filed an occupational disease claim (Form CA-2) alleging that on April 30, 1990 he first became aware of his hearing loss in both ears. He further alleged that on March 3, 2015 he first realized that his condition was caused or aggravated by his exposure to loud noise at work for 43 years. Appellant claimed that he had recently undergone a hearing test and was told that his hearing loss was likely due to noise.

In a May 20, 2015 narrative statement, appellant noted his exposure to noise in both his federal and nonfederal employment. (RD 5/26/15) He worked 33 years as a zone manager, supervisor, and shipfitter at the employing establishment, 4 years for the U.S. Air Force, 2 years at General Dynamics, 1 year at Barron Industries, 3 years at International Marine Industrial, 2 years at Vigor Shipyard, and 3 years at Todd Shipyard. His loudest noise exposure for the longest time period was at the employing establishment. Appellant related that most of his noise exposure occurred while working on ships and in and around dry docks. He was also exposed to noise from grinding, carbon arcing, sandblasting, air compressors, press brakes, punches, plate rolls, chippers, grinders, metal saws, and an overhead crane, and ventilation systems. Appellant had no recreational noise exposure other than occasional use of a table saw and during lawn care. He was a recreational bowler once a week for five years. Appellant claimed hearing loss in both ears, worse in the right ear.

Appellant submitted a list reflecting his exposure to noise when he worked at the above-noted employing establishments from June 1965 to June 2014. He also submitted an April 22, 2015 audiogram from Joy Nilsson, an audiologist.

By letter dated July 14, 2015, OWCP notified appellant of the deficiencies of his claim and afforded him 30 days to submit additional factual evidence. It requested that the employing establishment respond to appellant's allegations and provide a copy of all medical examinations pertaining to his hearing or ear problems, including any preemployment examinations and audiograms.

In a July 17, 2015 statement, appellant related that he did not report his hearing loss to the employing establishment. He had just recently found out that his hearing loss was likely related to noise. Appellant maintained that the employing establishment never informed him that he could or should file a hearing loss claim. He believed that he was part of a hearing conservation program because his hearing was tested annually at the employing establishment. In a checklist for filing a federal occupational hearing loss claim dated May 20, 2015, appellant noted that he did not have a history of any previous ear or hearing problems. He had no hobbies that exposed him to loud noise. Appellant was last exposed to hazardous noise at work in June 2014. Appellant also submitted a March 3, 2015 audiogram from Serena Baar, a hearing instrument specialist.

In a July 21, 2015 letter, the employing establishment agreed that it had employed appellant in various jobs from 1973 to 2004. It challenged his claim because he had not provided medical records and audiograms that indicated he was in its hearing conservation program. The employing establishment noted that it had not employed appellant since April 30, 2004.

The employing establishment submitted appellant's employment records. A notification of personnel action (SF 50-B) indicated that appellant had voluntarily retired effective April 30, 2004.

Appellant submitted employment records and correspondence from the employing establishment. He also submitted audiograms performed by the employing establishment as part of a hearing conservation program dated April 11, 1984 to April 11, 1995.

By letter dated October 14, 2015, OWCP informed appellant that a second opinion evaluation was scheduled with Dr. Julie A. Gustafson, a Board-certified otolaryngologist, for October 29, 2015 at 9:00 a.m.

In an October 29, 2015 medical report, Dr. Gustafson provided appellant's history of injury and family, social, occupational, and medical background. She reviewed the medical record, including the March 3 and April 22, 2015 audiograms, and the statement of accepted facts prepared by OWCP. Dr. Gustafson set forth normal findings on examination and diagnosed noise-induced bilateral hearing loss with tinnitus and a possible contribution from presbycusis. She advised that appellant's hearing loss was due to noise exposure in his federal employment. The audiometric testing completed on October 29, 2015 revealed hearing levels of 10, 10, 20, and 40 decibels in the right ear and 5, 10, 15, and 30 decibels in the left ear at levels of 500, 1,000, 2,000 and 3,000 hertz (Hz), respectively. Dr. Gustafson utilized the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) to find that appellant had no monaural hearing loss in either ear and no binaural hearing loss. She found that he had no impairment for tinnitus as the condition did not cause any interference with his activities of daily living (ADLs). Dr. Gustafson recommended hearing aids for both ears.

On December 2, 2015 an OWCP medical adviser reviewed Dr. Gustafson's report and the audiometric test results. He agreed that appellant's bilateral sensorineural hearing loss was due to occupational noise exposure in his federal employment. The medical adviser applied the audiometric data to OWCP's standard for evaluating hearing loss under the sixth edition of the A.M.A., *Guides* and determined that appellant had no ratable hearing impairment for either ear. He advised that maximum medical improvement was reached on October 29, 2015, the date of the most recent audiogram.

In a December 9, 2015 decision, OWCP accepted appellant's claim for bilateral sensorineural hearing loss. On December 28, 2015 it authorized hearing aids.

On January 11, 2016 appellant filed a claim for a schedule award (Form CA-7).

In a January 14, 2016 decision, OWCP denied appellant's claim for a schedule award. It found that the medical evidence of record failed to establish a ratable impairment for hearing loss.

LEGAL PRECEDENT

The schedule award provision of FECA² provides compensation to employees sustaining permanent loss or loss of use, of specified members 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 a determination is a matter which results 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* has been adopted by OWCP for evaluating schedule losses and the Board has concurred in such adoption.³

OWCP evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.⁴ 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.⁵ The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.⁶ 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.⁷ The Board has concurred in OWCP's adoption of this standard for evaluating hearing loss.⁸

Regarding tinnitus, the A.M.A., *Guides* provide that tinnitus is not a disease, but rather a symptom that may be the result of disease or injury.⁹ The A.M.A., *Guides* state that, if tinnitus interferes with ADLs, 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.¹⁰ A schedule award for tinnitus is not payable unless the medical evidence establishes that the condition caused or contributed to a ratable hearing loss.¹¹

² 5 U.S.C. § 8107

³ See 20 C.F.R. § 10.404; *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

⁴ A.M.A., *Guides* 250.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Donald E. Stockstad*, 53 ECAB 301 (2002); *petition for recon., granted (modifying prior decision)*, Docket No. 01-1570 (issued August 13, 2002); *Reynaldo R. Lichtenberger*, 52 ECAB 462 (2001).

⁹ A.M.A., *Guides* 249.

¹⁰ *Id.*; see also *Robert E. Cullison*, 55 ECAB 570 (2004).

¹¹ See *Charles H. Potter*, 39 ECAB 645 (1988).

ANALYSIS

The Board finds that the evidence of record does not establish that appellant has ratable hearing loss arising from his accepted binaural sensorineural hearing loss. OWCP accepted that he had binaural sensorineural hearing loss based on the report of Dr. Gustafson, a Board-certified otolaryngologist and OWCP referral physician. As part of her October 29, 2015 otologic evaluation, Dr. Gustafson had performed audiometric testing.

The medical adviser applied OWCP's standardized procedures to Dr. Gustafson's October 29, 2015 audiogram. Testing for the right ear at the frequency levels of 500, 1,000, 2,000, and 3,000 Hz revealed decibel losses of 10, 10, 20, and 40, respectively, for a total of 80 decibels. This figure, when divided by 4, resulted in an average hearing loss of 20 decibels. The average of 20 decibels was then reduced by the 25-decibel fence and the remaining balance was multiplied by 1.5, resulting in a negative figure. A negative number equates to zero. Testing for the left ear at the same frequency levels revealed decibel losses of 5, 10, 15, and 30, respectively, for a total loss of 60 decibels. This figure, when divided by 4, resulted in an average of 15 decibels. Reducing this average loss by 25-decibel fence and then multiplying the remaining balance by 1.5 again resulted in a negative figure. As appellant had a monaural hearing loss of zero percent for the right and left ears, the binaural hearing loss was also zero percent.¹² Thus, although he has an employment-related binaural hearing loss, it is not sufficient to show impairment of hearing according to the A.M.A., *Guides*.¹³

As OWCP's medical adviser properly applied the A.M.A., *Guides* in calculating appellant's impairment rating, OWCP correctly relied on Dr. Gustafson's opinion to find that appellant's hearing loss is nonratable for schedule award purposes.¹⁴ Furthermore, as there was no ratable hearing impairment, appellant was not eligible for the additional rating for tinnitus.¹⁵

There is no other medical evidence of record containing audiometric testing to support a ratable hearing loss. The employing establishment audiograms dated April 11, 1984 to April 11, 1995 and the results of the March 3 and April 22, 2015 audiograms have no probative value as they were not reviewed or certified as accurate by a physician.¹⁶

On appeal appellant contends that his hearing loss was due to his work exposure and that he will have to wear hearing aids on a daily basis for the rest of his life. He also contends that he submitted everything he needed to support his claim. As discussed, however, while the record established that appellant had work-related binaural hearing loss, the weight of the medical

¹² See *W.W.*, Docket No. 14-643 (issued July 11, 2014).

¹³ See *M.R.*, Docket No. 15-0529 (issued July 2, 2015); *P.V.*, Docket No. 13-1870 (issued January 7, 2014).

¹⁴ See *Linda Beale*, 57 ECAB 429 (2006).

¹⁵ See *P.V.*, *supra* note 13.

¹⁶ See *Joshua A. Holmes*, 42 ECAB 231, 236 (1990) (if an audiogram is prepared by an audiologist, it must be certified by a physician as being accurate before it can be used to determine the percentage of hearing loss); see also *James A. England*, 47 ECAB 115, 118 (1995) (finding that an audiogram not certified by a physician as accurate has no probative value and OWCP need not review uncertified audiograms).

evidence did not establish that he had a ratable binaural hearing loss under the A.M.A., *Guides*. Further, as discussed, the audiograms he submitted in support of his claim do not constitute probative medical evidence.

Appellant may request a 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 failed to meet his burden of proof to establish ratable binaural hearing loss entitling him to a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the January 14, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 25, 2016
Washington, DC

Patricia H. Fitzgerald, Deputy 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