United States Department of Labor
Employees' Compensation Appeals Board

E.W., Appellant	)	
and	)	**Docket No. 17-1022**
	)	**Issued: July 24, 2017**
DEPARTMENT OF THE NAVY, PORTSMOUTH NAVAL SHIPYARD, Portsmouth, NH, 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 April 10, 2017 appellant filed a timely appeal from a December 30, 2016 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 claim.

ISSUE

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

FACTUAL HISTORY

On February 19, 2016 appellant, then a 64-year-old mechanical shop supervisor, filed an occupational disease claim (Form CA-2) for bilateral hearing loss which he attributed to daily

[1] 5 U.S.C. § 8101 *et seq.*

exposure to loud noises in the workplace.[2] He indicated that he first became aware of his condition and its work-related nature on January 18, 2014. OWCP received appellant's employee health records, including hearing conservation data and audiograms dating back to September 1977.

On August 31, 2016 Dr. David Thompson, a Board-certified otolaryngologist and OWCP referral physician, examined appellant and administered an audiogram. He diagnosed bilateral "noise-induced" high-frequency sensorineural hearing loss. Dr. Thompson indicated that appellant's workplace exposure was of sufficient intensity and duration to have caused the demonstrated hearing loss. He further commented that appellant's abrupt high-frequency loss was inconsistent with age-related hearing loss.

By decision dated October 25, 2016, OWCP accepted appellant's claim for bilateral sensorineural hearing loss, with a January 18, 2014 date of injury. Additionally, it advised him to file a claim for a schedule award (Form CA-7), noting that the medical evidence of record "establishe[d] that [he had] permanent partial impairment as a result of [his] employment-related hearing loss."

On November 28, 2016 appellant filed a claim for a schedule award (Form CA-7).

On December 14, 2016 OWCP referred the case record, including Dr. Thompson's August 31, 2016 report, to its district medical adviser (DMA) to determine whether appellant had a ratable hearing loss under the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6th ed. 2009) (hereinafter A.M.A., *Guides*).

In a December 20, 2016 report, Dr. Jeffrey M. Israel, a Board-certified otolaryngologist and OWCP medical adviser, reviewed appellant's records, a May 26, 2016 statement of accepted facts, and Dr. Thompson's August 31, 2016 report. He noted that the earliest audiograms in the record, dated 1977 to 1992, showed normal hearing bilaterally, but serial audiograms thereafter showed a progressive high-frequency sensorineural hearing loss (SNHL). Dr. Israel further noted that the latest audiogram, dated August 31, 2016, revealed normal hearing bilaterally from 250 Hz to 2 KHz. From there, both ears drop to a 6 KHz acoustic notch at 50 dB (moderate) with recovery to 45 dB at 8 KHz. Dr. Israel opined that the patterns were suggestive of an SNHL due at least in part to noise-induced, work-related acoustic trauma. He further found that hearing impairment calculated under the A.M.A., *Guides* (6th ed. 2009) revealed a bilateral monaural loss of zero, as well as a binaural loss of zero. The December 20, 2016 report included hearing loss impairment calculations based on the August 31, 2016 audiogram results.[3]

[2] In his current position as a general foreman, appellant indicated that since 1989 he had been exposed to noise approximately two to three hours per day. This included noise from welding, grinding, impact wrenches, sand blasting, high-pressure air testing, and general industrial process noise. Appellant also explained that some hours were spent in confined spaces where the noise was dramatically amplified. He further indicated that he wore earplugs when required.

[3] The August 31, 2016 audiogram noted losses at the frequencies of 500, 1,000, 2,000, and 3,000 hertz (Hz). The right ear losses were recorded as 20, 15, 10 and 35 decibels (dB). The left ear losses were recorded as 5, 5, 10 and 35 dB.

Dr. Israel also indicated that there were no other hearing impairment calculations in the record with which to compare.

In a December 30, 2016 decision, OWCP determined that appellant was not entitled to a schedule award. It found the medical evidence of record did not establish that appellant's hearing loss was severe enough to be considered ratable under the A.M.A., *Guides*.

LEGAL PRECEDENT

Section 8107 of FECA sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.[4] FECA, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The implementing regulations have adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule losses.[5] Effective May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (2009).[6]

The method of evaluating permanent impairment due to hearing loss is set forth under Chapter 11, Section 11.2, Hearing and Tinnitus, A.M.A., *Guides* at 248-51 (6th ed. 2009). Using the frequencies of 500, 1,000, 2,000 and 3,000 Hz, the losses at each frequency are added up and averaged.[7] Then, the "fence" of 25 dB is deducted because, as the A.M.A., *Guides* points out, losses below 25 dB result in no impairment in the ability to hear everyday speech under everyday conditions.[8] The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.[9] 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.[10]

ANALYSIS

The Board finds that the case is not in posture for decision regarding whether appellant met his burden of proof to establish a ratable hearing loss for schedule award purposes.

[4] For complete loss of hearing of one ear, an employee shall receive 52 weeks' compensation. 5 U.S.C. § 8107(c)(13). For complete loss of hearing of both ears, an employee shall receive 200 weeks' compensation. *Id.*

[5] 20 C.F.R. § 10.404.

[6] *See* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6a (February 2013).

[7] A.M.A., *Guides* 250 (6th ed. 2009).

[8] *Id.* at 250-51.

[9] *Id.*

[10] *Id.*

In deciding matters pertaining to a given claimant's entitlement to FECA benefits, OWCP is required both by statute and regulation to make findings of fact.[11] The procedure manual further specifies that a final decision of OWCP "should be clear and detailed so that the reader understands the reason for the disallowance of the benefit and the evidence necessary to overcome the defect of the claim."[12]

In its December 30, 2016 decision denying appellant's claim for a schedule award, OWCP similarly concluded without explanation that the medical evidence revealed that his hearing loss was not severe enough to be considered ratable under the A.M.A., *Guides*. The decision did not specify what medical evidence OWCP considered or how or why the evidence of record was deemed insufficient to establish entitlement to a schedule award for hearing loss. As noted, an OWCP decision "shall contain findings of fact and a statement of reasons."[13] Moreover, the procedure manual provides that a formal schedule award denial should include a full discussion of the weight of medical evidence used to determine that the impairment was zero percent, and therefore, a schedule award was not payable.[14] Because OWCP's December 30, 2016 decision does not fully comply with statutory and regulatory requirements, the decision will be set aside.[15] Accordingly, the case shall be remanded for a proper review of the evidence and issuance of a *de novo* decision.

CONCLUSION

The case is not in posture for decision.

[11] Pursuant to 5 U.S.C. § 8124(a), OWCP "shall determine and make a finding of facts and make an award for or against payment of compensation." Additionally, 20 C.F.R. § 10.126 provides in pertinent part that the final decision of OWCP "shall contain findings of fact and a statement of reasons."

[12] *See* Federal (FECA) Procedure Manual, *supra* note 6 at Chapter 2.1400.5c(3)(e) (February 2013). *See also D.K.*, Docket No. 15-1769 (issued April 4, 2016); *G.J.*, Docket No. 14-528 (issued October 16, 2014).

[13] 20 C.F.R. § 10.126.

[14] Federal (FECA) Procedure Manual, *supra* note 6 at Chapter 2.808.8e(2).

[15] 20 C.F.R. § 10.126; 5 U.S.C. § 8124(a).

ORDER

IT IS HEREBY ORDERED THAT the December 30, 2016 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further action consistent with this decision.

Issued: July 24, 2017
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