

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

R.S., Appellant)	
)	
and)	Docket No. 18-1524
)	Issued: February 5, 2019
DEPARTMENT OF THE ARMY, U.S. TANK)	
AUTOMOTIVE & ARMAMENTS COMMAND,)	
Red River Army Depot, 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
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On August 6, 2018 appellant filed a timely appeal from a June 27, 2018 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 this case.

ISSUE

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

FACTUAL HISTORY

On March 14, 2018 appellant, then a 48-year-old facilities electrician, filed an occupational disease claim (Form CA-2) for right ear hearing loss. He identified March 14, 2018 as the date he

¹ 5 U.S.C. § 8101 *et seq.*

first became aware of his condition and realized its relation to his federal employment. Appellant explained that he had undergone a hearing test at the employing establishment.

The employing establishment provided appellant's hearing conservation program audiograms from June 18, 2001, and March 6, and 14, 2018. After obtaining information from both appellant and the employing establishment regarding his occupational noise exposure, OWCP prepared an April 5, 2018 statement of accepted facts. It noted that he worked as a facilities engineer since 2001 and had been exposed to noise 50 percent of his 10-hour workday. OWCP also noted that appellant had been exposed to noise from forklifts, cranes, sand blasters, backhoe hammers, power washers, engines, impact wrenches, and hammers.

OWCP referred appellant for additional audiometric testing and a second opinion examination by Dr. Charles E. Hollingsworth, a Board-certified otolaryngologist. A June 5, 2018 audiogram noted losses at the frequencies of 500, 1,000, 2,000, and 3,000 cycles per second. The right ear losses were recorded as 15, 10, 15, and 25 decibels (dBs). The left ear losses were recorded as 10, 10, 20, and 25 dBs.

In a June 5, 2018 narrative report, Dr. Hollingsworth noted that appellant had been working the past 17 years as an electrician and was occasionally around loud noise. He also noted that the earliest available audiogram from June 18, 2001 showed normal hearing in the right ear across all frequencies. Appellant's left ear hearing was similarly normal at the low and mid frequencies, but the June 18, 2001 audiogram revealed a mild hearing loss at the high frequencies. With respect to the most recent June 5, 2018 audiogram, Dr. Hollingsworth noted appellant's hearing was normal at low and mid frequencies, bilaterally. However, appellant had a mild-to-moderate high frequency hearing loss bilaterally, with the right ear being slightly worse than the left. Dr. Hollingsworth diagnosed bilateral sensorineural hearing loss, which he attributed to appellant's occupational noise exposure. He noted that appellant had reached maximum medical improvement as of June 5, 2018, and further commented that his high frequency hearing loss would probably worsen over the years, but presently appellant did not require hearing aids. Dr. Hollingsworth also advised that appellant did not have ratable (zero percent) hearing impairment under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).²

On June 7, 2018 OWCP accepted the claim for bilateral sensorineural hearing loss. It further advised appellant that the record established that he did not require hearing aids. Lastly, OWCP indicated that the case had been forwarded to its district medical adviser (DMA) to determine whether appellant had any permanent, employment-related hearing impairment.

In a report dated June 9, 2018, Dr. Jeffrey M. Israel, a Board-certified otolaryngologist serving as a DMA, determined that appellant did not have ratable hearing impairment based on the June 5, 2018 audiogram. He concurred with Dr. Hollingsworth, that the binaural hearing impairment was zero percent, and was not ratable under the A.M.A., *Guides*.

On June 14, 2018 appellant filed a claim for a schedule award (Form CA-7).

² A.M.A., *Guides* (6th ed. 2009).

By decision dated June 27, 2018, OWCP denied appellant's claim for a schedule award. It explained that under the A.M.A., *Guides* appellant's hearing loss was not sufficiently severe to be considered ratable for purposes of a schedule award.

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

Using the frequencies of 500, 1,000, 2,000, and 3,000 hertz (Hz), the losses at each frequency are added up and averaged.⁶ Then, the "fence" of 25 dBs is deducted because, as the A.M.A., *Guides* points out, losses below 25 dBs result in no impairment in the ability to hear every day 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 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

ANALYSIS

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

In a June 5, 2018 narrative report, Dr. Hollingsworth noted that audiogram findings for appellant's right ear hearing losses at 500, 1,000, 2,000, and 3,000 Hz were 15, 10, 15, and 25 dBs, which totaled 65 dBs. His left ear losses were 10, 10, 20, and 25 dBs, which totaled 65 dBs. The right ear hearing loss resulted in an average loss of 16.25 (65 ÷ 4) dBs, and the left ear loss also averaged 16.25 (65 ÷ 4) dBs. After subtracting the 25 dB fence, both the right ear and left ear

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 2.808.6a (February 2013).

⁶ See Section 11.2, Hearing and Tinnitus, A.M.A., *Guides* 248-51 (6th ed. 2009).

⁷ *Id.* at 250.

⁸ *Id.* at 250-51.

⁹ *Id.* at 251.

losses were reduced to negative numbers (-8.75 each). When multiplied by 1.5, the resulting monaural loss in each ear was zero percent. The June 5, 2018 audiogram results also showed zero percent binaural hearing impairment. In addition to the audiogram findings and the impairment opinion of Dr. Hollingsworth, the above-noted calculations were reviewed by and found to be accurate by the DMA on June 9, 2018.

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. Although appellant has an employment-related hearing loss, it is not sufficiently severe to be ratable for schedule award purposes.¹⁰ As the June 5, 2018 audiogram did not demonstrate that appellant's hearing loss was ratable, he is not 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.

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 June 27, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 5, 2019
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

¹⁰ See *G.G.*, Docket No. 18-0566 (issued October 2, 2018); *D.G.*, Docket No. 16-1486 (issued December 16, 2016).