



## **FACTUAL HISTORY**

Appellant, a 63-year-old retired supervisory mine safety and health inspector, has an accepted claim for bilateral sensorineural hearing loss which arose on or about July 23, 2004.<sup>2</sup> In its March 25, 2016 acceptance of the claim, OWCP advised appellant to file for a schedule award (Form CA-7) noting that the “medical evidence ... establishes that you have permanent partial impairment as a result of your employment-related hearing loss.” Appellant thereafter filed a claim for a schedule award (Form CA-7) on April 7, 2016.

Dr. Allison Ford Harbart, a Board-certified otolaryngologist and OWCP-referral physician, examined appellant on March 14, 2016 and diagnosed bilateral sensorineural hearing loss, which she attributed, at least in part, to his federal occupational exposure. Her evaluation included a March 14, 2016 audiogram, which noted losses at the frequencies of 500, 1,000, 2,000, and 3,000 cycles per second. The right ear losses were recorded as 10, 5, 15, and 25 decibels (dB). The left ear losses were recorded as 15, 10, 20, and 35 dB.<sup>3</sup>

OWCP referred the case record, including Dr. Harbart’s recent examination findings, to its district medical adviser (DMA) to determine the extent of any permanent functional loss of hearing, if any. In a report dated March 30, 2016, the district medical adviser, Dr. Jeffrey M. Israel, a Board-certified otolaryngologist, noted that appellant was exposed to hazardous noise from his work-related activities. He reviewed a series of employing establishment audiograms that showed a successive yearly progressive high frequency loss. Dr. Israel indicated that the most recent audiogram of March 14, 2016 showed normal hearing in both ears up to 4 kilohertz (KHz), the right ear showing an angled drop to the 50 dB level at 8 KHz and the left ear a bit worse and asymmetric dropping to 65 dB at 8 KHz. Utilizing the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) he found both right and left monaural losses at 0 and the binaural loss at 0.<sup>4</sup>

By decision dated March 31, 2016, OWCP denied appellant’s claim for a schedule award. It found that the medical evidence of record failed to establish a ratable hearing loss under the A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

## **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.<sup>5</sup> FECA,

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<sup>2</sup> Appellant voluntarily retired effective December 31, 2015.

<sup>3</sup> Dr. Harbart also reviewed the reported results of a series of employer-administered audiograms dating back to 1990. She noted that appellant had a mild hearing loss in his left ear when he started work in the early 1990s, and since then, his bilateral hearing gradually declined over the course of his almost 25-year tenure with the employing establishment.

<sup>4</sup> The DMA noted that the bulk of appellant’s hearing impairment was located in the frequencies (4,000 to 8,000 Hz) not compensated for under FECA.

<sup>5</sup> 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.*

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.<sup>6</sup> Effective May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (2009).<sup>7</sup>

Using the frequencies of 500, 1,000, 2,000, and 3,000 hertz (Hz), the losses at each frequency are added up and averaged.<sup>8</sup> Then, the “fence” of 25 dBs is deducted because, as the A.M.A., *Guides* points out, losses below 25 dBs result in no impairment in the ability to hear everyday speech under everyday conditions.<sup>9</sup> The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.<sup>10</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, and then added to the greater loss and the total is divided by six to arrive at the amount of the binaural hearing loss.<sup>11</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a ratable hearing loss. Based on the March 14, 2016 audiogram interpreted by Dr. Harbart, appellant’s right ear hearing losses at 500, 1,000, 2,000, and 3,000 Hz were 10, 5, 15, and 25 dBs, which totaled 55 dBs. His left ear losses were 15, 10, 20, and 35 dBs, which totaled 80 dBs. The right ear hearing loss resulted in an average loss of 13.75 ( $55 \div 4$ ) dBs, and the left ear loss averaged 20 ( $80 \div 4$ ) dBs. After subtracting the 25 dB fence, both the right ear and left ear losses were reduced to a negative number (-11.25 and -5, respectively). When multiplied by 1.5, the resulting monaural loss in each ear was 0 percent. The March 14, 2016 audiogram results also showed zero percent binaural hearing loss. The above-noted calculations are consistent with Dr. Israel, the DMA’s March 30, 2016 findings. Accordingly, OWCP properly determined that appellant did not have a ratable hearing loss under the A.M.A., *Guides* (6<sup>th</sup> ed. 2009).<sup>12</sup>

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<sup>6</sup> 20 C.F.R. § 10.404 (2014).

<sup>7</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.6a (February 2013); see also Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

<sup>8</sup> See Section 11.2, Hearing and Tinnitus, A.M.A., *Guides* 248-51 (6<sup>th</sup> ed. 2009).

<sup>9</sup> *Id.* at 250.

<sup>10</sup> *Id.* at 250-51.

<sup>11</sup> *Id.* at 251.

<sup>12</sup> OWCP’s March 25, 2016 statement to the contrary is not supported by the record, and it predated the DMA’s review of appellant’s most recent audiogram.

**CONCLUSION**

Appellant has not met his burden of proof to establish a ratable hearing loss.

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 31, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 10, 2016  
Washington, DC

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

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

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board