

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

G.C., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Cincinnati, OH, Employer)

**Docket No. 13-1218
Issued: September 6, 2013**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 23, 2013 appellant filed a timely appeal from the Office of Workers' Compensation Programs' (OWCP) decisions dated February 5 and December 17, 2012, and April 11, 2013. 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 more than a 26 percent binaural hearing loss causally related to his federal employment, for which he received a schedule award.

FACTUAL HISTORY

Appellant, a 61-year-old clerk, filed an occupational disease claim on July 1, 2012, alleging that he sustained a bilateral hearing loss caused by factors of his federal employment. He was exposed to noise from November 23, 1983 to September 29, 2011 at the postal service

¹ 5 U.S.C. § 8101 *et seq.*

from mail processing machines and old copy machines in a small room for eight hours per day, five days per week. Appellant retired from federal employment on September 29, 2011.

Appellant was previously granted a 26 percent award for bilateral hearing loss on July 22, 2009 under case number xxxxxx374. On August 21, 2012 he filed a Form CA-7 claim for a schedule award based on an additional binaural hearing loss.

OWCP referred appellant for a second opinion examination with Dr. James Autin, Board-certified in sleep medicine, who found in a November 14, 2012 report that appellant had a 25 percent binaural hearing loss. Dr. Autin diagnosed severe, bilateral noise-induced sensorineural hearing loss and checked a box indicating that appellant's noise exposure in his federal employment was sufficient to cause binaural hearing loss. He stated, however, that he was unable to ascertain with certainty whether appellant's workplace exposure was sufficient as to intensity and duration to have caused the loss in question. An audiogram performed on Dr. Autin's behalf on November 14, 2012 reflected testing at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second (cps) and revealed the following decibel losses: 25, 35, 50 and 45 for the right ear and 50, 55, 60 and 65 for the left ear respectively. Based on these results and in accordance with American Medical Association, *Guides to the Evaluation of Permanent Impairment* (sixth edition) (A.M.A., *Guides*), Dr. Autin determined that appellant had a 25 percent binaural hearing loss. He recommended hearing aids.

By decision dated December 17, 2012, OWCP found that appellant failed to establish that he had any additional permanent impairment for hearing loss causally related to his federal employment. It noted that appellant was previously granted a 26 percent award for bilateral hearing loss on July 22, 2009 under case number xxxxxx374.

On January 3, 2013 appellant requested reconsideration. He resubmitted portions of Dr. Autin's November 14, 2012 report but did not submit any new medical evidence.

By decision dated February 5, 2013, OWCP denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require OWCP to review its prior decision.

On February 8, 2013 appellant requested reconsideration. He submitted copies of audiological examinations from June 8, 2009 and May 18, 2012, in addition to other undated tests, which showed varying degrees of hearing loss.

By decision dated April 11, 2013, OWCP denied modification of the December 17, 2012 decision.

LEGAL PRECEDENT

The schedule award provision of FECA² and its implementing regulations³ 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 to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.⁴

OWCP evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.⁵ Using the frequencies of 500, 1,000, 2,000 and 3,000 cps, the losses at each frequency are added up and averaged.⁶ Then, the fence of 25 decibels is deducted. The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.⁷ 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 the binaural hearing loss.⁸ The Board has concurred in OWCP's adoption of this standard for evaluating hearing loss.⁹

Further, the requirements of the evidence to be used in evaluating occupational hearing-loss claims require that the employee should undergo audiological evaluation and otological examination; that the audiological testing precede the otologic examination; that the audiological evaluation and otologic examination be performed by different individuals as a method of evaluating the reliability of the findings; that the clinical audiologist and otolaryngologist be certified; that all audiological equipment authorized for testing meet the calibration protocol contained in the accreditation manual of the American Speech and Hearing Association that the audiometric test results include both bone conduction and pure-tone air conduction thresholds; speech reception thresholds and monaural discrimination scores; and that the otolaryngologist's

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404. Effective May 1, 2009, OWCP began using the A.M.A., *Guides* (6th ed. 2009).

⁴ *Id.*

⁵ Federal (FECA) Procedure Manual, Part 3 -- Schedule Awards, *Special Determinations*, Chapter 2.700.4.b (January 2010).

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ See *Donald Stockstad*, 53 ECAB 301 (2002), *petition for recon. granted (modifying prior decision)*, Docket No. 01-1570 (issued August 13, 2002).

report include the date and hour of examination; date and hour of the employee's last exposure to loud noise; a rationalized medical opinion regarding the relationship.¹⁰

ANALYSIS

OWCP accepted that appellant sustained a bilateral hearing loss due to noise. It developed the claim by referring him to Dr. Autin. On November 14, 2012 Dr. Autin examined appellant and an audiogram was obtained on the physician's behalf. He found, using OWCP's standard procedures, that appellant's noise exposure in his federal employment was sufficient to cause binaural hearing loss. The November 14, 2012 audiogram tested decibel losses at 500, 1,000, 2,000 and 3,000 cps and recorded decibel losses of 25, 35, 50 and 45 respectively in the right ear. The total decibel loss in the right ear is 155. When divided by 4, the result is an average hearing loss of 38.75 decibels. The average of 38.75 decibels, reduced by 25 decibels (the first 25 decibels were discounted as discussed above), equals 13.75 decibels, which when multiplied by the established factor of 1.5 computes a 20.63 percent hearing loss in the right ear. The audiogram tested decibel losses for the left ear at 500, 1,000, 2,000 and 3,000 cps and recorded decibel losses of 50, 55, 60 and 65 respectively. The total decibel loss in the left ear is 230. When divided by four, the result is an average hearing loss of 57.50 decibels. The average hearing loss of 57.50 is reduced by the fence of 25 decibels to 32.50, which when multiplied by the established factor of 1.5 computes a 48.75 percent hearing loss in the left ear. Therefore under this calculation appellant had a 25 percent binaural hearing loss. OWCP's medical adviser concurred in this finding; however, as OWCP had already granted appellant an awarded for a 26 percent binaural hearing loss, it properly denied appellant's claim for an additional schedule award in its December 17, 2012 decision.

Appellant requested reconsideration and submitted results from audiometric testing performed on June 8, 2009 and May 18, 2012, in addition to other undated tests. These audiograms are insufficient to satisfy appellant's burden of proof as they do not comply with the requirements set forth by OWCP. These tests lack speech testing and bone conduction scores and were not prepared or certified as accurate by a physician as defined by FECA. None of the audiograms were accompanied by a physician's opinion addressing how his employment-related noise exposure caused or aggravated any hearing loss. OWCP is not required to rely on this evidence in determining the degree of appellant's hearing loss because it does not constitute competent medical evidence and, therefore, is insufficient to satisfy appellant's burden of proof.¹¹ Dr. Autin provided a thorough examination and a reasoned opinion explaining how the findings on examination and testing were due to the noise in appellant's employment. The Board finds that Dr. Autin's report represents the weight of the evidence. The April 11, 2013 decision is affirmed.

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.

¹⁰ See *Joshua Holmes*, 42 ECAB 231 (1990).

¹¹ *Id.*

CONCLUSION

The Board finds that appellant has no greater than a 26 percent binaural hearing loss causally related to his federal employment, for which OWCP granted him a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated April 11, 2013, December 17 and February 5, 2012 are affirmed.

Issued: September 6, 2013
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board