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

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| **T.C., Appellant** | ) | |
| **and** | ) | **Docket No. 17-0576** |
| | ) | **Issued: May 22, 2018** |
| **DEPARTMENT OF HOMELAND SECURITY, TRANSPORTATION SECURITY ADMINISTRATION, St. Ann, MO, 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
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

### *JURISDICTION*

On January 17, 2017 appellant filed a timely appeal from a December 30, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

### *ISSUE*

The issue is whether appellant has established a ratable hearing loss entitling him to a schedule award.

### *FACTUAL HISTORY*

On June 19, 2014 appellant, then a 57-year-old former special agent, filed an occupational disease claim (Form CA-2) alleging that he sustained permanent ringing in both ears due to side

[1] 5 U.S.C. § 8101 *et seq.*

effects from taking Lariam, an antimalarial drug. He explained that he was exposed to the conditions alleged to have caused his disease while traveling for the employing establishment from 1988 to 1991 and from 1995 to 1999. Appellant initially became aware of his condition in 1988 and attributed it to his federal employment on May 26, 2014, when he learned that in July 2013 the Food and Drug Administration (FDA) had issued a warning that the drug Lariam had neurological side effects.[2]

By letter dated July 16, 2014, OWCP requested that appellant submit additional factual and medical information in support of his claim, including a detailed opinion from his attending physician regarding the cause of any diagnosed condition.

Appellant submitted the results of a July 15, 2014 audiogram. An audiologist on July 21, 2014 noted that Lariam can cause tinnitus and that the results were consistent with the audiological findings. On July 22, 2014 Dr. Raymond K. Weber, Board-certified in family medicine, reviewed and concurred with the findings by the audiologist.

OWCP, on November 4, 2014, referred appellant to Dr. Richard L. Barnes, an osteopath, for a second opinion examination. In a report dated November 18, 2014, Dr. Barnes diagnosed bilateral sensorineural hearing loss that was mild to moderate and consistent with noise-induced hearing loss and tinnitus due to exposure to Lariam. He attributed the hearing loss to exposure to noise in his federal employment and provided the results of an audiogram.

In a supplemental report dated March 12, 2015, Dr. Barnes opined that appellant's tinnitus was unrelated to taking antimalarial medication. He noted that high-frequency sensorineural hearing loss could result in tinnitus. On July 27, 2015 Dr. Barnes opined in an addendum report that the drug Lariam did not cause tinnitus.

By decision dated September 10, 2015, OWCP denied appellant's claim for employment-related tinnitus. It found that his claim was timely filed and that he had established the occurrence of the identified work factors. OWCP determined, however, that the medical evidence submitted was insufficient to establish that he sustained a diagnosed condition due to taking antimalarial medication.

Appellant, on September 24, 2015, requested reconsideration. He noted that he only took antimalarial medication on travel for the employment establishment. Appellant advised that he always used hearing protection for firearms training.

[2] In an accompanying statement, appellant related that while traveling as part of his employment from 1988 to 1991 and 1995 to 1999 he was required to take Lariam as a prophylaxis against malaria. He developed tinnitus. On May 26, 2014 appellant learned that the FDA had updated its side effect information regarding the drug Lariam to include psychiatric and neurological side effects that may be permanent, including ringing in the ears. On July 29, 2014 he advised that the employing establishment provided the Lariam in a plastic envelope without warning information. Appellant's exposure to the drug varied depending on the time of his travels. He was unaware that his tinnitus resulted from the drug exposure until May 2014.

Dr. Jeffrey T. Fierstein, a Board-certified otolaryngologist, opined on September 24, 2015 that appellant "developed tinnitus after taking [the] malaria prophylactic, Lariam." He attributed the tinnitus to the Lariam.

In a report dated October 16, 2015, Dr. Remington Lee Nevin, a general practitioner, reviewed the evidence of record and discussed literature finding an association between tinnitus and the antimalarial drug Mefloquine (also known as Lariam). He opined that appellant sustained tinnitus that was more likely than not directly related to toxicity from the antimalarial drug. Dr. Nevin advised that the condition was most likely permanent.

By letter dated March 10, 2016, OWCP referred appellant to Dr. Ketan A. Shah, a Board-certified otolaryngologist, for an otologic examination and an audiological evaluation. It provided a statement of accepted facts noting that appellant took the antimalarial medication Lariam, also known as Mefloquine, on work trips from 1988 to 1999. OWCP noted that he used hearing protection during firearms training.

In a report dated March 24, 2016, Richard K. Kleinschmidt, a physician assistant with Dr. Shah, discussed appellant's history of tinnitus after using the medication Lariam, or Melfloquine. He interpreted an audiogram as showing moderate-to-severe bilateral sensorineural hearing loss. The physician assistant diagnosed bilateral tinnitus more likely than not due to Lariam toxicity and bilateral sensorineural hearing loss more likely than not caused by tinnitus resulting from Lariam toxicity. He found that appellant was a good candidate for hearing aids. Audiometric testing was conducted on March 24, 2016. Testing at frequency levels of 500, 1,000, 2,000, and 3,000 cycles per second revealed losses in the right ear of 15, 5, 20, and 55, respectively, and losses in the left ear of 10, 10, 25, and 45, respectively.

OWCP, on June 29, 2016, vacated its September 10, 2015 decision and accepted appellant's claim for bilateral tinnitus and bilateral sensorineural hearing loss.

On July 8, 2016 appellant filed a claim for compensation (Form CA-7) requesting a schedule award.

An OWCP medical adviser reviewed the medical evidence on July 5, 2016 and applied OWCP's standards for evaluating hearing loss to the March 24, 2016 audiogram. He concluded that appellant's hearing loss was not sufficiently severe to be ratable for a schedule award. OWCP's medical adviser recommended that OWCP authorize hearing aids.

In a report dated October 29, 2016, Dr. Jay F. Piccirillo, a Board-certified otolaryngologist, discussed appellant's complaints of tinnitus for more than 20 years. He advised that the March 24, 2016 audiogram demonstrated high-frequency sensorineural hearing loss with speech reception thresholds bilaterally of 15 decibels. Referencing the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),[3] Dr. Piccirillo opined that appellant had a class 3, or severe, problem due to tinnitus.

[3] A.M.A., *Guides* (6th ed. 2009).

OWCP's medical adviser, in an updated report dated December 27, 2016, concurred with Dr. Piccirillo's finding that the March 24, 2016 audiogram showed moderate-to-severe sensorineural hearing loss in the right ear and moderate sensorineural hearing loss in the left ear at three to eight kilohertz. He noted, however, that applying the provisions of the sixth edition of the A.M.A., *Guides* to the audiological results yielded no monaural hearing loss in either ear and no binaural hearing loss. The medical adviser opined that appellant was not entitled to a schedule award for tinnitus as his hearing loss was not ratable.

By decision dated December 30, 2016, OWCP denied appellant's schedule award claim. It found that the medical evidence of record did not establish that he had a ratable hearing loss entitling him to a schedule award.

On appeal appellant describes his symptoms of tinnitus, noting that it is an accepted condition. He maintains that OWCP's medical adviser concurred with Dr. Piccirillo's conclusions. Appellant asserts that he has a moderate-to-severe impairment due to his tinnitus.

## ***LEGAL PRECEDENT***

The schedule award provision of FECA,[4] and its implementing federal regulations,[5] 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 for all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.[6] As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.[7]

OWCP evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.[8] Using the frequencies of 500, 1,000, 2,000, and 3,000 hertz, 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* point out, losses below 25 decibels result in no impairment in the ability to hear everyday speech under everyday conditions. 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 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 binaural

[4] 5 U.S.C. § 8107.

[5] 20 C.F.R. § 10.404.

[6] *Id.* at § 10.404(a).

[7] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5(a) ( March 2017); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

[8] A.M.A., *Guides* 250.

hearing loss. The Board has concurred in OWCP's adoption of this standard for evaluating hearing loss.[9]

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.[10] The A.M.A., *Guides* provide that, if tinnitus interferes with activities of daily living (ADLs), 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.[11] A schedule award for tinnitus is not payable unless the medical evidence establishes that the condition caused or contributed to a ratable hearing loss.[12]

## ***ANALYSIS***

OWCP accepted that appellant sustained bilateral sensorineural hearing loss and bilateral tinnitus due to exposure to the antimalarial drug Lariam during the course of his federal employment. It initially denied the claim after finding that the medical evidence failed to establish that he sustained employment-related tinnitus and hearing loss, but it subsequently further developed the medical evidence and accepted the claim for bilateral hearing loss and tinnitus based on his exposure to the antimalarial drug Lariam.

On July 5, 2016 an OWCP medical adviser reviewed a March 24, 2016 audiogram obtained as part of a March 24, 2016 second opinion examination and found that the hearing loss was not ratable for schedule award purposes. He applied the standardized procedures to the March 24, 2016 audiogram 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, 5, 20, and 55, 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.

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, 10, 25, and 45 respectively. These decibels were totaled at 90 and were divided by 4 to obtain the average hearing loss at those cycles of 22.5 decibels. The average of 22.5 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to zero which was multiplied by the established factor of 1.5 to compute zero percent hearing loss for the left ear. The medical adviser further noted that appellant had zero percent binaural hearing loss. He concluded that he did not have a ratable permanent impairment due to hearing loss under the A.M.A., *Guides*.

[9] *See J.H.*, Docket No. 08-2432 (issued June 15, 2009); *J.B.*, Docket No. 08-1735 (issued January 27, 2009).

[10] A.M.A., *Guides* 249.

[11] *Id.*; *see also Robert E. Cullison*, 55 ECAB 570 (2004).

[12] *See Charles H. Potter*, 39 ECAB 645 (1988).

The Board finds that OWCP's medical adviser applied the proper standards to the March 24, 2016 audiogram, finding zero percent monaural or binaural ratable hearing loss. Although he has an employment-related hearing loss, it is not significant enough to be ratable for schedule award purposes.[13]

Appellant submitted an October 29, 2016 report from Dr. Piccirillo, who found that, under the A.M.A., *Guides*, he had a class three problem due to tinnitus. An OWCP medical adviser concurred with Dr. Piccirillo's determination, but noted that as his hearing loss was not ratable, he was not entitled to a schedule award for tinnitus.

The A.M.A., *Guides*, provides that tinnitus, in the presence of unilateral or bilateral hearing impairment, may impair speech discrimination and provides for up to five percent rating for tinnitus, in the presence of measurable hearing loss, if the tinnitus impacts the ability to perform ADL.[14] Appellant's hearing loss is not ratable. Accordingly, the Board finds he is not entitled to a schedule award for tinnitus.[15]

On appeal appellant asserts that OWCP's medical adviser concurred with Dr. Piccirillo's findings and maintains that he has a moderate-to-severe impairment due to his tinnitus. The issue, however, is whether an audiogram establishes that he meets the criteria for a ratable hearing loss. An impairment rating for tinnitus may not be added to an impairment rating for hearing loss unless such hearing loss is ratable.[16]

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 a ratable hearing loss entitling him to a schedule award.

[13] *See W.T.*, Docket No. 17-1723 (issued March 20, 2018).

[14] *Supra* note 10; *Juan A. Trevino*, 54 ECAB 356 (2003).

[15] *See D.G.*, Docket No. 16-1486 (issued December 16, 2016); *A.W.*, Docket No. 16-0795 (issued August 29, 2016).

[16] *See Juan A. Trevino*, *supra* note 14.

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the December 30, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 22, 2018
Washington, DC

Christopher J. Godfrey, 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