

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

L.B., Appellant

and

**DEPARTMENT OF THE AIR FORCE, ROBINS
AIR FORCE BASE, GA, Employer**

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**Docket No. 14-479
Issued: August 6, 2014**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On December 31, 2013 appellant filed a timely appeal from an August 14, 2013 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 sustained a ratable hearing loss warranting a schedule award.

On appeal, appellant contends that he experienced hearing loss with ringing in his ears. He noted that he frequently asks people to repeat themselves, talks louder than other people in a crowd and has difficulty communicating over the telephone.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On April 27, 2013 appellant, then a 57-year-old supply technician, filed an occupational disease claim alleging hearing loss as a result of his federal employment. In an August 13, 2012 statement, he stated that he worked as a supply technician, a position he held from September 3, 2006 to April 30, 2012, in both an office and warehouse environment. While working in the office, he was exposed to noise from telephone ringing, typing, loud laughing and talking. While working at the warehouse, appellant was exposed three to four hours a day to noise from the operation of forklifts, tugs, and golf carts entering and leaving the warehouse, and overhead loud noises of workers hammering and drilling.

Outside the warehouse, there were four docks which store C-5 aircrafts for daily maintenance. Appellant was also exposed to noise from the aircraft mechanics, sheet metal workers and electricians working hammering, drilling and testing aircraft parts. There was also an industrial flight line area and he was continuously exposed to noise from aircrafts landing or taking off, engine testing, crane operating and toting of these aircraft. He also noted prior exposure to hazardous noise in his positions as a material expediter, aircraft freight loader and material examiner and identifier. Appellant was last exposed to noise in his federal employment on April 19, 2012. He retired effective April 30, 2012.

Appellant submitted the results of an audiometric test conducted at the employing establishment. He also submitted the results of an audiogram conducted by Milton J. Schmidt on April 19, 2012.

On September 13, 2012 OWCP referred appellant to Dr. Kenneth Walker, a Board-certified otolaryngologist, for a second opinion. Appellant was evaluated in Dr. Walker's office on October 18, 2012. At that time, he complained of tinnitus, high pitched ringing and bilateral hearing loss. The results of audiometric testing conducted on October 18, 2012 at the frequency levels of 500, 1,000, 2,000 and 3,000 Hertz (Hz) revealed air decibel losses in the right ear of 5, 10, 20 and 20 decibels, respectively; and decibel losses in the left ear of 0, 10, 25 and 25, respectively. There was no significant air/bone gap present. In an October 19, 2012 report, Dr. Walker noted that appellant's audiogram showed bilateral, noise-induced sensorineural hearing loss. He found that appellant's hearing loss was consistent in pattern with noise-induced hearing loss due, in part, to his federal employment. Dr. Walker recommended hearing conservation measures, annual audiograms and hearing aid evaluation.

On October 25, 2012 an OWCP medical adviser reviewed the record and audiometric testing to find that appellant's hearing loss was causally related to his history of noise exposure at work. Using Dr. Walker's findings, the medical adviser calculated that, under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*), appellant had a zero percent binaural hearing loss for purposes of a schedule award.

By decision dated October 29, 2012, OWCP accepted appellant's claim for bilateral sensorineural hearing loss.

On November 26, 2012 appellant filed a claim for a schedule award.

In a decision dated March 18, 2013, OWCP denied appellant's claim for a schedule award as the medical evidence established that the extent of his bilateral sensorineural hearing loss was not ratable.

On April 11, 2013 appellant requested review of the written record by an OWCP hearing representative.

By decision dated August 14, 2013, the hearing representative affirmed the March 18, 2013 decision.

LEGAL PRECEDENT

The schedule award provision of FECA² and its implementing regulations 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. FECA, however, does not specify the manner in which the percentage of loss of a member shall be determined. The method used in making such determination is a matter which rests in the sound discretion of OWCP. For consistent results and to ensure equal justice, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* (6th ed. 2009), has been adopted by OWCP for evaluating schedule loss and the Board has concurred in such adoption.³

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 up and averaged. Then, the fence of 25 decibels is 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.⁴ 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 and then added to the greater loss and the total is divided by six to arrive at the amount of the binaural hearing loss. The Board has concurred in OWCP's adoption of this standard for evaluating hearing loss.⁵ The Board has also noted OWCP's policy to round the calculated percentage of impairment to the nearest whole number.⁶

² 5 U.S.C. §§ 8101-8193.

³ *R.D.*, 59 ECAB 127 (2007); *Bernard Babcock, Jr.*, 52 ECAB 143 (2000); *see also* 20 C.F.R. § 10.404.

⁴ *See* A.M.A., *Guides* 250.

⁵ *E.S.*, 59 ECAB 249 (2007); *Reynaldo R. Lichtenberger*, 52 ECAB 462 (2001).

⁶ *J.H.*, Docket No. 08-2432 (issued June 15, 2009); *Robert E. Cullison*, 55 ECAB 570 (2004). *See* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.4(b)(2)(b) (September 2010).

ANALYSIS

The Board finds that appellant has not established that he has a ratable hearing loss. OWCP accepted that he had a bilateral sensorineural hearing loss based on the report of Dr. Walker. On October 19, 2012 Dr. Walker diagnosed bilateral sensorineural hearing loss causally related to appellant's federal employment.

An OWCP medical adviser applied OWCP's standard procedures to the October 18, 2012 audiogram obtained by Dr. Walker and rated a binaural hearing loss of zero percent. Test results for the frequency levels recorded at 500, 1,000, 2,000 and 3,000 Hz on the right revealed decibel losses of 5, 10, 20 and 20 decibels, respectively, for a total of 55 decibels. This figure, when divided by 4, results in an average hearing loss of 13.75 decibels. The average of 13.75 decibels, when reduced by the 25 decibel fence and multiplied by 1.5, results in a zero percent monaural hearing loss in the right ear. With respect to the left ear, test results for frequency levels at 500, 1,000, 2,000 and 3,000 Hz revealed decibel losses of 0, 10, 25 and 25, respectively, for a total of 60 decibels. This figure, when divided by 4, results in an average hearing loss of 15 decibels. The average of 15 decibels, when reduced by the 25-decibel fence and multiplied by 1.5, results in a zero percent monaural hearing loss in the left ear. As the monaural hearing loss rating was zero percent for both the left and right ears, the binaural hearing loss was also zero percent.⁷ For this reason, the extent of appellant's hearing loss is not ratable for purposes of a schedule award.

The Board notes that appellant submitted results of an April 19, 2012 audiogram. However, this evidence is of no probative value as it was not certified by a physician as accurate.⁸

On appeal appellant contends that he experiences ringing in his ears. He did not file a claim alleging tinnitus, although Dr. Walker did note that appellant complained of tinnitus. The Board also notes that 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 A schedule award for tinnitus is not payable unless the medical evidence establishes that the condition caused or contributed to a ratable hearing loss.¹⁰ As the extent of appellant's hearing loss is not ratable, there is no basis for payment of compensation due to tinnitus. Appellant further contends on appeal that his hearing loss interferes with his daily living in that he has to ask people to repeat themselves, that he talks louder than others, and that he has difficulty communicating over the telephone. The amount payable pursuant to the schedule at 5 U.S.C. § 8107(c) does not take into account the effect the impairment may have on sports, hobbies or lifestyle activities.¹¹ The Board finds that OWCP

⁷ See *T.W.*, Docket No. 13-1967 (issued February 10, 2014).

⁸ See *Joshua A. Holmes*, 42 ECAB 231, 236 (1990) (if an audiogram is prepared by an audiologist, it must be certified by a physician as being accurate before it can be used to determine the percentage of hearing loss). See also *James A. England*, 47 ECAB 115, 118 (1995) (finding that an audiogram not certified by a physician as being accurate has no probative value; OWCP need not review uncertified audiograms).

⁹ A.M.A., *Guides* 250.

¹⁰ *Supra* note 7.

¹¹ See *Denise L. Crouch*, 57 ECAB 161 (2005).

properly based its conclusion on the report of Dr. Walker as interpreted by the medical adviser, which showed that appellant did not establish a ratable hearing loss.

Appellant may request a schedule award or increased schedule award based on evidence of 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 that he sustained a ratable hearing loss warranting a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 14, 2013 is affirmed.

Issued: August 6, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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