

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

G.G., Appellant)	
)	
and)	Docket No. 18-0566
)	Issued: October 2, 2018
DEPARTMENT OF HOMELAND SECURITY,)	
CUSTOMS & BORDER PATROL, Laredo, 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 January 23, 2018 appellant filed a timely appeal from a December 20, 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 this case.

ISSUE

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

FACTUAL HISTORY

On September 13, 2017 appellant, then a 58-year-old canine enforcement agent, filed an occupational disease claim (Form CA-2) attributing his hearing loss to his employment duties. He

¹ 5 U.S.C. § 8101 *et seq.*

noted that he first became aware of his claimed hearing loss on January 1, 1995, but did not realize its connection to his federal employment until January 1, 2000. Appellant explained that he did not file a claim earlier as he was not aware of the procedures for filing a claim. He did not stop work.

By development letter dated September 18, 2017, OWCP requested that appellant submit additional factual and medical information in support of his claim. It afforded appellant 30 days to submit the necessary evidence.

Appellant submitted the results of a July 11, 2017 audiogram and July 16, 2017 audiometric summary report. The audiometric summary report noted testing at frequency levels of 500, 1,000, 2,000, and 3,000 Hertz (Hz) revealed decibel (dB) losses in the right ear of 15, 15, 15, and 25. On the left test results at the frequency levels of 500, 1,000, 2,000, and 3,000 Hz revealed dB losses of 20, 20, 20, and 20. The July 11, 2017 audiogram was reviewed Dr. Erik Sloman-Moll, an examining Board-certified anatomic and clinical pathologist, and Dr. Jaziel Silva-Gonzalez, an audiologist. They found slight binaural hearing loss, especially at high frequencies.

OWCP, on October 19, 2017, referred appellant to Dr. William Carl Smith, a Board-certified otolaryngologist, for a second opinion examination. In a report dated November 6, 2017, Dr. Smith diagnosed bilateral high frequency sensorineural hearing loss. He attributed the hearing loss to exposure to noise in his federal employment and provided the results of an audiogram. An audiogram was performed at Dr. Smith's office on November 6, 2017. Testing at frequency levels of 500, 1,000, 2,000, and 3,000 Hz revealed dB losses in the right ear of 15, 15, 15, and 25. On the left test results at the frequencies of 500, 1,000, 2,000, and 3,000 Hz revealed dB losses of 15, 10, 15, and 25. Dr. Smith found zero percent binaural hearing impairment and two percent permanent impairment due to mild tinnitus.

By decision dated November 14, 2017, OWCP accepted appellant's claim for binaural hearing loss.

An OWCP district medical adviser (DMA) reviewed the medical evidence on November 18, 2017 and applied OWCP's standards for evaluating hearing loss to the November 6, 2017 audiogram. He found that appellant had reached maximum medical improvement (MMI) as of the date of the examination, November 6, 2017.

The DMA noted that appellant had zero percent binaural hearing loss. He concluded that appellant did not have a ratable permanent impairment due to hearing loss under the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*)² and, thus, was not entitled to a schedule award for tinnitus. The DMA recommended that appellant undergo yearly audiograms, noise protection, and authorization for hearing aids.

On December 6, 2017 appellant filed a claim for compensation (Form CA-7) requesting a schedule award.

² A.M.A., *Guides* (6th ed. 2009).

By decision dated December 20, 2017, OWCP denied appellant's schedule award claim. It found that the medical evidence of record was insufficient to establish that he had ratable hearing loss warranting a schedule award.

LEGAL PRECEDENT

The schedule award provisions of FECA,³ and its implementing federal regulations,⁴ 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.⁵ As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.⁶

OWCP evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.⁷ Using the frequencies of 500, 1,000, 2,000, and 3,000 Hz, the losses at each frequency are added up and averaged. Then, the fence of 25 dBs is deducted because, as the A.M.A., *Guides* point out, losses below 25 dBs 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 hearing loss. The Board has concurred in OWCP's adoption of this standard for evaluating hearing loss.⁸

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.⁹ 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.¹⁰ A schedule award for tinnitus is not payable

³ *Id.* at § 8107.

⁴ 20 C.F.R. § 10.404.

⁵ *Id.* at § 10.404(a).

⁶ 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).

⁷ A.M.A., *Guides* 250 (6th ed. 2009).

⁸ *See J.H.*, Docket No. 08-2432 (issued June 15, 2009); *J.B.*, Docket No. 08-1735 (issued January 27, 2009).

⁹ A.M.A., *Guides*, *supra* note 6 at 249.

¹⁰ *Id.*; *see also Robert E. Cullison*, 55 ECAB 570 (2004).

unless the medical evidence establishes that the condition caused or contributed to a ratable hearing loss.¹¹

ANALYSIS

The Board finds that appellant has not established ratable hearing loss warranting a schedule award.

OWCP referred appellant to Dr. Smith for evaluation of his hearing loss. Dr. Smith's November 6, 2017 examination found that appellant had binaural sensorineural hearing loss due to workplace exposure. FECA procedures relating to the evaluation of schedule awards provide that the file should then be routed to OWCP's DMA for an opinion concerning the nature and percent of impairment.¹²

On November 18, 2016 a DMA reviewed the medical evidence of record, including Dr. Smith's report, and found that the hearing loss was not ratable for schedule award purposes. He explained that the November 6, 2017 audiogram obtained for Dr. Smith's evaluation was the most current audiogram. The DMA thereafter applied the standardized procedures to the November 6, 2017 audiogram performed for Dr. Smith to determine whether appellant's hearing loss was ratable for schedule award purposes.

The DMA noted that the November 6, 2017 audiogram recorded frequency levels at the 500, 1,000, 2,000, and 3,000 Hz and revealed dB losses of 15, 15, 15, and 25, respectively in the right ear for a total dB loss of 70. He then followed established procedures and divided this total by four which resulted in an average loss of 17.5 dBs and subtracted the fence of 25 dBs to equal zero. The DMA then multiplied this by the established factor of 1.5 to result in zero percent monaural hearing loss for the right ear.

The DMA then properly followed the same procedure on the left, noting that the test results at the frequencies of 500, 1,000, 2,000, and 3,000 Hz revealed dB losses of 15, 10, 15, and 25, respectively, for a total of 65 dBs. He divided this by four, for an average hearing loss of 16.25 dBs, subtracted the fence of 25 dBs to equal zero dBs, and multiplied this by the established factor of 1.5, for zero percent monaural hearing loss for the left ear. The DMA found that appellant had no ratable hearing loss, and noted correctly that appellant was not entitled to a schedule award for tinnitus as he had no ratable hearing loss.¹³ Thus, the Board finds that the DMA applied the proper standards to the November 6, 2017 audiogram, finding zero percent binaural hearing loss.

¹¹ See *Charles H. Potter*, 39 ECAB 645 (1988).

¹² *Supra* note 5 at Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(e) (February 2013).

¹³ A.M.A., *Guides*, *supra* note 6 at 249.

Although appellant has an employment-related hearing loss, it is not significant enough to be ratable for schedule award purposes.¹⁴

The Board has also reviewed the July 11, 2017 audiogram performed by Dr. Silva-Gonzalez. This audiogram also documents zero percent binaural hearing loss. Appellant has not submitted medical evidence sufficient to establish ratable hearing loss. He has, therefore, failed to meet his burden of proof.

The Board notes that Dr. Smith diagnosed tinnitus. Dr. Smith, using the A.M.A., *Guides*, found that appellant had two percent permanent impairment due to tinnitus. As noted above, the DMA noted that, as appellant's hearing loss was not ratable, he was not entitled to a schedule award for tinnitus. The Board has held that, in the absence of ratable hearing loss, a schedule award for tinnitus is not appropriate.¹⁵ Accordingly, the Board finds that appellant is not entitled to a schedule award for tinnitus.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 ratable hearing loss warranting a schedule award.

¹⁴ See *T.C.*, Docket No. 17-0576 (issued May 22, 2018); *D.G.*, Docket No. 16-1486 (issued December 16, 2016); *A.W.*, Docket No. 16-0795 (issued August 29, 2016).

¹⁵ *L.S.*, 57 ECAB 725 (2006).

¹⁶ See *D.G.*, and *A.W.*, *supra* note 14.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 20, 2017 is affirmed.

Issued: October 2, 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