

it was causally related to his employment on November 14, 2016. Appellant did not stop work and continued to be exposed to noise.

Appellant submitted an employment history and noted that since March 26, 1990 he worked as a special agent and was exposed to noise from quarterly firearms qualification with various handguns, shotguns, and rifles and from noise from other agents and law enforcement officers who attended range qualifications with hundreds of rounds being fired in each session. Foam earplugs were provided. Appellant developed ringing in his right ear which progressed to 24 hours a day, seven days a week and occasional tinnitus in his left ear. He reported no history of hearing loss. Appellant did not participate in hobbies which exposed him to loud noises. He had an audiogram on November 14, 2016 which found bilateral hearing loss. Hearing aids were recommended. Appellant submitted an audiogram signed by an audiologist dated November 14, 2016 which revealed sensorineural hearing loss bilaterally.

By letter dated December 13, 2016, OWCP advised appellant of the type of evidence needed to establish his claim. In a letter of the same date, it requested that the employing establishment address the sources of his noise exposure including decibel and frequency level, period of exposure, and hearing protection provided.

In response to OWCP's letter appellant restated his history of noise exposure at work since March 26, 1990. He related that, since November 2009, he also worked as a high school wrestling coach, but had no noise exposure. From August 2014 to the present appellant had also been employed as a real estate appraiser with no noise exposure. He noted that he was still exposed to hazardous noise at work with the employing establishment. Appellant first became aware of his hearing loss on November 14, 2016 after undergoing an audiogram which revealed bilateral sensorineural hearing loss. Appellant noted experiencing ringing in his right ear which has progressed and occasional ringing in his left ear.

The employing establishment submitted a statement from appellant's supervisor, dated January 10, 2017, who reviewed and concurred in appellant's statements. The supervisor noted that appellant was required to qualify at the gun range four times a year. He advised that appellant was exposed to noise from weapons. With regard to the period of exposure he indicated that it varied depending on the size of the class and subject taught. The supervisor noted that appellant was provided with soft in the ear protection and over the ear headset for hearing protection. Appellant's position description was also provided.

Appellant submitted a report from Dr. Betsy Vasquez, a Board-certified otolaryngologist, who treated him for progressive hearing loss and tinnitus. She noted that his background was in law enforcement as a special agent who qualified at a shooting range every three months. Dr. Vasquez diagnosed bilateral tinnitus and bilateral moderate sensorineural hearing loss. She recommended hearing protection and hearing aids.

A statement of accepted facts (SOAF) dated April 7, 2017 noted that appellant was employed as a special agent since March 26, 1990 and was exposed to noise from a firearms range, qualifying with various guns, and exposure to hundreds and sometimes thousands of ammunition rounds being fired, eight hours a quarter. He wore foam earplugs.

On April 10, 2017 OWCP referred appellant, together with the SOAF, to Dr. Stephen Bane, a Board-certified otolaryngologist, for an otologic examination and an audiological evaluation. In a May 1, 2017 report, Dr. Bane noted examining appellant on May 1, 2017 and referenced appellant's exposure to workplace noise. Examination of the ears revealed normal canals and drums, normal drum motility, normal tuning forks test, and no asymmetry. Dr. Bane diagnosed bilateral mild-to-moderate sensorineural hearing loss with tinnitus. He noted that the sensorineural hearing loss was in part, if not all, due to the noise encounter in appellant's federal civilian employment. Dr. Bane noted that the hearing was in excess of what would be normally predicated on the basis of presbycusis. He noted that the workplace exposure as described was sufficient in intensity and duration to have caused the loss in question. Dr. Bane opined that appellant had monaural impairment of five percent in the left ear and five percent in the right ear and five percent binaural impairment for tinnitus. He indicated that hearing aids were not indicated. Audiometric testing was performed for Dr. Bane on May 1, 2017. Testing at the frequency levels of 500, 1,000, 2,000, and 3,000 cycles per second revealed the following: right ear 10, 5, 15, and 35 decibels; left ear 5, 5, 15, and 20 decibels.

On May 18, 2017 OWCP accepted appellant's claim for bilateral sensorineural hearing loss and tinnitus due to noise exposure.

On May 23, 2017 appellant filed a claim for a schedule award (Form CA-7).

On May 23, 2017 an OWCP's medical adviser reviewed Dr. Bane's report and the audiometric test of May 1, 2017. He concluded that, in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*,² (A.M.A., *Guides*), appellant had zero percent monaural hearing loss in each ear and zero percent binaural hearing loss. The medical adviser determined that appellant's hearing loss was not sufficiently severe to be ratable for a schedule award after applying OWCP's standards for evaluating hearing loss to the results of the May 1, 2017 audiogram. He noted that appellant reached maximum medical improvement on May 1, 2017. The medical adviser indicated that Dr. Bane gave appellant five percent impairment for tinnitus. However, a tinnitus award cannot be given when there is no calculated hearing impairment. The medical adviser recommended hearing aids not for hearing loss, but to mask tinnitus.

In a decision dated June 2, 2017, OWCP found that although appellant's hearing loss was employment related it was not sufficiently severe enough to be considered ratable for purposes of a schedule award.

LEGAL PRECEDENT

The schedule award provisions 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

² A.M.A., *Guides* (6th ed. 2009).

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404 (1999).

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 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.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

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.¹² The A.M.A., *Guides* also provide that if tinnitus interferes with activities of daily living, 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.¹³

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

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

⁶ *Supra* note 2 at 250 (6th ed. 2009).

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).

¹² *Supra* note 2 at 249 (6th ed. 2009).

¹³ *Id.* See also *R.O.*, Docket No. 13-1036 (issued August 28, 2013); *R.H.*, Docket No. 10-2139 (issued July 13, 2011); *Robert E. Cullison*, 55 ECAB 570, 573 (2004).

providing rationale for the percentage of impairment specified.¹⁴ It may follow the advice of its medical adviser or consultant where he or she has properly utilized the A.M.A., *Guides*.¹⁵

ANALYSIS

OWCP accepted that appellant sustained bilateral hearing loss due to noise exposure from his federal employment. The issue is whether he has proven a schedule award by establishing that he sustained a ratable impairment in accordance with the A.M.A., *Guides*. The Board finds that the evidence of record does not establish that appellant has a ratable impairment based on his accepted bilateral hearing loss. The May 1, 2017 audiogram results did not demonstrate ratable values in accordance with the sixth edition of the A.M.A., *Guides*.

OWCP properly referred appellant to Dr. Bane for an examination relative to his hearing loss. Dr. Bane's May 1, 2017 examination found that appellant's bilateral sensorineural hearing loss was due to his workplace noise exposure. On May 23, 2017 an OWCP's medical adviser reviewed Dr. Bane's report and found that the hearing loss was not ratable for schedule award purposes. He applied the standardized procedures to the May 1, 2017 audiogram performed for Dr. Bane to determine if appellant's hearing loss was ratable for schedule award purposes.

Testing for the right ear at the frequency levels of 500, 1,000, 2,000, and 3,000 cycles per second revealed decibel losses of 10, 5, 15, and 35, respectively. These decibels were totaled at 65 and were divided by 4 to obtain an average hearing loss at those cycles of 16.25 decibels. The average of 16.25 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal zero percent hearing loss for the right ear.

Testing for the left ear at the frequency levels of 500, 1,000, 2,000, and 3,000 cycles per second revealed decibels losses of 5, 5, 15, and 20 respectively. These decibels were totaled at 45 and were divided by 4 to obtain the average hearing loss at those cycles of 11.25 decibels. The average of 11.25 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to 0 which was multiplied by the established factor of 1.5 to compute 0 percent hearing loss for the left ear. Thus, OWCP's medical adviser concluded that appellant not have any permanent impairment of his hearing that warranted a schedule award. Consequently, appellant does not have ratable hearing loss under OWCP's standardized procedures.

The Board notes that Dr. Bane diagnosed tinnitus. The A.M.A., *Guides* allows for compensation of up to five percent for tinnitus in the presence of measurable hearing loss if the tinnitus impacts the ability to perform activities of daily living.¹⁶ The Board has held that, in the absence of a ratable hearing loss, a schedule award for tinnitus is not appropriate.¹⁷ As explained

¹⁴ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(f) (February 2013).

¹⁵ See *Ronald J. Pavlik*, 33 ECAB 1596 (1982).

¹⁶ *Supra* note 2 at 246; see *Leslie M. Mahin*, 55 ECAB 311 (2004).

¹⁷ *L.S.*, 57 ECAB 725 (2006).

above, appellant has not established a ratable hearing loss. He is therefore not entitled to a schedule award.

On appeal appellant asserts that he sustained sensorineural hearing loss and tinnitus and should have been granted a schedule award. For the reasons set forth above, he has not established his claim for a schedule award.

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 not established ratable hearing loss, warranting a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the June 2, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 14, 2017
Washington, DC

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

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

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board