United States Department of Labor
Employees' Compensation Appeals Board

R.M., Appellant	)	
	)	
and	)	**Docket No. 15-1747**
	)	**Issued: January 19, 2016**
DEPARTMENT OF THE NAVY, COMMANDER U.S. PACIFIC FLEET SHIPYARDS, Bremerton, WA, 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
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 18, 2015 appellant filed a timely appeal from a June 9, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

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

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On July 28, 2014 appellant, then a 65-year-old ship building specialist, filed an occupational disease claim (Form CA-2) alleging that he sustained bilateral hearing loss due to exposure to loud noise in the performance of duty. He indicated that he realized the disease or illness was caused or aggravated by his employment on September 9, 2008. Appellant did not stop work.

In a separate statement and employment history, appellant noted that he was exposed to loud noise as a ship fitter with the employing establishment from 1987 to 2009 and as a ship building specialist since 2009. He pointed out that he wore safety devices and protection against noise exposure.

OWCP received copies of personnel actions, work records, a position description, and copies of employing establishment audiograms for the periods March 24, 1987 to June 14, 2010, and a July 18, 2014 audiogram performed by an audiologist at a private clinic.[2]

By letter dated August 7, 2014, OWCP informed appellant of the type of evidence needed to support his claim and requested that he submit such evidence within 30 days.

In response, appellant submitted a copy of a 2010 assessment regarding safety and health at the employing establishment. He emphasized in his submission that, over the course of 22 years, he had worked on back to back projects where exposure to grinding noises was at a minimum of four hours per day. Appellant indicated that his testing revealed hearing loss of 60 percent in some areas.

In an October 24, 2014 memorandum, Allen Howard, a commanding officer, noted that since the 1960's the degree and frequency to exposure and noise at the employing establishment included using hearing protections for exposure to noise above 84 decibels. A noise assessment exposure worksheet was included for appellant and revealed continuous exposure to noise in the 79 to 89 decibel range and intermittent exposure to noise in the 100 to 110 decibel range over the course of his employment from June 1, 1987 to the present.

On December 8, 2014 OWCP referred appellant, together with a statement of accepted facts, to Dr. Jackson Holland, a Board-certified otolaryngologist, for a second opinion evaluation regarding the nature, extent, and relationship of appellant's hearing loss to his federal employment.

In a December 29, 2014 report, Dr. Holland noted appellant's history of noise exposure during his federal employment. He reviewed available medical records and examined appellant. Dr. Holland advised that the ear canals were patent, the tympanic membranes were within normal limits, bilaterally, and drum motility was normal. There was no evidence of acoustic

[2] The July 18, 2014 audiogram showed that testing for the right ear, at the frequency levels of 500, 1,000, 2,000, and 3,000 cycles per second (cps), revealed decibel losses of 20, 25, 10, and 45. Testing for the left ear at the same frequency levels revealed decibel losses of 25, 25, 30, and 45.

neuroma or Meniere's disease affecting the claimant's hearing. Dr. Holland noted that audiometric testing was performed on his behalf on that date. In response to whether appellant showed sensorineural loss that was in excess of what would be normally predicated on the basis of presbycusis, Dr. Holland explained that, based upon a review of employing establishment audiograms, it was more probable than not that appellant's hearing loss pattern was sustained during occupational exposure to hazardous noise levels at the employing establishment. He opined that presbycusis played a negligible role in hearing impairment in the higher frequencies demonstrated by appellant. Dr. Holland also noted that appellant was diagnosed with diabetes mellitus in 2010 and noted that diabetics had a substantially greater probability to demonstrate neurosensory hearing loss than a comparable worker without diabetes functioning in a similar workplace environment. He reasoned that appellant did not display low frequency and mid-frequency accelerated loss either based on inherited factors, disease factors, or significant contributions from presbycusis. Dr. Holland diagnosed bilateral noise-induced sensorineural hearing loss and tinnitus and opined that it was due to appellant's noise exposure in the course of his federal employment. He explained that his opinion was based upon the workplace audiograms and the diagnostic audiogram performed in his office. Dr. Holland also indicated that the descriptions of the workplace job requirements and the accompanying levels of hazardous noise also assisted with his determination. He recommended bilateral hearing aid fittings and reported zero percent tinnitus rating. Dr. Holland attached a copy of the December 29, 2014 audiogram. Testing for the right ear at the frequency levels of 500, 1,000, 2,000, and 3,000 cycles per second (cps) revealed decibel losses of 15, 15, 10, and 30 respectively. Testing for the left ear at the frequency levels of 500, 1,000, 2,000, and 3,000 cps revealed decibel losses of 20, 10, 10, and 35 respectively.

By decision dated January 12, 2015, OWCP accepted appellant's claim for binaural noise-induced hearing loss due to his employment-related hearing exposure.

In an April 27, 2015 Form CA-7, claim for compensation, appellant requested a schedule award.

On May 12, 2015 an OWCP medical adviser reviewed the otologic and audiologic testing performed on appellant by Dr. Holland and applied OWCP's standardized procedures to his evaluation. He determined that maximum medical improvement was achieved on December 29, 2014. The medical adviser utilized the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6th ed. 2009) (A.M.A., *Guides*) and determined that appellant had zero percent binaural hearing loss. He also recommended authorizing hearing aids.

In a June 9, 2015 decision, OWCP explained that, while it had accepted appellant's claim for hearing loss, it had determined that his hearing loss was not severe enough to be considered ratable and therefore, he was not entitled to schedule award compensation for hearing loss. It also explained that the medical evidence established that appellant was entitled to medical benefits for the effects of his injury and that he should contact them for further information regarding hearing aids.

LEGAL PRECEDENT

The schedule award provision of FECA[3] and its implementing 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 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.[5]

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 cps, 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.[6] 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.[7]

ANALYSIS

The evidence of record is insufficient to establish that appellant is entitled to a schedule award for his hearing loss in accordance with the sixth edition of the A.M.A., *Guides*.

Dr. Holland, a Board-certified otolaryngologist and referral physician, reported on December 29, 2014 that appellant's hearing loss pattern resulted from his occupational exposure to hazardous noise levels while employed at the employing establishment. On May 12, 2015 an OWCP medical adviser reviewed the otologic and audiologic testing performed on appellant by Dr. Holland and properly applied OWCP's standardized procedures to this evaluation. Testing for the right ear at the frequency levels of 500, 1,000, 2,000, and 3,000 cps revealed decibel losses of 15, 15, 10, and 30 respectively. These decibel losses were totaled at 70 decibels and were divided by 4 to obtain the average hearing loss of 17.5 decibels. This average loss was then reduced by 25 decibels (25 decibels being discounted as discussed above) to equal a negative figure. Testing for the left ear at the frequency levels of 500, 1,000, 2,000, and 3,000 cps revealed decibel losses of 20, 10, 10, and 35 respectively. These decibel losses total 75 decibels

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[3] 5 U.S.C. § 8107.

[4] 20 C.F.R. § 10.404.

[5] *Id.*

[6] *See* A.M.A., *Guides* 250.

[7] *E.S.*, 59 ECAB 249 (2007); *Reynaldo R. Lichetenberger*, 52 ECAB 462 (2001).

and when divided by 4 result in an average hearing loss of 18.75 decibels. This average loss when reduced by 25 decibels (25 decibels being discounted as discussed above) equals a negative figure. An OWCP medical adviser properly concluded that the calculations showed that appellant did not have a ratable hearing loss under the relevant standards of the A.M.A., *Guides*. This does not mean that he does not have a hearing loss. It means the extent of loss is not sufficient to constitute a ratable impairment according to the A.M.A., *Guides*.[8] The Board has held that, following medical evaluation of a claim, if the hearing loss is determined to be nonratable for schedule award purposes, other benefits such as, hearing aids, may still be provided if any causally related hearing loss exists.[9]

The Board finds that there is no current medical evidence of record supporting that appellant has a ratable hearing loss under OWCP's standardized procedures for rating hearing impairment. Although appellant submitted a July 18, 2014 audiogram, this audiogram is of no probative medical value because it was not certified by a physician as accurate.[10]

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 meet his burden of proof to establish that he is entitled to a schedule award for hearing loss.

[8] *See J.S.,* Docket No. 12-967 (issued October 12, 2012).

[9] *See* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Services and Supplies,* Chapter 3.400.3(d)(2) (October 1995); *Raymond VanNett,* 44 ECAB 480 (1993).

[10] *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 accurate has no probative value and OWCP need not review uncertified audiograms).

ORDER

IT IS HEREBY ORDERED THAT the June 9, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 19, 2016
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board