

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**J.B., Appellant**

**and**

**DEPARTMENT OF THE ARMY, ARMY  
AMMUNITION PLANT, McAlester, OK,  
Employer**

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**Docket No. 15-1567  
Issued: November 17, 2015**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On July 14, 2015 appellant filed a timely appeal from a March 26, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant has established a ratable hearing loss.

**FACTUAL HISTORY**

On July 9, 2013 appellant, then a 49-year-old materials handler, filed an occupational disease claim (Form CA-2) alleging that on or before June 8, 2010 he sustained a hearing loss with ringing in his left ear due to hazardous noise exposure in the performance of duty. He

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

described exposure to a Sky Trac and “loud engine noise” for 10 hours a day, 4 to 5 days a week over a 5-year period. Appellant did not stop work.

Appellant participated in an employing establishment hearing conservation program. He submitted annual audiograms dated from February 15, 2005 to December 14, 2011. A June 2, 2010 audiogram was marked “follow up” due to a 40-decibel threshold shift from the February 15, 2005 reference audiogram at 4,000 hertz (Hz). A June 15, 2011 audiometric report noted that appellant’s duties during the previous two years had not exposed him to hazardous noise, but that he had recreational exposure to loud noise from hunting without use of hearing protection.

A December 14, 2011 audiogram showed decibel losses at the frequency levels of 500, 1,000, 2,000, and 3,000 Hz in the right ear of 10, 5, 0, and 0, respectively. Testing at the same frequency levels for the left ear revealed decibel losses of 10, 5, 15, and 10, respectively.

In a September 17, 2013 letter, OWCP advised appellant of the additional evidence needed to establish his claim, including corroboration of hazardous noise exposure at work and medical evidence supporting that a ratable hearing loss resulted from that exposure. It afforded him 30 days to submit such evidence.

On October 29, 2013 OWCP referred appellant, the medical record, and a statement of accepted facts to Dr. Dwayne H. Atwell, a Board-certified otolaryngologist, and Traci L. Wilkerson, a doctor of audiology, to assess the nature and extent of his hearing loss. It acknowledged that appellant had been exposed to hazardous noise at work. Dr. Wilkerson obtained a November 13, 2013 audiogram demonstrating decibel losses at the frequency levels of 500, 1,000, 2,000, and 3,000 Hz in the right ear of 20, 20, 15, and 10, respectively. Testing at the same frequency levels for the left ear revealed decibel losses of 20, 20, 25, and 20, respectively. Dr. Atwell reviewed the audiogram and examined appellant. He opined that the decibel losses observed by Dr. Wilkerson constituted a bilateral sensorineural hearing loss due in part to hazardous noise exposure during federal employment. Dr. Atwell found that appellant did not have a ratable hearing loss. However, he assessed five percent binaural hearing impairment due to tinnitus impacting activities of daily living. Dr. Atwell recommended repeat testing due to asymmetry at 4,000 Hz, but noted that the testing was valid.

On April 8, 2014 an OWCP medical adviser reviewed Dr. Atwell’s report and the November 13, 2013 audiometry. He explained that as appellant had no ratable hearing loss, he was not entitled to an added five percent impairment due to tinnitus. The medical adviser recommended that a final impairment rating not be performed until the repeat audiometric testing recommended by Dr. Atwell.

By letter dated April 8, 2014, OWCP accepted that appellant sustained a bilateral noise-induced hearing loss.

On August 12, 2014 appellant claimed a schedule award (Form CA-7). OWCP referred the case record to the OWCP medical adviser to determine whether appellant had sustained a ratable hearing loss under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). In a September 3, 2014 addendum, the

medical adviser opined that appellant had reached maximum medical improvement as of November 13, 2013. He noted that there did not appear to be a need for the follow-up testing suggested by Dr. Atwell other than a general recommendation for future follow-up. The medical adviser therefore opined that the November 13, 2013 audiometric testing was a sufficient basis for an impairment rating. He totaled the 500, 1,000, 2,000, and 3,000 Hz decibel losses for the right ear of 20, 20, 15, and 10 decibels to equal 65. The medical adviser averaged the losses to determine that appellant had an average hearing loss of 16 decibels. He then subtracted the fence of 25 decibels and multiplied the balance by 1.5, resulting in zero percent right ear monaural hearing loss. For the left ear, the medical adviser added the decibel losses of 20, 20, 25, and 20 respectively, equals 21, resulting in an average loss of 21 decibels. After subtracting a fence of 25 decibels, he multiplied the remaining balance by 1.5 to calculate zero percent left ear monaural hearing loss. The medical adviser concluded that appellant had no ratable hearing impairment but would benefit from hearing aids.

By decision dated March 26, 2015, OWCP denied appellant's schedule award claim, finding that he had not established a ratable hearing loss. It further denied the additional five percent for tinnitus recommended by Dr. Atwell as he had not established a ratable hearing loss.

### **LEGAL PRECEDENT**

The schedule award provision of FECA and its implementing regulations 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. 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* has been adopted by OWCP for evaluating schedule losses and the Board has concurred in such adoption.<sup>2</sup>

OWCP evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.<sup>3</sup> Using the frequencies of 500, 1,000, 2,000, and 3,000 Hz the losses at each frequency are added up and averaged.<sup>4</sup> The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.<sup>5</sup> 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

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<sup>2</sup> See 20 C.F.R. § 10.404; *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

<sup>3</sup> A.M.A., *Guides* 250 (6<sup>th</sup> ed. 2009). See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (February 2013); see also Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

binaural hearing loss.<sup>6</sup> The Board has concurred in OWCP's adoption of this standard for evaluating hearing loss.<sup>7</sup>

If tinnitus interferes with activities of daily living, including sleep, reading, and other tasks requiring concentration, enjoyment of quiet recreation, and emotional well-being, up to five percent may be added to a measurable binaural hearing impairment.<sup>8</sup>

### ANALYSIS

An OWCP medical adviser reviewed the report of Dr. Atwell, a Board-certified otolaryngologist whom OWCP referred appellant to for a second opinion otologic examination and audiological evaluation. Dr. Atwell determined that appellant sustained bilateral sensorineural hearing loss due to his exposure to noise in the workplace. The medical adviser concluded that appellant had no ratable hearing impairment in either ear. He properly applied OWCP's standardized procedures to the November 13, 2013 audiogram reviewed by Dr. Atwell, which recorded frequency levels at the 500, 1,000, 2,000, and 3,000 Hz and revealed decibel losses of 20, 20, 15, and 10 respectively for a total decibel loss of 65 on the right. The medical adviser then followed established procedures and divided this total by 4 which resulted in an average loss of 16 decibels and subtracted the fence of 25 decibels to equal 0 decibels. He then multiplied this by the established factor of 1.5 to result in zero percent monaural hearing loss for the right ear. The medical adviser then properly followed the same procedure on the left, noting that the test results for the left ear at the frequencies of 500, 1,000, 2,000, and 3,000 Hz revealed decibel losses of 20, 20, 25, and 20 decibels respectively, for a total of 85 decibels. He divided this by 4, for an average 21 decibels, and subtracted the fence of 25 decibels to equal zero decibels, and multiplied this by the established factor of 1.5, for zero percent monaural hearing loss for the left ear.

The Board finds that Dr. Atwell properly reviewed the audiogram obtained by the audiologist, and concluded that it showed a binaural hearing loss. The medical adviser utilized those findings and properly applied the A.M.A., *Guides* to arrive at zero percent binaural hearing loss. Appellant has not established that he has a ratable hearing loss in either ear.

The Board notes that Dr. Atwell incorrectly awarded appellant five percent impairment for tinnitus. As appellant did not sustain a ratable hearing loss, he cannot receive a schedule award exclusively for tinnitus.<sup>9</sup>

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.

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<sup>6</sup> *Id.*

<sup>7</sup> *P.D.*, Docket No. 15-1173 (issued September 2, 2015); *C.C.*, Docket No. 11-731 (issued October 11, 2011).

<sup>8</sup> A.M.A., *Guides* 249.

<sup>9</sup> *M.R.*, Docket No. 15-0529 (issued July 2, 2015); see *Richard Larry Enders*, 48 ECAB 184 (1996).

**CONCLUSION**

The Board finds that appellant did not establish a ratable hearing loss.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Program dated March 26, 2015 is affirmed.

Issued: November 17, 2015  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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