

factors of his federal employment. While working at the employing establishment since 1974, he had been exposed to noise from chipping, grinding, sanding and sand blasting. Earplugs and eye protection were provided. Appellant submitted results of audiograms dated 1974 to November 2011 which showed varying degrees of left-sided hearing loss.

In order to determine whether appellant had any permanent impairment in his right and left ear stemming from his federal employment, OWCP referred him for a second opinion examination with Dr. Meredith K.L. Pang, a Board-certified otolaryngologist. In a February 2, 2012 report, which included an evaluation of his hearing loss, Dr. Pang found that appellant had no ratable hearing loss. An audiogram dated February 2, 2012, with an attached calibration certificate, showed hearing levels of 5, 5, 10 and 25 decibels (dB) on the right at 500, 1000, 2,000 and 3,000 hertz (Hz), respectively and 5, 5, 5 and 25 dB on the left at 500, 1,000, 2,000 and 3,000 Hz. Dr. Pang found based on the audiogram results that appellant had a ratable hearing loss of zero percent in the left and right ears pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). She diagnosed bilateral sensorineural hearing loss compatible with noise exposure. Dr. Pang stated that appellant's workplace exposure was of sufficient intensity and duration to have caused and/or aggravated noise-induced hearing loss. Appellant further opined that he was not a candidate for hearing aids at the time of his evaluation.

In a March 19, 2012 report, an OWCP medical adviser, after reviewing the results of the February 2, 2012 audiogram, determined that appellant had a nonratable work-related bilateral hearing loss. The medical adviser checked a box indicating that appellant would not benefit from hearing amplification.

By decision dated May 17, 2012, OWCP accepted appellant's claim for bilateral sensorineural hearing loss. It indicated that he was not entitled to a schedule award because the medical evidence did not establish that his bilateral hearing loss was ratable. OWCP also found that appellant did not require the use of hearing aids.

LEGAL PRECEDENT -- ISSUE 1

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

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.*

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 cycles per second, the losses at each frequency are added up and averaged.⁶ Then, the fence of 25 dB 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

ANALYSIS -- ISSUE 1

OWCP accepted that appellant sustained a bilateral hearing loss due to noise exposure from his federal employment.¹⁰ The issue is whether he sustained a ratable impairment in accordance with the A.M.A., *Guides*, entitling him to a schedule award. Dr. Pang provided a February 2, 2012 audiogram, with a recent calibration certificate, showing hearing levels of 5, 5, 10 and 25 dB on the right at 500, 1,000, 2,000 and 3,000 Hz, respectively, to find an average of 11.25. The average of 11.25 dB, reduced by 25 dB (the first 25 dB were discounted as discussed above), equals zero dB. With regard to the left ear, the audiogram showed hearing levels of 5, 5, 5 and 25 dB on the left at 500, 1,000, 2,000 and 3,000 Hz, respectively, to find an average of 10. The average of 10 dB, reduced by 25 dB (the first 25 dB were discounted as discussed above), equals zero dB. Based on this test Dr. Pang determined that appellant did not sustain a bilateral hearing loss.¹¹ The Board finds that she properly applied the A.M.A., *Guides* to the February 2, 2012 audiogram to determine that appellant did not sustain a ratable hearing loss for schedule award purposes.¹²

Although appellant submitted results from audiometric testing performed from 1974 to November 2011, 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 they 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.

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

¹⁰ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002); *Frantz Ghassan*, 57 ECAB 349 (2006).

¹¹ A.M.A., *Guides* 249-51.

¹² See *S.G.*, 58 ECAB 383 (2007).

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 his burden of proof.¹³ Dr. Pang provided a thorough examination and a reasoned opinion explaining how the findings on examination and testing were not due to the noise in appellant's employment. The Board finds that Dr. Pang's report represents the weight of the evidence.

OWCP's medical adviser properly applied the applicable standards of the A.M.A., *Guides*, to determine that appellant did not have a work-related, ratable, bilateral hearing loss. The May 17, 2012 decision is affirmed.

LEGAL PRECEDENT -- ISSUE 2

Section 8103(a) of FECA provides that the United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances and supplies prescribed or recommended by a qualified physician, which the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of any disability or aid in lessening the amount of any monthly compensation.¹⁴ OWCP must therefore exercise discretion in determining whether the particular service, appliance or supply is likely to affect the purposes specified in FECA.¹⁵

ANALYSIS -- ISSUE 2

The Board finds that the medical evidence of record confirms that appellant is not entitled to hearing aids. There is no medical evidence from a physician recommending that he be provided with hearing aids or any other medical treatment for his employment-related hearing loss. Both Dr. Pang and an OWCP medical adviser found that appellant did not require hearing aids. The Board finds that under these circumstances OWCP did not abuse its discretion under section 8103(a) by denying authorization for hearing aids.¹⁶

Appellant may request a schedule award or increase 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 has not established a ratable, bilateral hearing loss entitling him to a schedule award. The Board also finds that OWCP did not abuse its discretion in denying authorization for hearing aids.

¹³ *Joshua A. Holmes*, 42 ECAB 231, 236 (1990).

¹⁴ 5 U.S.C. § 8103.

¹⁵ OWCP has broad discretionary authority in the administration of FECA and must exercise its discretion to achieve the objectives of section 8103. *Marjorie S. Greer*, 39 ECAB 1099 (1988).

¹⁶ This does not preclude appellant from seeking authorization for hearing aids or other appropriate medical treatment. See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Services and Supplies*, Chapter 3.400.3(d)(2) (October 1990); *Raymond VanNett*, 44 ECAB 480 (1993).

ORDER

IT IS HEREBY ORDERED THAT the May 17, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 6, 2012
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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