

Appellant began work at the employing establishment as an ordinance equipment specialist and painter in January 1977. His duties entailed installation, overhaul, modification and repair of items such as torpedoes, torpedo subassemblies, actuators, valves, fuel tanks, pressure regulators, pumps, and other equipment. Sources of hazardous noise exposure included pneumatic tools, drills, saws, exhaust fans, steam heaters, sandblasters, air hoods, and air sprayers. Noise exposure ranged up to the full workday. Appellant participated in the employing establishment's hearing conservation program and was provided hearing protection.

Hearing conservation data, medical notes, and audiograms were submitted dated August 2, 1984 to May 18, 2015.

OWCP referred appellant, together with a statement of accepted facts (SOAF), to Dr. Richard Seaman, a Board-certified otolaryngologist, for a second opinion evaluation on January 5, 2017. An audiogram was completed on that date which revealed the following decibel (dB) losses at 500, 1,000, 2,000, and 3,000 hertz (Hz): 5, 5, 25, and 30 for the right ear and 5, 10, 15, and 35 for the left ear. Speech reception thresholds were 20 dB on the right and 15 dB on the left, while auditory discrimination scores were 92 percent bilaterally. Dr. Seaman reported complaints of hearing loss with very occasional tinnitus. He diagnosed bilateral sensorineural hearing loss which he opined was caused by his federal employment-related noise exposure. Dr. Seaman further opined that the hearing loss was in excess of what would normally be predicated on the basis of presbycusis, and that the workplace exposure was sufficient as to intensity and duration to have caused the loss in question.

By decision dated February 27, 2017, OWCP accepted appellant's claim for bilateral noise effects on inner ear.

On February 27, 2017 OWCP referred the case file along with Dr. Seaman's report to Dr. Charles Pettit, a Board-certified otolaryngologist serving as an OWCP district medical adviser (DMA), to determine the extent of appellant's functional loss of hearing, date of maximum medical improvement (MMI), and whether hearing aids should be authorized.

In a March 1, 2017 report, Amy M. Becken, an audiologist, reported that appellant's hearing tests showed a high frequency sensorineural hearing loss bilaterally. Speech reception thresholds were consistent with the pure tone averages calculated for each ear. Ms. Becken reported that speech discrimination scores were reduced in both ears respectfully. On behalf of appellant, she requested OWCP authorize hearing devices due to appellant's communication issues.

In a March 9, 2017 report, Dr. Pettit opined that appellant sustained bilateral hearing loss as a result of work-related noise exposure. However, he did not believe that hearing aids should be authorized. Dr. Pettit explained that appellant's speech reception thresholds and pure tone responses to sound stimuli within the frequencies most important to understanding speech were still at a level for which hearing aids were not generally considered necessary. He noted that hearing aids were not considered medically necessary because speech reception and comprehension would not be significantly improved with amplification to justify dispensing hearing aids.

By decision dated May 8, 2017, OWCP accepted appellant's claim for bilateral sensorineural hearing loss. It denied authorization for hearing aids as the weight of the medical evidence established that appellant would not benefit from the devices.²

LEGAL PRECEDENT

Section 8103 of FECA³ provides that the United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances, and supplies prescribed or recommended by a qualified physician, which the Secretary of Labor considers likely to cure, give relief, reduce the degree of the periods of any disability, or aid in lessening the amount of any monthly compensation.⁴ These services, appliances, and supplies shall be furnished by or on the order of the United States medical officers and hospital or at the employee's option by or on the order of physicians and hospitals designated or approved by the Secretary.⁵ The employee may be furnished necessary and reasonable transportation and expenses incidental to the securing of such services, appliances, and supplies.⁶ In interpreting section 8103, the Board has recognized that OWCP has broad discretion in approving services provided under FECA. The only limitation on OWCP's authority is that of reasonableness.⁷

OWCP must therefore exercise discretion in determining whether the particular service, appliance, or supply is likely to affect the purposes specified in FECA.⁸ Following medical evaluation of a claim, if hearing loss is accepted, even if the hearing loss is subsequently determined to be nonratable for schedule award purposes, other benefits such as hearing aids may still be payable if any employment-related hearing loss exists.⁹

ANALYSIS

OWCP accepted appellant's claim for bilateral hearing loss as a result of his federal employment noise exposure. It denied his request, however, for authorization of hearing aids. The Board finds that OWCP properly denied authorization for hearing aids.¹⁰

² OWCP has not issued a final decision as to whether appellant has a ratable hearing loss, entitling him to a schedule award.

³ 5 U.S.C. § 8103.

⁴ *Id.*

⁵ *Daniel J. Perea*, 42 ECAB 214 (1990).

⁶ *See Debra S. King*, 44 ECAB 203 (1992); *Bertha L. Arnold*, 38 ECAB 282 (1986).

⁷ *D.C.*, Docket No. 06-2161 (issued July 13, 2007).

⁸ *Supra* note 2.

⁹ *See F.D.*, Docket No. 10-1175 (issued January 4, 2011); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Services and Supplies*, Chapter 3.700.3(d)(2) (October 1990).

¹⁰ *L.B.*, Docket No. 12-1580 (issued December 13, 2012).

In his January 5, 2017 otologic examination Dr. Seaman, serving as the second opinion physician, diagnosed bilateral sensorineural hearing loss which he opined was related to employment-related noise exposure. He provided no opinion on hearing aids.

On March 9, 2017 Dr. Pettit, serving as OWCP's DMA, reviewed Dr. Seaman's report and agreed that appellant's bilateral sensorineural hearing loss was due to occupational noise exposure. However, he opined that hearing aids should not be authorized. Dr. Pettit provided rationale for his opinion, explaining that appellant's speech reception thresholds and pure tone responses to sound stimuli within the frequencies most important to understanding speech were still at a level for which hearing aids were not generally considered necessary. He noted that hearing aids were not considered medically necessary because speech reception and comprehension would not be significantly improved with amplification to justify the use of hearing aids. As such, Dr. Pettit's report does not establish that appellant required the use of hearing aids as a result of his federal employment noise exposure.¹¹

There is no other rationalized medical evidence supporting the use of hearing aids causally related to his occupational noise exposure. In a March 1, 2017 report, Ms. Becken, reported that appellant was a good candidate for binaural hearing aids. She explained that appellant was having communication issues and speech discrimination scores were reduced in both ears respectfully. The Board notes that audiologists are not included among the healthcare professionals defined as a physician under FECA.¹² Therefore, Ms. Becken's opinion is of no probative medical value.¹³

OWCP's medical adviser was the only physician of record who offered an opinion regarding authorization of hearing aids, and he explained that hearing aids were not necessary. Therefore, the Board finds that OWCP did not abuse its discretion in denying authorization for hearing aids. The denial was not unreasonable based on the medical evidence of record. Should the need for hearing aids arise in the future appellant may file an appropriate claim at that time.¹⁴

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that OWCP properly denied authorization of hearing aids.

¹¹ *J.C.*, Docket No. 13-1413 (issued October 22, 2013).

¹² 5 U.S.C. § 8102(2) of FECA provides as follows: (2) 'physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. *See J.K.*, Docket No. 17-0321 (issued April 24, 2017) an audiologist is not a physician under FECA.

¹³ *R.V.*, Docket No. 12-248 (issued June 6, 2012); *Thomas O. Bouis*, 57 ECAB 602 (2006).

¹⁴ *D.S.*, Docket No. 13-1463 (issued November 14, 2013).

ORDER

IT IS HEREBY ORDERED THAT the May 8, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 5, 2017
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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