

**United States Department of Labor
Employees' Compensation Appeals Board**

L.H., Appellant)	
)	
and)	Docket No. 17-1957
)	Issued: June 13, 2018
DEPARTMENT OF THE TREASURY,)	
BUREAU OF ENGRAVING & PRINTING,)	
Fort Worth, TX, Employer)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 20, 2017 appellant filed a timely appeal from an August 22, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

ISSUE

The issue is whether appellant has established permanent, ratable hearing loss, warranting a schedule award.

FACTUAL HISTORY

On June 22, 2017 appellant, then a 57-year-old materials handler, filed an occupational disease claim (Form CA-2) alleging that she developed hearing loss and tinnitus due to her federal

¹ 5 U.S.C. § 8101 *et seq.*

employment duties. She first became aware of her condition on October 29, 2014 and first attributed it to factors of her federal employment on that date. Appellant did not stop work and continued to be exposed to noise.

In her accompanying narrative, appellant reported previous exposure to weapons fire, helicopters, and large trucks as a military police officer in the U.S. Army from June 1993 through February 1994. She also listed her employment as a warehouse clerk from February 1994 through March 1995 and her current position as a materials handler from March 1995 driving a forklift in a warehouse setting. Appellant also described noise from mutilation pipes from a large machine that shreds currency, cardboard, and metal plates as well as construction work, printing presses, large trucks, and hydraulic jacks. She alleged that the employing establishment initially did not enforce earplug usage and that with earplugs sound was not entirely eliminated.

In a June 2, 2017 memorandum, the employing establishment listed appellant's noise exposure to forklift operation and production machinery noise. It noted that assorted hearing protection was provided including earplugs and earmuffs.

Appellant underwent periodic audiograms with the Division of Federal Occupational Health. As part of this, she sought treatment for hearing loss from Dr. James Sweatt, a Board-certified surgeon, on October 29, 2014. Dr. Sweatt recommended a complete hearing evaluation. On April 3, 2017 appellant underwent an audiogram which demonstrated mild high-frequency sensorineural hearing loss.

A statement of accepted facts (SOAF) dated June 27, 2017 noted that appellant was employed as a materials handler since March 1995 and was exposed to noise from forklifts, machinery, truck deliveries, mutilation pipes, printing presses, and hydraulic jacks as well as construction noises.

On July 3, 2017 OWCP referred appellant, together with the SOAF to Dr. Kenneth S. Hsu, a Board-certified otolaryngologist for an otologic examination and an audiological evaluation. In a July 20, 2017 report, Dr. Hsu reviewed the SOAF and found that appellant's employment-related noise exposure was sufficient to have caused her hearing loss. He diagnosed asymmetric noise-induced sensorineural hearing loss and mild tinnitus. Dr. Hsu opined that this hearing loss was due to noise exposure encountered in appellant's federal employment. He opined that appellant's progressive hearing loss was consistent with noise-induced hearing loss and the asymmetry of the high-frequency hearing loss suggested a medical cause beyond presbycusis. Audiometric testing was performed for Dr. Hsu on July 20, 2017. Testing at the frequencies of 500, 1,000, 2,000, and 3,000 cycles per second revealed the following: right ear 15, 20, 25, and 35 decibels; left ear 10, 20, 30, and 35 decibels.

On August 2, 2017 OWCP accepted appellant's claim for binaural hearing loss and tinnitus due to noise exposure.

On August 10, 2017 appellant filed a claim for a schedule award (Form CA-7).

On August 14, 2017 an OWCP medical adviser reviewed Dr. Hsu's report and the audiometric test of July 20, 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 July 20, 2017 audiogram. He did not recommend hearing aids.

By decision dated August 22, 2017, OWCP found that although appellant's hearing loss was employment related it was not sufficiently severe 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 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

² A.M.A., *Guides* (6th ed. 2009).

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404 (1999).

⁵ *Id.* See also *M.A.*, Docket No. 17-1490 (issued November 14, 2017); *Jacqueline S. Harris*, 54 ECAB 139 (2002).

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

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

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 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

The Board finds that the evidence of record does not establish that appellant has ratable binaural hearing loss. The July 20, 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. Hsu for an examination relative to her hearing loss. Dr. Hsu's July 20, 2017 examination found that appellant's binaural hearing loss was due to her workplace noise exposure. On August 14, 2017 OWCP's medical adviser reviewed Dr. Hsu's report and found that the hearing loss was not ratable for schedule award purposes. He applied the standardized procedures to the June 20, 2017 audiogram performed for Dr. Hsu 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, 15, 20, 25, and 35, respectively. These decibels were totaled at 95 and were divided by 4 to obtain an average hearing loss at those cycles of 23.75 decibels. The average of 23.75 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.

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 *M.A.* *supra* note 5; *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).

¹⁴ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(f) (March 2017).

¹⁵ See *M.A.*, *supra* note 5; *Ronald J. Pavlik*, 33 ECAB 1596 (1982).

Testing for the left ear at the frequency levels of 500, 1,000, 2,000, and 3,000 cycles per second revealed decibel losses of 10, 20, 30, and 35, respectively. These decibels were totaled at 95 and were divided by 4 to obtain the average hearing loss at those cycles of 23.75 decibels. The average of 23.75 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 did not have any permanent impairment of her hearing that warranted a schedule award. Consequently, appellant does not have ratable hearing loss under OWCP's standardized procedures. Although she has employment-related hearing loss, it is not sufficiently severe to be ratable for schedule award purposes.¹⁶ Appellant has, therefore, failed to meet her burden of proof to establish permanent, ratable hearing loss warranting a schedule award.¹⁷

The Board notes that Dr. Hsu diagnosed tinnitus. The A.M.A., *Guides* allows for compensation of up to five percent impairment for tinnitus in the presence of measurable hearing loss if the tinnitus impacts the ability to perform activities of daily living.¹⁸ The Board has held that, in the absence of a ratable hearing loss, a schedule award for tinnitus is not appropriate.¹⁹ As explained above, appellant has not established a ratable hearing loss. She is, therefore, not entitled to a schedule award for tinnitus.

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 permanent, ratable hearing loss, warranting a schedule award.

¹⁶ *W.T.*, Docket No. 17-1723 (issued March 20, 2018); *E.D.*, Docket No. 11-174 (issued July 26, 2011).

¹⁷ *W.T.*, *id.*; *S.B.*, Docket No. 17-1527 (issued January 9, 2018).

¹⁸ *Supra* note 2 at 246; see *Leslie M. Mahin*, 55 ECAB 311 (2004).

¹⁹ *L.S.*, 57 ECAB 725 (2006).

ORDER

IT IS HEREBY ORDERED THAT the August 22, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 13, 2018
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