

causally related to his federal employment on January 1, 2005 when he returned to the quieter corporate environment and could tell that his communications skills were impacted by his hearing loss. He noted that he delayed filing his claim due to the potential of reprisal. In completing the claim form, the employing establishment noted that appellant retired on January 9, 2016.

On March 7, 2016 OWCP received records from appellant documenting his employment history. Appellant provided a summary of his positions at the employing establishment, commencing in September 1975, and an explanation of noise exposure in each position. He explained that he had been exposed to noise from aircraft jet engines as well as high-pitched steam leaks from industrial equipment.

By letter dated March 15, 2016, OWCP advised appellant that further information was necessary to support his claim, and afforded him 30 days to submit the requested information. On the same date, it requested that the employing establishment submit information with regard to his employment and exposure to noise.

On April 29, 2016 Dr. Whitney R. Mauldin, a Board-certified audiologist, responded for the employing establishment. He noted that, based on a review of appellant's claim, medical records, work history, and audiometric records, it was his professional opinion that appellant did not meet FECA requirements for occurrence of event or causal relationship. Dr. Mauldin reviewed appellant's work history, which began on April 28, 1980 as a student generating plant operator. Appellant held multiple positions since that time, including unit operator, shift operations coordinator, shift supervisor, production supervisor, business analyst consultant, manager, and specialist. Dr. Mauldin noted that appellant retired on January 9, 2016. He confirmed that the employing establishment had a hearing protection program. Dr. Mauldin noted that review of plant records revealed no employment-related incident resulting in acoustical trauma that would have affected appellant's hearing anytime during his federal employment. He also noted that appellant received annual training regarding levels of noise considered hazardous and was informed of mandatory hearing protection required to adhere to the safety protocols. Dr. Mauldin noted that mandatory use of hearing protection devices in designated areas above 85 decibels would reduce appellant's possible exposure to noise, thus mitigating any employment-related cause of his hearing loss. He further noted that appellant spent the last 17 years of his federal employment in an office setting where noise levels were "well below" 85 decibels, and noted that his last hearing examination indicated no ratable degree of hearing loss, mild downward sloping hearing loss in the left ear, and mild-to-moderate hearing loss in the right ear which was inconsistent with possible occupational noise levels. Dr. Mauldin contended that any hearing loss that appellant experienced would not be employment related. The record also contains an April 29, 2016 audiogram conducted by Dr. Mauldin.

In a February 22, 2016 memorandum, Cassie Miles, a registered nurse, indicated that numerous documents were in appellant's employing establishment records which indicated that ear defenders were fitted and issued, that his last audiogram conducted for the employing establishment was on May 26, 2005, that he would have exited the employing establishment's hearing conservation program around 1999 upon a change of job duties which would not require inclusion in that program, and that his audiograms did not indicate a ratable hearing loss.

OWCP prepared a statement of accepted facts on October 24, 2016 which outlined appellant's history of employment at the employing establishment.

On October 26, 2016 OWCP referred appellant to Dr. Joseph A. Motto, a Board-certified otolaryngologist, for a second opinion. In a November 15, 2016 response to OWCP's queries, Dr. Motto found a moderate high frequency sensorineural hearing loss not due to appellant's noise exposure at the employing establishment. He discussed the difference between appellant's current audiogram and his audiogram when he began his federal employment, noting that he was hired with normal hearing, and discussed what the predicted loss would be due to aging. Dr. Motto noted that appellant did not meet the criteria for compensable noise-induced hearing loss that is calculated by the sum of 2,000, 3,000, and 4,000 hertz (Hz) and must be at least 25 decibels to be compensable. An audiogram performed on November 15, 2016 related hearing thresholds of 500, 1,000, 2,000, and 3,000 Hz were 35, 30, 20, 40 decibels for the left ear and 15, 15, and 50 decibels for the right.

By decision dated November 29, 2016, OWCP accepted that appellant's employment factors occurred as alleged, but denied appellant's claim as the evidence of record was insufficient to establish that his hearing loss was causally related to the accepted employment factors. It also found that the reason for that finding was that he did not meet the criteria for compensable noise-induced hearing loss.

LEGAL PRECEDENT

An employee seeking benefits under FECA² has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period, that an injury was sustained in the performance of duty as alleged, and that any disabilities and/or specific conditions for which compensation is claimed are causally related to the employment injury.³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

The schedule award provision of FECA⁵ and its implementing regulations⁶ 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. It, 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 single set of

² *Id.*

³ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁵ 5 U.S.C. § 8107.

⁶ 20 C.F.R. § 10.404.

tables so that there may be uniform standards applicable to all claimants. The American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (A.M.A., *Guides*) (6th ed. 2009), has been adopted by OWCP for evaluating schedule loss and the Board has concurred in such adoption.⁷

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.⁸ 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. The Board has concurred in OWCP's adoption of this standard for evaluating hearing loss.⁹ The Board has also noted OWCP's policy to round the calculated percentage of impairment to the nearest whole number.¹⁰

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed to OWCP's medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the medical adviser providing rationale for the percentage of impairment specified.¹¹ It may follow the advice of its medical adviser or consultant where he or she has properly utilized the A.M.A., *Guides*.¹²

ANALYSIS

The Board finds that this case is not in posture for decision.

OWCP referred appellant to Dr. Motto for a second opinion as to whether appellant had a compensable hearing loss causally related to the accepted factors of his federal employment.

The Board notes initially that Dr. Motto determined that appellant did not meet the criteria for determining compensable noise-induced hearing loss. However, in reaching this conclusion, Dr. Motto did not apply the proper procedures as noted in the A.M.A., *Guides* and followed by Board precedent.¹³ The November 15, 2016 audiogram does document hearing loss

⁷ *R.D.*, 59 ECAB 127 (2007); *Bernard Babcock, Jr.*, 52 ECAB 143 (2000); *see also id.*

⁸ *See A.M.A., Guides* 250.

⁹ *E.S.*, 59 ECAB 249 (2007); *Reynaldo R. Lichtenberger*, 52 ECAB 462 (2001).

¹⁰ *J.H.*, Docket No. 08-2432 (issued June 15, 2009); *Robert E. Cullison*, 55 ECAB 570 (2004). *See also* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.4(b)(2)(b) (September 2010).

¹¹ *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(f) (March 2017).

¹² *See Ronald J. Pavlik*, 33 ECAB 1596 (1982); *see also B.V.*, Docket No. 13-1015 (issued September 5, 2013).

¹³ *See supra* note 8; *see also B.C.*, Docket No. 16-0448 (issued November 9, 2016).

in both ears and hearing loss above the 25 decibel threshold, of the left ear. Dr. Motto should have followed the proper methodology as set forth in the A.M.A., *Guides* to determine the percentage of appellant's hearing loss, if any.¹⁴

In addressing causal relationship, Dr. Motto also utilized a chart that discusses appellant's predicted age-related hearing loss, a methodology inconsistent with Board precedent. OWCP asked him to address whether appellant's workplace exposure was of sufficient intensity and duration to have caused the hearing loss in question. Dr. Motto simply answered this question "no" and thus his report requires further clarification.

OWCP's procedures provide that, regardless of the form a medical report takes, the report should include the physician's reasoned opinion as to the relationship between the condition found and factors of federal employment.¹⁵ Dr. Motto failed to offer a rationalized medical explanation addressing appellant's employment history and whether his employment-related noise exposure caused or aggravated his hearing loss.

It is well established that proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While the claimant has the burden of proof to establish entitlement to compensation, OWCP shares the responsibility in the development of the evidence to see that justice is done.¹⁶ Once it undertakes development of the record it must do a complete job in procuring medical evidence that will resolve the relevant issues in the case.¹⁷

On remand, OWCP shall refer appellant for another second opinion to determine whether he has compensable hearing loss causally related to factors of his federal employment. After such further development of the evidence as necessary, it shall issue a *de novo* decision.

CONCLUSION

The Board finds that this case is not in posture for decision.

¹⁴ *Id.*

¹⁵ *Supra* note 10 at Chapter 3.600.6 (October 1990).

¹⁶ *D.G.*, Docket No. 15-0702 (issued August 27, 2015).

¹⁷ *Phillip L Barnes*, 55 ECAB 426 (2004); *see also Virginia Richard (Lionel F. Richard)*, 53 ECAB 430 (2002).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 29, 2016 is set aside, and the case is remanded for further consideration consistent with this opinion.

Issued: August 10, 2017
Washington, DC

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

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

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