

his hearing loss was caused or aggravated by his employment on December 2, 1999. Appellant did not stop work. However, he indicated that he was retiring at the end of December 2015 and was advised by the nurse to file a hearing loss claim before he retired.

On December 22, 2015 appellant submitted an employment history. He advised that he was exposed to loud noise as a vehicle inspector with the employing establishment from 1974 to the present. Appellant indicated that his hearing loss was first noticed on March 12, 1999. He noted that his hearing loss declined even though he wore safety devices and protection against noise exposure.

OWCP received copies of personnel actions, work records, a position description, employing establishment audiograms, and hearing conservation data dating from July 12, 1995 to December 4, 2015; and notifications of personnel actions from June 20, 1999 to July 8, 2013.

In a January 20, 2016 statement of accepted facts (SOAF), OWCP accepted that appellant worked for the employing establishment from 1979 to the present. It accepted that he was exposed to noise levels between 72.1 and 91.1 decibels from gasoline and diesel engines, air tools, air compressors, power washers, power vacuums, fluid pumping systems, and exhaust fan systems for eight hours a day. OWCP noted that in 1999, blue point earplugs and sound guard earplugs were provided.

On January 20, 2016 OWCP referred appellant, together with the SOAF to Dr. Gerald N. Bart, a Board-certified otolaryngologist, for a second opinion evaluation regarding the nature, extent, and relationship of appellant's hearing loss to his federal employment.

In a March 7, 2016 report, Dr. Bart noted appellant's history of noise exposure during his federal employment, which dated back to 1999. He noted reviewing available medical records and examined appellant. Dr. Bart utilized the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).² He determined that the ear canals and tympanic membranes were within normal limits, bilaterally, and they were free of any obstacles. Dr. Bart found that drum motility was mobile and both active and passive. He determined that there was no evidence of acoustic neuroma or Meniere's disease affecting appellant's hearing. Dr. Bart advised that audiometric testing was performed on his behalf on that date. In response to whether appellant showed sensorineural loss in excess of what would be normally predicated on the basis of presbycusis, Dr. Bart responded in the negative to the question of whether sensorineural loss is in excess of what would be normally predicated on the basis of presbycusis. He also responded yes, noting high intensity noise exposure constantly for prolonged periods of time. Dr. Bart responded that there was no other outside noise exposure pertinent to appellant's hearing loss. He diagnosed bilateral sensorineural hearing loss due to his federal employment and noted that appellant had communication difficulty that affected his daily life and recommended hearing aids. Dr. Bart attached a copy of the March 7, 2016 audiogram. Testing for the right ear at the frequency levels of 500, 1,000, 2,000, and 3,000 cycles per second (cps) revealed decibel losses of 10, 10, 5, and 35 respectively. Testing for the left ear at the frequency levels of 500, 1,000, 2,000, and 3,000 cps revealed decibel losses of 10, 10, 15, and 50 respectively.

² A.M.A., *Guides* (6th ed. 2009).

The audiogram was performed by audiologist Christina M. Pina and calibrated on July 13, 2015 by Steve Brasso.

By decision dated May 23, 2016, OWCP accepted appellant's claim for binaural sensorineural hearing loss due to his employment-related hearing exposure.

On June 14, 2016 appellant filed a claim for compensation (Form CA-7), requesting a schedule award.

On January 23, 2017 an OWCP medical adviser reviewed the otologic and audiologic testing performed on behalf of Dr. Bart and applied OWCP's standardized procedures to his evaluation. He determined that maximum medical improvement was achieved on March 7, 2016. The medical adviser utilized the A.M.A., *Guides* and determined that appellant had zero percent binaural hearing loss. He opined that the patterns of hearing loss he observed were suggestive of a sensorineural hearing loss due at least in part to noise-induced work-related acoustic trauma. The medical adviser noted that the audiometric tests results were valid and representative of appellant's hearing sensitivity. He also recommended authorizing hearing aids.

By decision dated January 26, 2017, OWCP explained that, while they had accepted appellant's claim for binaural sensorineural hearing loss, they had determined that his hearing loss was not severe enough to be considered ratable and therefore, he was not entitled to schedule award compensation.

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, it 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*. Using the frequencies of 500, 1,000, 2,000, and 3,000 cps, 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.⁶ 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

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404.

⁵ *Id.*

⁶ *See* A.M.A., *Guides* 250.

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.⁷

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish that ratable hearing loss in accordance with the sixth edition of the A.M.A., *Guides*.

On January 23, 2017 OWCP's medical adviser reviewed the otologic and audiologic testing performed on behalf of Dr. Bart, a Board-certified otolaryngologist, and properly applied OWCP's standardized procedures to this evaluation. Testing for the right ear at the frequency levels of 500, 1,000, 2,000, and 3,000 cps revealed decibel losses of 10, 10, 5, and 35 respectively. These decibel losses were totaled at 60 decibels and were divided by 4 to obtain the average hearing loss of 15 decibels. This average loss was then reduced by 25 decibels (25 decibels being discounted as discussed above) to equal a negative figure. Testing for the left ear at the frequency levels of 500, 1,000, 2,000, and 3,000 cps revealed decibel losses of 10, 10, 15, and 50 respectively. These decibel losses total 85 decibels and when divided by 4 result in an average hearing loss of 21.25 decibels. This average loss when reduced by 25 decibels (25 decibels being discounted as discussed above) equals a negative figure. OWCP's medical adviser, therefore, properly concluded that the calculations showed that appellant did not have ratable hearing loss under the relevant standards of the A.M.A., *Guides*.

The Board finds that there is no current medical evidence of record supporting that appellant has ratable hearing loss under OWCP's standardized procedures for rating hearing impairment.⁸

On appeal appellant argues that he actually has hearing loss as he worked for the employing establishment for 40 years; even before hearing protection was required. He explains that he was sure that his hearing loss was caused by his employment. The Board notes that OWCP has accepted appellant's claim for binaural sensorineural hearing loss due to his employment-related hearing exposure. However, the current level of hearing loss has been found not severe enough to be considered ratable such that he would be entitled to 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.

⁷ E.S., 59 ECAB 249 (2007); Reynaldo R. Lichtenberger, 52 ECAB 462 (2001).

⁸ The Board notes that hearing aids were recommended and authorized by OWCP's medical adviser.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish ratable hearing loss, warranting a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the January 26, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 6, 2018
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