

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

_____)	
W.T., Appellant)	
)	
and)	Docket No. 17-1723
)	Issued: March 20, 2018
DEPARTMENT OF THE ARMY, U.S. ARMY)	
CORPS OF ENGINEERS, Vicksburg, MS,)	
Employer)	
_____)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 3, 2017 appellant filed a timely appeal from a July 17, 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 over the merits of the claim.

ISSUE

The issue is whether appellant met his burden of proof to establish ratable hearing loss, warranting a schedule award.

FACTUAL HISTORY

On November 29, 2016 appellant, then a 59-year-old line foreman, filed an occupational disease claim (Form CA-2) for bilateral sensorineural hearing loss which he attributed to daily

¹ 5 U.S.C. § 8101 *et seq.*

exposure to loud noises in the workplace. He first became aware of his condition on July 14, 2014 and realized that it was caused or aggravated by factors of his federal employment on December 14, 2015. Appellant indicated that he was an engineering equipment operator where the noise was constant most of the time. He further indicated that he wore ear protection to minimize the effect of the machine noise.

In a development letter dated December 12, 2016, OWCP requested that appellant submit additional factual information pertaining to his job exposure which he believed contributed to his hearing condition. Further, in a December 12, 2016 letter, it requested additional information from the employing establishment, including copies of all medical examinations pertaining to hearing or ear problems, including preemployment examination and all audiograms.

OWCP received a copy of a December 14, 2015 audiogram, appellant's audiogram record from August 21, 2013 to September 4, 2015, and a copy of appellant's job history from 1979 to 2016.

On March 13, 2017 OWCP referred the case record, including a statement of accepted facts (SOAF) and lists of questions, to Dr. Bryan M. Clay, a Board-certified otolaryngologist, for a second opinion evaluation. In an April 4, 2017 report, Dr. Clay examined appellant and administered an audiogram. He diagnosed bilateral mid-high and high-frequency sensorineural hearing loss. Dr. Clay indicated that appellant's sensorineural hearing loss was due in part to his chronic exposure to loud noises in his federal civilian employment. He further found that based on the results of the April 4, 2017 audiogram the impairment calculations under the American Medical Association, *Guides to the Evaluation of Permanent Impairment*² (A.M.A., *Guides*) revealed a monaural loss of zero in each ear, as well as a binaural loss of zero. Dr. Clay also indicated that there was tinnitus present.

By decision dated April 14, 2017, OWCP accepted appellant's claim for bilateral sensorineural hearing loss, with a July 14, 2014 date of injury.

On April 14, 2017 OWCP also referred the case record, including Dr. Clay's April 4, 2017 report and audiogram, to a medical adviser to determine whether appellant had a ratable hearing loss under the A.M.A., *Guides*.

In a May 1, 2017 report, Dr. Charles Pettit, a Board-certified otolaryngologist and OWCP medical adviser, reviewed appellant's medical records, the SOAF, and Dr. Clay's April 4, 2017 report and audiogram. He stated that, although hazardous conditions were frequent, noise exposure did not appear in the medical record as a major concern. Dr. Pettit noted that appellant had denied tinnitus during his April 4, 2017 medical examination, the physical examination of the ears was normal, and the audiogram showed mild sensorineural hearing loss with excellent speech discrimination scores bilaterally, and normal speech discrimination scores. He opined that appellant's impairment rating was zero and hearing aids were not required. Dr. Pettit further indicated that he agreed with Dr. Clay's findings regarding the degree of hearing loss and impairment. A copy of Dr. Pettit's impairment calculations was provided. The August 4, 2017 audiogram found right ear frequency levels of 500, 1,000, 2,000, and 3,000 cycles per second

² A.M.A., *Guides* (6th ed. 2009).

revealed decibels losses of 5, 10, 35, and 35, respectively. These decibels were totaled at 85 and were divided by 4 to obtain an average hearing loss at those cycles of 21.25 decibels. The average of 21.25 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, 25, and 35 respectively. These decibels were totaled at 70 and were divided by 4 to obtain the average hearing loss at those cycles of 17.5 decibels. The average of 17.5 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 zero percent hearing loss for the left ear. Thus, OWCP's medical adviser concluded that appellant does not have a permanent impairment.

On June 19, 2017 appellant filed a claim for a schedule award (Form CA-7).

By decision dated July 17, 2017, OWCP denied appellant's schedule award claim as the medical evidence of record did not demonstrate permanent, measureable hearing impairment.

LEGAL PRECEDENT

Section 8107 of FECA sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.³ FECA, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The implementing regulations have adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule losses.⁴ Effective May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (2009).⁵

The method of evaluating permanent impairment due to hearing loss is set forth under Chapter 11, section 11.2, Hearing and Tinnitus, A.M.A., *Guides* at 248-51 (6th ed. 2009). Using the frequencies of 500, 1,000, 2,000 and 3,000 hertz, the losses at each frequency are added up and averaged.⁶ 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.⁷ The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.⁸ The binaural loss is determined by calculating the loss in

³ For complete loss of hearing of one ear, an employee shall receive 52 weeks' compensation. 5 U.S.C. § 8107(c)(13). For complete loss of hearing of both ears, an employee shall receive 200 weeks' compensation. *Id.*

⁴ 20 C.F.R. § 10.404.

⁵ See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (February 2013).

⁶ A.M.A., *Guides* 250 (6th ed. 2009).

⁷ *Id.* at 250-51.

⁸ *Id.*

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.⁹

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.¹⁰ OWCP may follow the advice of its medical adviser or consultant as to whether he or she has properly utilized the A.M.A., *Guides*.¹¹

ANALYSIS

OWCP accepted that appellant sustained bilateral sensorineural hearing loss due to noise exposure from his federal employment. The issue is whether he has established ratable permanent impairment in accordance with the A.M.A., *Guides*, thereby warranting a schedule award. The Board finds that the evidence of record does not establish that appellant has ratable permanent impairment due to his accepted bilateral hearing loss. The April 4, 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. Clay for an examination relative to his hearing loss. Dr. Clay's April 4, 2017 examination found that appellant's bilateral sensorineural hearing loss was due in part to his workplace noise exposure. On May 1, 2017 an OWCP medical adviser reviewed Dr. Clay's report and found that the hearing loss was not ratable for schedule award purposes. He applied the standardized procedures to the April 4, 2017 audiogram performed for Dr. Clay 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 decibels losses of 5, 10, 35, and 35, respectively. These decibels were totaled at 85 and were divided by 4 to obtain an average hearing loss at those cycles of 21.25 decibels. The average of 21.25 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, 25, and 35 respectively. These decibels were totaled at 70 and were divided by 4 to obtain the average hearing loss at those cycles of 17.5 decibels. The average of 17.5 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 zero percent hearing loss for the left ear. Thus, OWCP's medical adviser concluded that appellant does not have a permanent impairment.

⁹ *Id.*

¹⁰ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(f) (March 2017).

¹¹ See *Ronald J. Pavlik*, 33 ECAB 1596 (1982).

The Board finds that OWCP's medical adviser applied the proper standards to the August 4, 2017 audiogram, finding zero percent bilateral sensorineural hearing loss.¹² Appellant has not submitted a medical report establishing a percentage of hearing loss which would refute the opinion of the medical adviser. Although he has an employment-related hearing loss, it is not significant enough to be ratable for schedule award purposes.¹³ Appellant has, therefore, failed to meet his burden of proof to establish permanent, ratable hearing loss warranting a schedule award.¹⁴

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.

¹² 5 U.S.C. § 8107; 20 C.F.R. § 10.404.

¹³ See *E.D.*, Docket No. 11-174 (issued July 26, 2011).

¹⁴ See *S.B.*, Docket No. 17-1527 (issued January 9, 2018).

ORDER

IT IS HEREBY ORDERED THAT the July 17, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 20, 2018
Washington, DC

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

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

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