**NAVY OCCUPATIONAL AUDIOLOGIST’S ROLE IN ADDRESSING**

**CIVILIAN WORKER HEARING LOSS COMPENSATION CLAIMS**

**Background:** As subject matter experts on noise-induced hearing loss, Occupational Audiologists (OAs) may be involved in determining whether civilian employee hearing loss claims are occupationally-related under the Federal Employees’ Compensation Act (FECA). Below is the claims process and the audiologist’s role in determining causality (work-relatedness) of employee hearing loss. The final report requires signatures from an Audiologist and a Physician.

**References:**

1. DODI 1400.25-V810, April 16, 2009 Civilian Personnel Management
2. OPNAV M-5100.23 Chapter 8 Occupational Health
3. Manual of the Medical Department NAVMED P-117 Chapter 22, Article 33(c) and 34(7) Change 141 8 Jun 2012
4. American Medical Association Sixth Edition Guide to the Evaluation of Permanent Impairment
5. Federal Employees’ Compensation Act (FECA) OPM 810
6. DOL DFEC Procedure Manual Chapter 2-0801 Time/Statutory Filing Requirements
7. DOL DFEC Procedure Manual Chapter 2-0803 Fact of Injury
8. DOL DFEC Procedure Manual Chapter 2-0805 Causal Relationship

**Claims Process:**

Employee initiates claim. Workplace illness/injury claims are initiated by the employee and submitted to their Human Resource Office (HRO) Injury Compensation Program Administrator (ICPA).

* + Claims can be submitted anytime during employment. Employees do not have to wait until retirement to file a claim.
	+ If hearing loss worsens after an initial claim, a subsequent claim can be filed one year after the final payment from the original claim. Ratability of a subsequent claim is only for the difference in hearing between the current hearing loss and hearing loss recorded at the time of the original claim. Example: If the original claim was 10% disability and the subsequent loss was ratable as 13%, the subsequent award would be the 3% not previously awarded.

ICPA coordinates the claim package.

* + The ICPA then solicits information/items needed to complete an injury claim package. Information is obtained from the employee, employee supervisor, and medical.
	+ Diagnostic evaluations or claim reviews should not be completed by Occupational Health/Occupational Audiology unless a request for evaluation has been received from the ICPA defining the type of claim, the required evaluation, whether it is an initial or subsequent claim, and whether the employee is active or retired.
	+ The request from ICPA may come in the form of a Department of Labor CA-2 Form (Encl 1), a CA-1331 (Encl 2), or a locally generated memorandum.
	+ There may be several Tabs in the claim package with items to be completed by various professionals. Typically, the tabs are organized in the below fashion. The Audiologist may have access to some or all of this information.

Tab 1: Memo to Occupational Medicine requesting evaluation of employee disability

Tab 2: CA-2 Form (Notice of Occupational Disease and Claim for Compensation)

Tab 3: Employment History

Tab 4: CA-35 Form (Evidence Required in Support of a Claim for Work-Related Occupational

 Disease)

Tab 5: Supporting medical evaluations and test results from Occupational Medicine,

 Occupational Audiology, and/or private physician

Tab 6: SF 50 forms (Notification of Personnel Actions) depicting employee date of injury pay

 rate, and current pay rate

Tab 7: Employee’s current Position Description (PD), resumes, SF-171s, DD214s, and any VA

 disability letters

Timelines. An original claim for compensation must be filed within three years of the injury occurrence. However, compensation may still be allowed if:

* + Written notice of the injury was provided to the immediate superior within 30 days of occurrence.
	+ The immediate superior had actual knowledge of the injury within 30 days of occurrence.
		- An agency where employees may be exposed to hazardous noise levels may administer annual hearing tests for exposed employees. A hearing loss identified on such a test would constitute actual knowledge on the part of the agency of a possible work injury (reference f).

Determine the Type of Evaluation Needed.

* + Retired employees. If the employee has retired:
		- The OA will not see the patient/employee for an evaluation.
		- A disposition may be determined based solely on a review of the records and information provided in the claim package. The OA is not required to conduct any records research for the employee in DOEHRS or the Electronic Health Record (EHR). Occupational Health may no longer have access to the employee’s medical record after retirement; therefore, the employee should request their records from the archives for inclusion in the claims package.
		- At the OA’s discretion, if it is determined that the claim package does not include sufficient documentation to render an opinion, the OA may choose to conduct records research in DOEHRS, EHR, and/or the medical record, if available.
	+ Active employees. If the employee is still actively federally employed:
		- Review the employee’s PD, if available, to determine whether the job is considered noise-hazardous.
		- Review the Periodic Industrial Hygiene Survey (PIHS) report to determine the employee’s occupational noise exposure history.
		- Conduct an Audiologic Evaluation. An audiologic evaluation and an otologic evaluation are required, and should be performed on the same day by different providers. The audiologic evaluation should occur first. The employee must be noise-free for at least 16 hours prior to the evaluation. Reschedule the appointment if the employee has not been noise-free for at least 16 hours. The OA must document the audiometer make, model, serial number and calibration information on the report, along with his/her credentials (license/board certification numbers).
			* Obtain a comprehensive patient history, including on and off-duty noise hazard exposures and other audiologic/otologic factors.
			* Conduct otoscopy.
			* Obtain air conduction thresholds at: 500, 1000, 2000, 3000, 4000, 6000, 8000 Hz.
			* Obtain bone conduction thresholds at: 500, 1000, 2000, 3000, 4000 Hz.
			* Conduct impedance audiometry.
			* Obtain Speech Reception Thresholds (SRTs) and discrimination scores for each ear using standardized recorded speech materials.
				+ Use the full standardized word discrimination list for each ear.

Determine work-relatedness of hearing loss. After reviewing the employee’s PD, the PIHS, patient history, and the audiologic evaluation results, make a determination of whether the employee’s hearing loss resulted from occupational exposure. The five requirements of the medical evidence for a causal relationship are as follows (references g and h):

* + - 1. The provider should read the employee’s statement and refer to it in his or her own medical statement indicating that he or she has read the employee’s description of the conditions of employment which caused the disease or illness. This gives the provider a frame of reference upon which to base a medical opinion. The provider should state something like the following: “I have read the statement dated \_\_\_\_\_\_ prepared by \_\_\_\_\_\_\_\_\_\_\_ regarding the conditions of employment at\_\_\_\_\_\_\_\_\_\_\_ during the period from \_\_\_\_\_\_ to \_\_\_\_\_\_.”
			2. The provider must give a definitive, conclusive diagnosis, referring to any relevant tests. Impressions do not satisfy this requirement.
			3. The provider must give a definitive, conclusive opinion that the employee’s disability was caused, aggravated, precipitated or accelerated by the conditions of employment described by the employee. Speculative language such as the use of the words “perhaps related,” “probably related” or “might be” will not support the claim. If the disability is temporary, the opinion must state the time during which the employee will be disabled.
			4. The provider must give his or her medical reasoning (or rationale) for the diagnosis and opinion. In other words, the provider must show how s/he reached the opinion given, i.e., what are the medical reasons for the opinion.
			5. The provider must state the period of time the disability will last and the extent of the disability. If the disability is partial, the statement must indicate the work limitations of the employee during the period of disability.

- OPTIONAL STEP - Check with the local ICPA to inquire whether the disability rating should be calculated by the OA and submitted with the package. If so:

Calculate the disability rating (if disability is work-related) without using any correction factors. See Encl 3 for a spreadsheet that facilitates the below calculation.

* + - Calculate the average threshold at 500, 1000, 2000, and 3000 Hz for the first ear.
		- If ASA calibration was used, subtract 15 dB. If ISO-ANSI calibration was used, subtract 25 dB.
		- Multiply the result by 1.5 to determine percentage of hearing loss.
		- Repeat the above process for the 2nd ear.
		- Take the better ear percentage of hearing loss and multiply it by 5. Then add this result to the percentage loss in the worse ear.
		- Divide the sum by 6 to determine the percentage of binaural loss.
		- Round down from .49 or up from .50.
		- If the monaural loss calculation is higher than the binaural loss calculation, use the monaural calculation.
		- If there is a measurable/ratable unilateral or bilateral hearing impairment, a tinnitus rating can also be applied (if the employee reports tinnitus). The audiological assessment must directly address the impact of tinnitus on the claimant’s daily life. If significant, up to 5% additional impairment can be added.
		- Formula:

Monaural [(500+1000+2000+3000) ÷ 4)) – 25dB] x 1.5 = % Monaural Loss

Binaural [(500+1000+2000+3000) ÷ 4)) – 25dB] x 1.5 for each ear

[(Better Ear % x 5) + Poorer Ear %] ÷ 6 = % Binaural Loss

Final percent rating should be rounded down from .49 or up from .50

If the employee has ratable hearing loss AND tinnitus affecting ADLs, an additional 5% may be added for tinnitus rating.

\* Some OAs calculate the disability only for the purpose of determining whether there is a compensable HL, but do not include the percent disability amount in the report. Some do not comment on tinnitus, since there is no objective test to prove or disprove it.

Write a report of your findings.

* CA 1332 (Encl 4) is the otologic evaluation form used when an ENT is available for physical exam and signature of concurrence with the audiologist. A facility may sign a letter of non-availability for this specialty if the MTF does not have ENT or does not have availability for ENT to do a physical exam for hearing loss patients. Federal Employees are entitled to all specialties within the MTF, provided it is related to their occupational healthcare.
* The CA 1332 requires one signature from the Audiologist (on page 3), and two signatures from a Physician (on pages 2 and 3). Therefore, if an ENT physician is not available, it is recommended that the OA coordinate these FECA claim evaluations with an Occupational Health Physician.
* A memorandum detailing the OA’s opinion and comments may be used in lieu of the CA 1332 form for retired employees and for active employees if a physician is not available to examine the employee and co-sign the CA 1332. The memorandum should address the following:
	+ The stated injury, history of employment environment, reference Industrial Hygiene survey data, history of present illness, treatment options, causality, extent of disability, and prognosis.
	+ A definitive opinion on the work-relatedness (meaning yes or no, not maybe). The report can include whether there were intervening noise exposures, such as non-occupational noise, but causality must be clearly stated. The extent of disability should also be described, such as, whether hearing aids would improve quality of life.
	+ If the disability calculation rating is requested as part of the OA package, include the rating formula showing the math for monaural and binaural loss and state whether tinnitus affects Activities of Daily Life (ADLs). Tinnitus is not compensable as a stand-alone rating. It may only be rated as an add-on to a hearing loss rating for disability.

Recordkeeping.

DOL is the official record holder for injury claims and HRO/ICPA maintains an agency copy. Medical has no obligation to provide copies of FECA workers’ compensation claim reports, other than to the ICPA. The employee may be directed to DOL or their local ICPA to request a copy of submitted reports from supervisors, medical, IH, etc.

**Miscellaneous Items**

* Burden of proof is on the claimant. The adjudicating body for DOL is responsible for determining the validity of all case documents. Items that add weight to a report are:
	+ Provider certification/credentials
	+ Specialist vs general practitioner
	+ Familiarity with the patient
	+ Medical rationale is well-reasoned
	+ Objective findings support the rationale
	+ Assessment is comprehensive
	+ Medical history is comprehensive
* Liability. No liability is anticipated for the audiologist conducting this assessment. Adjudication Boards do not involve a jury, therefore, there is no possibility of subpoena for court proceedings. This applies to active duty and civilian audiologists.
* Second Opinion. DOL will often solicit for a second opinion report to add strength to the case. If the reports differ, the more thorough report with sound reasoning will be the one utilized for determination of rating and award.
* FECA Working Group. IAW references a-c, Occupational Health is required to provide a representative to the FECA Working Group. This group is established to discuss trends and potential mitigation strategies regarding safety in the workplace. The group meets at least quarterly, is chaired by the ICPA, and may seek medical guidance on claims of interest. Occupational Audiologist/HCPM attendance on this group is extremely valuable.

**Glossary:**

ADL- Activities of Daily Life

DOEHRS – Defense Occupational and Environmental Health Readiness System

DOL- Department of Labor

EHR – Electronic Health Record

FECA- Federal Employee Compensation Act

HCP – Hearing Conservation Program

HCPM- Hearing Conservation Program Manager

HRO- Human Resources Office

IAW- In accordance with

ICPA- Injury Compensation Program Administrator

OA – Occupational Audiologist

OWCP- Office of Workers’ Compensation Programs

PD – Position Description

PIHS – Periodic Industrial Hygiene Survey