

FACTUAL HISTORY

On June 23, 2015 appellant, then a 56-year-old supervisory waterfront safety specialist, filed an occupational disease claim (Form CA-2) for hearing loss. He alleged that on May 27, 2015 he first became aware of a threshold shift in both ears and realized that his condition was caused or aggravated by his federal employment based on an audiologist's report.

By letter dated July 1, 2015, OWCP advised appellant of the type of evidence needed to establish his claim. It also requested that the employing establishment respond to his allegations and provide noise survey reports for each site where he worked, the sources and period of noise exposure for each location, whether he wore ear protection, and copies of all medical examinations pertaining to hearing or ear problems, including preemployment examinations and audiograms.

In a June 23, 2015 statement, appellant noted that he was a gun owner, but that he only shot his gun about twice a year and used foam earplugs. He related that he had not previously seen a physician regarding his hearing loss. Appellant indicated that during an annual hearing test conducted by the employing establishment on May 27, 2015, an attending audiologist informed him that he had significant hearing loss. The audiologist also informed him that he was too young to have that level of hearing loss from natural degradation.

Appellant submitted employment records which included his work history and exposure to noise from June 1975 through the present. He also submitted a description of his supervisory waterfront safety specialist position.

In letters dated August 3, 2015, the employing establishment noted that appellant was currently employed as a supervisor waterfront safety specialist. It further noted that he had been in a hearing conservation program from 1989 through the present. The employing establishment related that appellant was exposed to noise as described in his position description. Appellant was provided with hearing protection during his employment.

OWCP received audiograms dated November 21, 1989 through May 27, 2015 performed by the employing establishment as part of the hearing conservation program. These revealed that appellant had bilateral sensorineural hearing loss.

By letter dated October 7, 2015, OWCP informed appellant of his referral for a second opinion evaluation with an otolaryngologist, along with a statement of accepted facts, a set of questions, and the medical record.

In a letter dated October 8, 2015, OWCP's medical scheduler informed appellant, that an examination was scheduled with Dr. Gerald G. Randolph, a Board-certified otolaryngologist, for November 3, 2015. In a November 3, 2015 medical report, Dr. Randolph noted that he had examined appellant on that date and referenced his exposure to workplace noise. He reported appellant's complaints of hearing loss and intermittent tinnitus and noted his medical, family, and socioeconomic background. Dr. Randolph reviewed the employing establishment's audiometric data. He reported that his examination of appellant's external auditory canals and tympanic membranes was normal. Basic tuning fork tests revealed that the Weber test did not

lateralize. Air conduction was greater than bone conduction bilaterally. There was no indication of medical conditions, such as acoustic neuroma or Meniere's disease. Dr. Randolph noted that an audiogram performed on the date of his examination revealed hearing loss with an audiometric configuration compatible with hearing loss due to noise exposure. He diagnosed bilateral sensorineural hearing loss that was in part, or all, due to noise exposure in appellant's federal civil employment. Dr. Randolph recommended bilateral hearing aids.

The November 3, 2015 audiogram performed on behalf of Dr. Randolph reflected testing at the frequency levels of 500, 1,000, 2,000, and 3,000 hertz (Hz) and revealed the following: right ear 5, 5, 20, and 50 decibels (dBs), respectively; left ear 5, 5, 20, and 45 dBs, respectively. Utilizing the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*² (A.M.A., *Guides*), Dr. Randolph determined that appellant had zero percent ratable hearing loss in both ears.

On December 21, 2015 OWCP accepted appellant's claim for bilateral noise effects on the inner ear.

In a January 11, 2016 letter, Amy M. Becken, a certified audiologist, advised OWCP that hearing test results showed that appellant had severe high frequency sensorineural hearing loss bilaterally. She noted that speech reception thresholds were consistent with pure tone averages calculated for each ear. Ms. Becken found that speech discrimination scores were reduced in both ears. She noted the acceptance of appellant's claim for bilateral hearing loss and requested authorization for hearing devices based on his communication issues.

On July 15, 2016 appellant filed a claim for a schedule award (Form CA-7).

On July 25, 2016 an OWCP district medical adviser (DMA) reviewed Dr. Randolph's report and the November 3, 2015 audiometric test. He agreed that appellant had zero percent binaural hearing loss under the sixth edition of the A.M.A., *Guides*. The DMA totaled the dB losses for the right ear of 5, 5, 20, and 50 at 500, 1,000, 2,000, and 3,000 Hz, respectively, to equal 80. He averaged the losses to determine that appellant had an average hearing loss of 20 dBs. The DMA then subtracted a 25-dB fence and multiplied the balance of -5 by 1.5 to find zero percent right ear monaural hearing loss. For the left ear, he added the dB losses of 5, 5, 20, and 45 at 500, 1,000, 2,000, and 3,000 Hz, respectively, to equal 75. The DMA averaged the losses to determine that appellant had an average hearing loss of 18.75 dBs. He then subtracted a 25-dB fence and multiplied the balance of -6.25 by 1.5 to find zero percent left ear monaural hearing loss. The DMA concluded that appellant had no ratable hearing impairment. He noted the date of maximum medical improvement as November 16, 2015. The DMA recommended annual audiograms and noise protection for appellant's ears and authorized hearing aids.

In a decision dated October 26, 2016, OWCP found that, although appellant's hearing loss was employment related, it was not severe enough to be considered ratable for purposes of a schedule award. It authorized additional medical benefits, including hearing aids.

² A.M.A., *Guides* (6th ed. 2009).

LEGAL PRECEDENT

The schedule award provision of FECA³ and its implementing regulations⁴ 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. However, FECA does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates 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 the implementing regulations as the appropriate standard for evaluating schedule losses.⁵

OWCP evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.⁶ 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.⁷ Then, the fence of 25 dBs is deducted because, as the A.M.A., *Guides* points out, losses below 25 dBs result in no impairment in the ability to hear everyday speech under everyday conditions.⁸ The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.⁹ 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.¹⁰ The Board has concurred in OWCP's adoption of this standard for evaluating hearing loss.¹¹

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed to OWCP's DMA for an opinion concerning the nature and percentage in accordance with the A.M.A., *Guides* with the DMA providing rationale for the percentage of impairment specified.¹²

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404.

⁵ *Id.* See also *Jacqueline S. Harris*, 54 ECAB 139 (2002).

⁶ *Supra* note 2.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *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).

¹² Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6(f) (February 2013).

ANALYSIS

The Board finds that appellant has not established ratable binaural hearing loss.

OWCP referred appellant to Dr. Randolph, a second opinion physician, regarding his hearing loss. Dr. Randolph's November 3, 2015 examination found that appellant's bilateral sensorineural hearing loss was due to his workplace noise exposure. The audiogram performed on that date revealed dB losses of 5, 5, 20, and 50 at 500, 1,000, 2,000, and 3,000 Hz, respectively, for the right ear. Testing of the left ear revealed dB losses of 5, 5, 20, and 45 at 500, 1,000, 2,000, and 3,000 Hz, respectively. Dr. Randolph found zero percent hearing loss in both ears.

Consistent with its procedures, OWCP properly referred the file to its DMA for a rating of permanent impairment in accordance with the sixth edition of the A.M.A., *Guides*.

On July 25, 2016 OWCP's DMA reviewed Dr. Randolph's report and the November 3, 2015 audiogram and concluded that appellant had no ratable hearing loss to warrant a schedule award. The DMA, properly added the right ear dBs losses to reach 80 and averaged this sum to reach 20. He then subtracted the fence of 25 as directed by the A.M.A., *Guides* to reach -5 and multiplied this amount by 1.5 to reach zero percent monaural loss for the right ear. The DMA added the left ear dBs losses to total 75 and averaged this sum to total 18.75. He then subtracted the fence of 25 to reach -6.25 and multiplied this amount by 1.5 to reach zero percent monaural loss for the left ear. As the monaural hearing loss rating was zero percent for both the right and left ears, the binaural hearing loss was also zero percent.¹³ This does not mean that appellant has no hearing loss. Rather, it means that the extent or degree of loss is insufficient to show a ratable impairment in hearing according to the A.M.A., *Guides*.¹⁴ The A.M.A., *Guides* set a threshold for impairment and appellant's occupational hearing loss did not cross that threshold. The Board finds that the DMA applied the proper standards to the November 3, 2015 audiogram to determine that appellant had no ratable, work related, binaural hearing loss for schedule award purposes.¹⁵

Although appellant submitted results from the employing establishment's annual audiometric testing from November 21, 1989 to May 27, 2015, these audiograms do not comply with the requirements set forth by OWCP. They lack proper certification of calibration, speech testing, and bone conduction scores and were not prepared or certified as accurate by a physician as defined by FECA. Further, the audiograms were not accompanied by a physician's opinion addressing how appellant's employment-related noise exposure caused or aggravated any hearing loss. It is appellant's burden to submit a properly prepared and certified audiogram to

¹³ A.M.A., *Guides* 249-51.

¹⁴ See *P.V.*, Docket No. 13-1870 (issued January 7, 2014).

¹⁵ See *S.G.*, 58 ECAB 383 (2007).

OWCP.¹⁶ OWCP was not required to rely on this evidence in determining the degree of appellant's hearing loss as it failed to constitute competent medical evidence.¹⁷

The January 11, 2015 report from Ms. Becken, an audiologist, has no probative medical value because an audiologist is not considered a physician as defined under FECA.¹⁸

On appeal, appellant contends that OWCP's decision was unjust and he should have been awarded a schedule award since his work-related hearing loss has significantly changed his quality of life. However, the Board has held that factors such as employability or limitations on daily activities have no bearing on the calculation of impairment.¹⁹ For the reasons stated, the Board finds that appellant has not established ratable employment-related binaural hearing loss for schedule award purposes.

Appellant may request a schedule award or increased schedule award at any time 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 warranting a schedule award.

¹⁶ See *R.B.*, Docket No. 10-1512 (issued March 24, 2011); *Robert E. Cullison*, 55 ECAB 570 (2004); *Vincent Holmes*, 53 ECAB 468 (2002) (OWCP does not have to review audiograms not certified by a physician. See also *J.B.*, Docket No. 12-0607 (issued August 9, 2012); 5 U.S.C. § 8101(2) (defines the term physician).

¹⁷ *Id.* See also *H.M.*, Docket No. 13-1061 (issued July 29, 2013); *M.T.*, Docket No. 12-1294 (issued December 6, 2012).

¹⁸ 5 U.S.C. § 8101(2); *M.P.*, Docket No. 13-1790 (issued December 17, 2013) (an audiologist is not considered a physician under FECA and the audiologist's opinion regarding the medical cause of a claimant's hearing loss is of no probative medical value).

¹⁹ *J.H.*, Docket No. 08-2432 (issued June 15, 2009).

ORDER

IT IS HEREBY ORDERED THAT the October 26, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 24, 2017
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