

FACTUAL HISTORY

This case has previously been before the Board.² The facts and circumstances as set forth in the prior decision are incorporated herein by reference. The facts relevant to this appeal will be set forth.

On February 10, 2012 appellant, then a 67-year-old retired mobile equipment servicer, filed an occupational disease claim (Form CA-2) alleging that he sustained hearing loss causally related to factors of his federal employment. He retired in 2010. OWCP assigned the claim file number xxxxxx941.

The employing establishment related that appellant was exposed to hazardous noise repairing and maintaining vehicles from 1997 to 2010. It submitted audiograms obtained dating from February 9, 2001 to October 20, 2010 and accompanying hearing test notifications.

An April 11, 2000 statement of accepted facts (SOAF) noted that appellant had previously filed an occupational disease claim for hearing loss on or about April 1, 1998, assigned file number xxxxxx426.

OWCP, by letter dated October 15, 2012, referred appellant to Dr. R. Michael Loper, a Board-certified otolaryngologist, for a second opinion evaluation to determine whether the hearing loss was as a result of his employment. The SOAF established that he had worked for the employing establishment from 1997 to 2010 and had a history of prior noise exposure in federal employment from October 1985 to July 1986 and from January 1995 to January 1996.

On November 1, 2012 Dr. Loper interpreted an October 2007 audiogram as showing mild-to-severe hearing loss in the right ear and moderate-to-severe hearing loss in the left ear. He advised the change in appellant's hearing loss subsequent to 2007 was minimal. Dr. Loper found that the hearing loss in his left ear, which resulted in no speech discrimination, was probably related to another issue, possibly a retrocochlear lesion. He concluded that appellant's additional hearing loss was no more than would be expected with presbycusis. Dr. Loper diagnosed sensorineural hearing loss unrelated to noise exposure in the course of his federal employment. He concluded, "[Appellant] had existing hearing loss [in] October 11, 2007. Hearing has changed only slightly and can be attributed to presbycusis."³

OWCP, in a decision dated January 15, 2013, denied appellant's claim for hearing loss. It determined that Dr. Loper's opinion constituted the weight of the evidence and established that he had not sustained hearing loss due to noise exposure in the course of his federal employment.

On February 12, 2013 appellant requested a review of the written record by an OWCP hearing representative. Following a preliminary review, on April 4, 2013 an OWCP hearing representative vacated the January 15, 2013 decision and noted that OWCP had previously

² Docket No. 14-1828 (issued February 25, 2015).

³ Dr. Loper referred appellant for a magnetic resonance imaging (MRI) scan study to rule out a cochlear lesion. A December 11, 2012 MRI scan study of the auditory canals was unremarkable.

accepted bilateral hearing loss (under file number xxxxxx426) and granted him a schedule award on February 28, 2002 for 36 percent permanent impairment of the left ear. This was not listed on the SOAF. The hearing representative further noted that the physician discussed appellant's hearing loss only from 2007 onward rather than considering audiograms from 2002 through 2010. She instructed OWCP to amend the SOAF to reflect that he had received a prior schedule award for left ear hearing loss, refer the case to an OWCP medical adviser for review, and, if necessary, obtain clarification from Dr. Loper regarding whether appellant is entitled to a schedule award for hearing loss.

On April 5, 2013 OWCP prepared an updated SOAF indicating that it had accepted a claim for left hearing loss due to noise exposure and bilateral sensorineural hearing loss under file number xxxxxx426.

In a report dated April 5, 2013, an OWCP medical adviser noted that Dr. Loper considered only audiograms in 2007 and 2012 in finding that appellant's hearing loss was unrelated to noise exposure. He recommended that OWCP provide the physician with audiograms from 2001 to 2012 and instruct him to discuss whether any demonstrated hearing loss was employment related.

On April 16, 2013 OWCP requested that Dr. Loper review audiograms dated 2001 through 2010 and address whether appellant sustained noise exposure due to his federal employment. In an April 18, 2013 response, Dr. Loper compared the results of audiograms taken on February 9, 2001 and October 20, 2010. He advised that appellant's hearing loss was "no more than would be expected on the basis of presbycusis."

An OWCP medical adviser reviewed Dr. Loper's report on April 30, 2013 and, based on this report opined that appellant was not entitled to an additional schedule award.

In a decision dated May 7, 2013, OWCP denied appellant's claim for hearing loss. It found that the medical evidence failed to establish additional hearing loss causally related to his accepted work exposure.

Appellant on January 28, 2014 requested reconsideration. He attributed his hearing loss to his employment beginning April 1, 1998. Appellant advised that OWCP had already accepted his claim for bilateral hearing loss in 2004. He contended that Dr. Loper did not know of his previously accepted employment-related hearing loss.

In a decision dated March 13, 2014, OWCP denied modification of its prior decision. It indicated that appellant had previously received a schedule award for 36 percent left hearing loss under file number xxxxxx426 and that it had authorized hearing aids.

Appellant appealed to the Board. In a decision dated February 25, 2015, the Board set aside the March 13, 2014 decision.⁴ It noted that OWCP had accepted a prior claim for hearing loss, assigned file number xxxxxx426, and that an OWCP hearing representative, in an April 4, 2013 decision, remanded the case for OWCP to provide Dr. Loper with the information about his

⁴ See *supra* note 2.

prior claim and schedule award. OWCP did not, however, provide the information about the prior schedule award to the physician. The Board instructed OWCP, on remand, to double the case records for both hearing loss claims and determine whether appellant had sustained additional hearing loss due to his federal employment.

OWCP prepared a new SOAF clarifying that it had accepted left ear hearing loss due to noise exposure and bilateral sensorineural hearing loss under file number xxxxxx426 and that it had awarded 36 percent permanent impairment in the left ear. It also combined the current case record with file number xxxxxx426. The schedule award covered the period January 25 to June 5, 2002.

OWCP requested that Dr. Loper review the updated SOAF and the audiograms from 2001 to 2010. It asked that the physician address whether appellant had sustained additional hearing loss due to noise exposure while working at the employing establishment from 2001 to 2010.

Dr. Loper, in a response dated May 14, 2015, noted that appellant had a prior accepted hearing loss claim and schedule award. He again reviewed the audiograms from 2001 to 2010 and related, "It is my opinion that hearing loss seen is not due to noise exposure on the job between 2001 and 2010."

By decision dated May 29, 2015, OWCP denied appellant's claim for hearing loss due to noise exposure from 2001 to 2010. It found that Dr. Loper's opinion represented the weight of the evidence and established that he had not sustained employment-related hearing loss during this period.

Appellant on June 25, 2015 requested a review of the written record.

In a decision dated December 18, 2015, an OWCP hearing representative affirmed the May 29, 2015 decision. She found that Dr. Loper had relied upon an accurate factual and medical history and established that appellant did not have any additional employment-related hearing loss.

On appeal appellant contends that he submitted sufficient evidence to establish that he sustained an injury due to his employment on April 1, 1998.

LEGAL PRECEDENT

A claimant seeking benefits under FECA⁵ has the burden of proof to establish the essential elements of his claim by the weight of the reliable, probative, and substantial evidence, including that any specific condition or disability for work for which he claims compensation is causally related to the employment injury.⁶

⁵ 5 U.S.C. § 8101 *et seq.*

⁶ See *Jacquelyn L. Oliver*, 48 ECAB 232 (1996).

In an occupational disease claim, to establish that an injury was sustained in the performance of duty, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed;⁷ (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;⁸ and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁹

A claim for an increased schedule award may be based on new employment exposure; however, additional occupational exposure is not a prerequisite. A claim for an increased schedule award based on additional exposure constitutes a new claim.¹⁰ Absent additional employment exposure, an increased schedule award may also be based on evidence demonstrating that the progression of an employment-related condition has resulted in a greater permanent impairment than previously calculated.¹¹

ANALYSIS

On July 26, 2000 and February 11, 2004 OWCP accepted appellant's April 1998 claim for bilateral sensorineural hearing loss under file number xxxxxx426. On February 28, 2002 it awarded 36 percent permanent loss of hearing on the left side under file number xxxxxx426.

Appellant subsequently filed an occupational disease claim on February 10, 2012 alleging additional hearing loss due to noise exposure while working for the employing establishment. As he sustained a period of additional exposure, OWCP properly considered it as a new claim.¹²

The employing establishment obtained audiograms from February 9, 2001 to October 20, 2010. The audiograms, however, were not accompanied by a physician's report addressing how noise-related exposure caused or aggravated his hearing loss.¹³

OWCP referred appellant to Dr. Loper for a second opinion examination. In a report dated October 15, 2012, Dr. Loper reviewed an October 2007 audiogram showing mild-to-severe hearing loss on the right side and moderate-to-severe hearing loss on the left side. He opined that appellant's left hearing loss was likely due to an unrelated issue. Dr. Loper found that any additional hearing loss since 2007 was unrelated to noise exposure and was not more than

⁷ *Michael R. Shaffer*, 55 ECAB 386 (2004).

⁸ *Marlon Vera*, 54 ECAB 834 (2003); *Roger Williams*, 52 ECAB 468 (2001).

⁹ *Beverly A. Spencer*, 55 ECAB 501 (2004).

¹⁰ *See James R. Hentz*, 56 ECAB 573 (2005); *Paul Fierstein*, 51 ECAB 381 (2000).

¹¹ *Linda T. Brown*, 51 ECAB 115 (1999).

¹² *See James R. Hentz supra* note 10; additionally, OWCP's procedures provide that a claim for an additional schedule award based on an additional period of exposure to the same work factors, such as often occurs in hearing loss cases, should be adjudicated as a new claim. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.9(c) (February 2013).

¹³ *See G.O.*, Docket No. 15-0561 (issued May 8, 2015).

expected with presbycusis. In a supplemental report dated April 18, 2013, he reviewed audiograms dated February 9, 2001 to October 20, 2010. Dr. Loper compared the results from the February 9, 2001 audiogram with the results from the October 20, 2010 audiogram. He again found that the results showed hearing loss consistent with age.

Following remand by the Board, OWCP advised Dr. Loper that it had previously accepted bilateral hearing loss and granted a schedule award for 36 percent of the left ear. It asked that the physician provide an opinion regarding whether he sustained any additional employment-related hearing loss. On May 14, 2015 Dr. Loper found that his hearing loss was unrelated to his noise exposure between 2001 and 2010 at work. The Board finds that Dr. Loper's opinion is based on a review of the evidence and supported by medical rationale explaining that any increase in hearing loss was not more than would be expected with presbycusis. His opinion is thus sufficient to establish that appellant has not shown an increase in his bilateral hearing loss due to additional workplace noise exposure.¹⁴

On appeal appellant argues that he sustained an injury due to his employment on April 1, 1998. His April 1998 hearing loss claim, however, remains accepted for bilateral sensorineural hearing loss under file number xxxxxx426, now doubled with the current file number.¹⁵

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128 and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not established additional hearing loss based on additional occupational noise exposure in the course of his federal employment.

¹⁴ See *J.B.*, Docket No. 15-1474 (issued March 4, 2016).

¹⁵ See *James R. Hentz*, *supra* note 10.

ORDER

IT IS HEREBY ORDERED THAT the December 18, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 10, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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