

ISSUE

The issue is whether appellant has met his burden of proof to establish greater than a total 70 percent binaural hearing loss for which he previously received schedule award compensation.

FACTUAL HISTORY

On April 10, 2008 appellant, then a 61-year-old materials handler, filed an occupational disease claim (Form CA-2) alleging that he developed hearing loss in both ears due to noise exposure as factors of his federal employment. On November 19, 2008 OWCP accepted his claim for binaural hearing loss. By decision dated December 4, 2008, it granted appellant a schedule award for 54 percent binaural loss of hearing.

On December 31, 2012 appellant stopped work. On October 8, 2013 he filed a claim for a schedule award (Form CA-7) for increased hearing loss. In a February 10, 2014 development letter, OWCP noted that as appellant's hearing loss claim continued to be open for medical benefits, he was free to use his entitlement to medical benefits to provide the medical documentation needed to establish his increased schedule award claim. Appellant sought medical treatment on May 30, 2014 and submitted a report to OWCP. By decision dated February 19, 2015, OWCP granted him a schedule award for an additional 16 percent binaural hearing loss, for a total of 70 percent.

In a report dated June 25, 2018, Monica Wiser, an audiologist, examined appellant due to his binaural hearing loss and noted that he had reported a change in his hearing since his last evaluation on May 12, 2016. She opined that there was a decrease in his hearing and word recognition ability since his last hearing evaluation in 2016.

In a letter dated November 1, 2018, appellant requested a second opinion referral from OWCP for evaluation of his binaural loss of hearing. On November 27, 2018 he filed a schedule award claim (Form CA-7) for increased hearing loss.

In a December 12, 2018 development letter, OWCP advised appellant of the deficiencies of his schedule award claim. It requested additional factual and medical evidence from him and provided a list of questions. OWCP directed appellant to forward the development letter to his physician. It afforded 30 days for a response. No additional evidence was received.

By decision dated January 30, 2019, OWCP denied appellant's claim for an additional schedule award finding that he had not submitted medical evidence establishing an additional loss of hearing beyond the 70 percent binaural loss of hearing for which he had previously received schedule awards.

LEGAL PRECEDENT

The schedule award provision 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 Hertz (Hz), the losses at each frequency are added up and averaged. Then, the fence of 25 decibels (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

A claim for an increased schedule award may be based on new employment exposure; however, additional occupational exposure is not a prerequisite. A claim for an increased schedule award based on additional exposure constitutes a new claim.⁹ Absent additional employment exposure, an increased schedule award may also be based on evidence demonstrating that the progression of an employment-related condition has resulted in greater permanent impairment than previously calculated.¹⁰ The Board has long recognized that, if a claimant's employment-related hearing loss worsens in the future, he may apply for an additional schedule award for any increased permanent impairment. The Board has also recognized that a claimant may be entitled to a schedule award for increased hearing loss, even after exposure to hazardous noise has ceased, if

³ 5 U.S.C. § 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* 248-51 (6th ed. 2009).

⁸ *See V.M.*, Docket No. 18-1800 (issued April 23, 2019).

⁹ *V.G.*, Docket No. 17-0494 (issued July 6, 2018); *R.A.*, Docket No. 16-1218 (issued November 10, 2016); *James R. Hentz*, 56 ECAB 573 (2005); *Paul Fierstein*, 51 ECAB 381 (2000).

¹⁰ *V.G.*, *id.*; *R.A.*, *id.*; *Linda T. Brown*, 51 ECAB 115 (1999).

causal relationship is supported by the medical evidence of record.¹¹ The Board has cautioned against an OWCP medical adviser providing a blanket unrationalized statement that hearing loss does not progress following the cessation of hazardous noise exposure.¹²

OWCP's procedures require referral to a second opinion physician in hearing loss cases when the attending physician's examinations and reports do not provide the specific evidence that OWCP requires for adjudication¹³ in compliance with the specifications outlined in Federal (FECA) Procedure Manual Chapter 3.0600.¹⁴ This provision specifically requires both an audiological and otological examination by appropriately certified medical professionals.¹⁵

ANALYSIS

The Board finds that this case is not in posture for a decision.

Appellant submitted additional evidence from Ms. Wisner dated June 25, 2018 opining that his hearing loss had increased. While this report is insufficient to meet appellant's burden of proof, it raises an uncontroverted inference of a worsening of his accepted condition and is sufficient to require OWCP to undertake further development of appellant's claim.¹⁶

In keeping with its procedures, OWCP should have referred appellant for a second opinion evaluation by an otolaryngologist as well as an additional audiogram. Instead, it failed to develop and evaluate the evidence that appellant submitted in support of his claim for an additional schedule award.¹⁷ Further development is therefore required to determine whether appellant is entitled to an additional schedule award for increased hearing loss.

Proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While appellant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence to see that justice is done.¹⁸

Accordingly, the Board will remand the case to OWCP to obtain a second opinion evaluation from an otolaryngologist, which includes audiometric testing, for a fully-rationalized opinion regarding whether appellant developed increased hearing loss as a result of his federal

¹¹ *R.B.*, Docket No. 16-1863 (issued April 3, 2017).

¹² *E.R.*, Docket No. 16-1529 (issued March 3, 2017); *Adelbert E. Buzzell*, 34 ECAB 96 (1982).

¹³ *Supra* note 6 at Chapter 2.810.9.b(2) (June 2015).

¹⁴ *Supra* note 6 at Chapter 3.600 Exhibit 4-6 (September 1996).

¹⁵ *Id.*

¹⁶ *J.F.*, Docket No. 16-1225 (issued November 21, 2016); *John J. Carlone*, 41 ECAB 354, 358-60 (1989).

¹⁷ *W.H.*, Docket No. 14-1661 (issued December 24, 2014).

¹⁸ *P.L.*, Docket No. 17-0355 (issued June 27, 2018).

employment noise exposure. Following this and any other further development deemed necessary, OWCP shall issue a *de novo* decision on appellant's schedule award claim.

CONCLUSION

The Board finds that this case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the January 30, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further development consistent with this decision of the Board.

Issued: November 8, 2019
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