

FACTUAL HISTORY

On November 9, 2011 appellant, then a 55-year-old supervisory border patrol agent, filed an occupational disease claim alleging that noise exposure at work caused hearing loss. In letters dated November 25, 2011, OWCP informed appellant of the evidence needed to support his claim and asked that the employing establishment provide information regarding his noise exposure and hearing conservation measures.

Appellant provided a statement describing his work-related noise exposure during firearms training. The employing establishment advised that he was exposed to noise from firearms including handguns, rifles and shotguns and provided noise level surveys. Appellant submitted audiograms dated December 15, 2000, November 11 and 23, 2011 obtained by the employing establishment. The November 11, 2011 audiogram reflected testing at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second and revealed the following: right ear 10, 15, 15 and 20 decibels; left ear 10, 10, 15 and 40 decibels, respectively. The November 23, 2011 audiogram reflected testing at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second and revealed the following: right ear 5, 15, 5 and 25 decibels; left ear 15, 25, 25 and 35 decibels, respectively. Appellant also submitted a November 10, 2011 treatment note from Dr. Rafael Arrendondo, a Board-certified otolaryngologist, who noted appellant's history of noise exposure. Dr. Arrendondo scheduled an audiogram.

In December 2011, OWCP referred appellant to Dr. Gregory S. Rowin, an osteopath who practices otolaryngology, for an otologic examination and audiological evaluation. In a January 31, 2012 report, Dr. Rowin reviewed the history of noise exposure at work, the statement of accepted facts and the medical record. He advised that the workplace noise exposure was sufficient to cause hearing loss. On examination, the ears appeared normal. Dr. Rowin submitted calibration certification and results of audiometric testing performed by a certified audiologist. The audiogram performed on January 31, 2012, reflected testing at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second and revealed the following: right ear 15, 15, 5 and 10 decibels; left ear 15, 15, 15 and 25 decibels, respectively. Dr. Rowin advised that tinnitus was present and that hearing aids were not recommended. On March 7, 2012 Dr. Ronald H. Blum, an OWCP medical adviser, reviewed Dr. Rowin's report and the January 31, 2012 audiogram. He advised that the date of maximum medical improvement was January 31, 2012 and determined that appellant's bilateral hearing loss was not severe enough to be ratable under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*).² Dr. Blum advised that hearing aids should not be authorized.

In a March 7, 2012 decision, OWCP accepted that appellant sustained bilateral hearing loss due to employment-related noise exposure but found that he was not entitled to a schedule award because the extent of hearing loss was not severe enough to be ratable. It further found that he would not benefit from hearing aids.

² A.M.A., *Guides* (6th ed. 2008).

On March 28, 2012 appellant requested reconsideration. He submitted a December 12, 2011 treatment note from Dr. Arrendondo, who advised that audiometric testing demonstrated high-frequency hearing loss in the left ear and borderline hearing loss on the right. Dr. Arrendondo recommended ear protection for loud noise exposure.

In a merit decision dated May 9, 2012, OWCP denied modification of the March 7, 2012 decision. Appellant again requested reconsideration on January 28, 2013. He resubmitted Dr. Arrendondo's treatment notes and the November 11, 2011 audiogram. Appellant also submitted a January 28, 2013 audiogram that he identified as completed by Sofia Von Hapsburg, an audiologist. The January 28, 2013 audiogram was unsigned and demonstrated testing at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second and revealed the following: right ear 10, 20, 10 and 25 decibels; left ear 20, 25, 25 and 45 decibels, respectively. Appellant also noted that John N. Evans, a hearing aid specialist, advised that he had left ear hearing loss and would benefit from hearing aids.

In a merit decision dated May 9, 2013, OWCP denied modification of the prior decisions.

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 For decisions after February 1, 2001, the fifth edition of the A.M.A., *Guides* was used to calculate schedule awards.⁶ For decisions issued after May 1, 2009, the sixth edition is to be used.⁷

OWCP evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*. Using the frequencies of 500, 1,000, 2,000 and 3,000 cycles per second, the losses at each frequency are added and averaged.⁸ The "fence" of 25 decibels is then deducted because, as the A.M.A., *Guides* points out, losses below 25 decibels result in no impairment in the ability to hear everyday speech under everyday conditions.⁹ The remaining amount is

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 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

⁷ FECA Bulletin No. 09-03 (issued March 15, 2009).

⁸ A.M.A., *Guides*, *supra* note 2 at 250.

⁹ *Id.*

multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.¹⁰ 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.¹¹ The Board has concurred in OWCP's adoption of this standard for evaluating hearing loss.¹²

ANALYSIS

The Board finds that the evidence of record does not establish that appellant has a ratable hearing loss based on his accepted bilateral hearing loss. The January 31, 2012 audiogram results did not demonstrate ratable values.

The January 31, 2012 audiogram is the only study that complied with OWCP certification procedures.¹³ It demonstrated record values at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second of 15, 15, 5 and 10 decibels on the right for a total of 45 decibels. This figure, when divided by 4, results in an average hearing loss of 11.25 decibels. The average of 11.25 decibels, when reduced by the 25-decibel fence, results in zero percent monaural hearing loss in the right ear. The frequency levels on the left at 500, 1,000, 2,000 and 3,000 cycles per second revealed decibel losses of 15, 15, 15 and 25, for a total of 70 decibels. This figure, when divided by 4, results in an average hearing loss of 17.5 decibels, which when reduced by 25 decibels, also results in zero percent monaural hearing loss of the left ear. The Board finds that, as the January 31, 2012 audiogram did not demonstrate that appellant's hearing loss was ratable, he is not entitled to a schedule award for his accepted hearing loss condition. As to the need for hearing aids, Dr. Rowin indicated that they were not recommended. Dr. Arrendondo did not discuss hearing aids. While appellant maintained that Mr. Evans recommended a hearing aid,

¹⁰ *Id.*

¹¹ *Id.* at 251.

¹² *Horace L. Fuller*, 53 ECAB 775 (2002).

¹³ OWCP procedures set forth requirements for the type of medical evidence used in evaluating hearing loss. These include that the employee undergo both audiometric and otologic examination; that the audiometric testing precede the otologic examination; that the audiometric testing be performed by an appropriately certified audiologist; that the otologic examination be performed by an otolaryngologist certified or eligible for certification by the American Academy of Otolaryngology; that the audiometric and otologic examination be performed by different individuals as a method of evaluating the reliability of the findings; 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 report include: date and hour of examination; date and hour of employee's last exposure to loud noise; a rationalized medical opinion regarding the relation of the hearing loss to the employment-related noise exposure; and a statement of the reliability of the tests. Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirement for Medical Records*, Chapter 3.600.8(a) (September 1995); see *Vernon Brown*, 54 ECAB 376 (2003).

there is no report from Mr. Evans in the record before the Board. Moreover, Mr. Evans would not be considered a physician under FECA.¹⁴

The November 23, 2011 audiogram merely indicated that the examiner was “Riezeman” and contained no further identification or certification. The January 28, 2013 audiogram indicated that it was obtained at Audiology Consulting Services where Ms. Von Hapsburg is an audiologist. The report is unsigned and contains a comment “borderline normal hearing.” Audiologists are not included among the healthcare professionals recognized as a physician under FECA.¹⁵

Lastly the Board notes that Dr. Rowin diagnosed tinnitus. Where a claimant’s hearing loss is not ratable, the claimant is not entitled to an award for tinnitus.¹⁶

Appellant may request a schedule award 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 did not establish that he is entitled to a schedule award for his employment-related hearing loss as his hearing loss was not ratable.

¹⁴ *Thomas O. Bouis*, 57 ECAB 602 (2006). Section 8101(2) of FECA provides that “physician” includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8101(2). See *Joshua A. Holmes*, 42 ECAB 231 (1990) (an audiogram prepared by an audiologist must be certified by a physician before it can be used to determine hearing loss).

¹⁵ *Id.*

¹⁶ *Juan A. Trevino*, 54 ECAB 358 (2003).

ORDER

IT IS HEREBY ORDERED THAT the May 9, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 4, 2014
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board