

FACTUAL HISTORY

This case has previously been before the Board.² The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On January 13, 2014 appellant, then a 54-year-old boat builder, filed an occupational disease claim (Form CA-2) alleging that he developed hearing loss as a result of employment-related noise exposure while working at the shipyard and using power tools on the job.³

OWCP referred appellant to Dr. Carol L. St. George, a Board-certified otolaryngologist, for a second opinion evaluation on September 3, 2014. An audiogram, completed on September 3, 2014, revealed the following decibel losses at 500, 1,000, 2,000, and 3,000 hertz (Hz): 10, 25, 20, and 35 for the right ear and 20, 20, 15, and 35 for the left ear. Dr. St. George noted that the audiogram showed bilateral high frequency sensorineural hearing loss. She opined that appellant's bilateral high frequency hearing loss was due to his workplace noise exposure and was in excess of what would be predicated for presbycusis as the noise exposure was of sufficient intensity and duration to have caused the hearing loss in question. Dr. St. George recommended the use of hearing aids which would amplify higher frequencies. In accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*⁴ (hereinafter A.M.A., *Guides*), her calculation of monaural and binaural impairment revealed no ratable hearing loss despite appellant's bilateral high frequency hearing loss.

By decision dated January 5, 2015, OWCP accepted appellant's claim for bilateral sensorineural hearing loss. It further found that the medical evidence of record revealed that he would benefit from hearing aids. Appellant filed a claim for a schedule award (Form CA-7).

On May 21, 2015 Dr. Arnold Berman, an OWCP district medical adviser (DMA) reviewed Dr. St. George's September 3, 2014 otologic examination and agreed that appellant developed binaural work-related hearing loss. In accordance with the A.M.A., *Guides*, the DMA applied the September 3, 2014 audiometric data to OWCP's standard for evaluating hearing loss and determined that appellant had zero percent monaural hearing loss in the left ear, zero percent monaural hearing loss in the right ear, and zero percent binaural hearing loss.⁵ Dr. Berman concluded that appellant had no ratable hearing loss and the date of maximum medical improvement (MMI) was September 3, 2014. He also commented that hearing aids should not be authorized.

² Docket No. 16-0231 (issued March 10, 2016).

³ The record reflects that appellant began work for the U.S. Coast Guard in 1968. He worked as a U.S. Coast Guard boat builder from April 22, 1972 to the present. Appellant was exposed to shipyard noise from sealing, sanding, grinding, iron workings, and water blasting.

⁴ A.M.A., *Guides* (6th ed. 2009).

⁵ *Id.* at 252, Table 11-2.

A subsequent audiogram was completed on April 7, 2015 which revealed decibel losses at 500, 1,000, 2,000, and 3,000 Hz: 15, 10, 15, and 30 for the right ear decibels and 5, 10, 5, and 30 decibels, for the left ear.

By decision dated September 22, 2015, OWCP denied appellant's schedule award claim finding that his hearing loss was not sufficiently severe to be considered ratable. With regard to hearing aids, it noted that the medical evidence did not establish that he required hearing aids and denied authorization for these additional medical benefits.

On November 19, 2015 appellant timely appealed to the Board.

As previously noted, by decision dated March 10, 2016, the Board affirmed OWCP's September 22, 2015 decision in part, finding that appellant failed to establish ratable hearing loss for schedule award purposes. The Board set aside, the September 22, 2015 decision in part finding that he was not entitled to hearing aids and remanded the case for further development.⁶ The Board noted on remand that OWCP had initially requested Dr. Berman to provide clarification pertaining to his May 21, 2015 DMA report. On July 7, 2016 Dr. Berman failed to provide an opinion on appellant's hearing impairment and need for hearing aids. Rather, he requested OWCP refer the raw audiology data to an audiologist for review and then return the case file back to him.

Following the Board's March 10, 2016 decision, appellant submitted an April 7, 2016 audiogram which revealed the following decibel losses at 500, 1,000, 2,000, and 3,000 Hz: 15, 10, 20, and 35 for the right ear and 10, 15, 10, and 35 for the left ear.

OWCP routed the case file to Dr. Jeffrey M. Israel, a Board-certified otolaryngologist serving as an OWCP DMA, to determine the extent of appellant's permanent partial impairment, date of MMI, and need for hearing aids.

In a July 29, 2016 report, Dr. Israel noted review of Dr. St. George's September 3, 2014 evaluation, as well as the April 7, 2016 audiogram. He explained that hearing impairment as calculated by the use of the sixth edition of the A.M.A., *Guides* revealed right and left monaural loss of zero and as such, a binaural loss of zero. Dr. Israel opined that although the ratable hearing loss was zero, hearing aids should be authorized due to the work-related sensorineural hearing loss.

By decision dated April 11, 2016, OWCP determined that appellant was entitled to hearing aids. It denied his schedule award claim, however, finding that his hearing loss was not sufficiently severe to be considered ratable.

LEGAL PRECEDENT

The schedule award provision of FECA⁷ and its implementing regulations set forth the number of weeks of compensation payable to employees sustaining permanent impairment from

⁶ *Supra* note 2.

⁷ 5 U.S.C. § 8107.

loss, or loss of use, of scheduled members or functions of the body. FECA, however, does not specify the manner in which the percentage 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 losses and the Board has concurred in such adoption.⁸

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.⁹ 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, 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.¹⁰

ANALYSIS

OWCP accepted appellant's occupational disease claim for bilateral sensorineural hearing loss. By decision dated August 11, 2016, it determined that he was entitled to hearing aids. OWCP denied appellant's claim, however, for a schedule award finding that his hearing loss was not sufficiently severe to be considered ratable.

Subsequent, to the Board's March 10, 2016 decision an April 7, 2016 audiogram was completed which revealed the following decibel losses at 500, 1,000, 2,000, and 3,000 Hz: 15, 10, 20, and 35 for the right ear and 10, 15, 10, and 35 for the left ear. On July 29, 2016 Dr. Israel serving as OWCP's DMA, reviewed the case file and determined that appellant's examination revealed a right and left monaural loss of zero and a binaural loss of zero.

The Board finds that OWCP properly denied appellant's schedule award claim. According to the most recent April 17, 2016 audiometry findings, appellant's hearing thresholds were 15, 10, 20, and 35 on the right and 10, 15, 10, and 35 on the left. These total 80 and 70 decibels, respectively, for averages of 20 and 17.5 decibels. Because these averages are below the fence of 25 decibels, appellant is deemed to have no impairment in his ability to hear every day sounds under everyday listening conditions.¹¹ This does not mean that he has no hearing loss. It means that the extent or degree of loss is insufficient to show a practical impairment in

⁸ See *R.D.*, 59 ECAB 127 (2007); *Bernard Babcock, Jr.*, 52 ECAB 143 (2000).

⁹ See A.M.A., *Guides* 250.

¹⁰ See *E.S.*, 59 ECAB 249 (2007); *Donald Stockstad*, 53 ECAB 301 (2002), *petition for recon. granted (modifying prior decision)*, Docket No. 01-1570 (issued August 13, 2002).

¹¹ See *L.F.*, Docket No. 10-2115 (issued June 3, 2011).

hearing according to the A.M.A., *Guides*. The A.M.A., *Guides* set a threshold for impairment and appellant's occupational hearing loss did not cross that threshold. Thus, OWCP's DMA applied the proper standards to the April 7, 2016 audiogram. Appellant's hearing loss was not ratable. For this reason, the Board finds that OWCP properly denied his schedule award claim.

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.

CONCLUSION

The Board finds that appellant has not established a ratable hearing loss, warranting a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the August 11, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 17, 2017
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board