



at work. He first became aware of his hearing loss and its relationship to his federal employment on October 15, 2014. Appellant did not stop work and continued to be exposed to noise.

In an attachment to the Form CA-2, dated August 31, 2016, appellant noted working for the employing establishment since December 1, 2003. He was required to participate in quarterly qualifications for three weapons, pistol, rifle, and shot gun. Appellant indicated that during those quarterly qualifications he expended 146 rounds of ammunition. He also noted noise exposure from a handheld radio, all-terrain vehicles (ATV), helicopters, vehicle emergency equipment, and sirens. Appellant underwent a hearing test on July 15, 2016 which revealed moderate-to-severe hearing loss. He noted that his hearing gradually deteriorated and in October 2014 he first noticed moderate ringing in his ear. Appellant advised that he often has the volume on the television abnormally high and has to ask people to repeat themselves.

By letter dated September 7, 2016, OWCP advised appellant of the type of evidence needed to establish his claim. In a letter of the same date, it requested that the employing establishment address the sources of appellant's noise exposure, decibel and frequency level, period of exposure, and hearing protection provided.

The employing establishment submitted a statement from R.M., the supervisor of border patrol agents, who reviewed appellant's statements and concurred in his responses. R.M. indicated that agents were continuously exposed to loud noises in the line of duty. He indicated that appellant was currently exposed to loud noises associated with the firing range, loading and offloading detainees from buses, traffic checkpoint inspections of vehicles with loud engine noise, ATV's, boats, and helicopters. This exposure varied from short periods of time to a few hours daily. R.M. advised that appellant continued to be exposed to noise on a daily basis. He submitted appellant's optional application for federal employment (OF-612) dated October 31, 2002. Also submitted was a sound level survey from the Federal Law Enforcement Training Center in Georgia dated May 5, 1981. Appellant underwent an audiogram performed by an audiologist on July 15, 2016. The audiogram noted appellant had right ear surgery in 2002.

In an undated statement appellant noted his employment history and advised that he did not have hazardous noise exposure before 2003. From December 1, 2003 to the present he worked as a border patrol agent and used several different service weapons including a 40-caliber hand gun, M-4 carbine, and shot guns. Appellant noted qualifying with these weapons for five to six hours every month in an outdoor range. He indicated that hearing protection was provided in the form of earmuffs and goggles. Appellant noted being exposed to loud noise from ATV's, air operations (usually helicopters), air plane engines, bus engines, cell doors, sirens, and loud service radio noises. He indicated that hearing protection was not provided in any of these situations. Appellant noted being issued and using an earpiece which was attached to his handheld portable radio. While in the field he inserted the earpiece into his ear an average of six to eight hours per workday. Appellant indicated that the volume of the radios were constantly being raised and lowered due to the signal strength transmission sent out over the radios. He noted having right ear surgery in June 2002. Appellant advised that he did not have any hobbies involving loud noise. He noted that the last time he was exposed to hazardous noise was August 29, 2016 while working along ATV's and helicopters. Appellant

first noticed hearing loss a couple of years earlier when he would have to increase the volume of the television, and in conversations he would have to ask people to repeat themselves.

In a September 27, 2016 statement of accepted facts (SOAF), OWCP noted appellant's noise exposure history at work as well as his right ear surgery in 2002. It noted that appellant continued to be exposed to loud noises on a daily basis.

On September 28, 2016 OWCP referred appellant, together with the SOAF, to Dr. Charles P. Theivagt, a Board-certified otolaryngologist, for an otologic examination and an audiological evaluation. In an October 25, 2016 report, Dr. Theivagt noted examining appellant on October 25, 2016 and referenced appellant's exposure to workplace noise. He noted appellant complained of tinnitus. Dr. Theivagt advised appellant's history was significant for a right ear tympanic membrane perforation in 2002. Examination of the ears revealed normal canals and drums, normal drum motility, left external auditory canal was clear, tympanic membrane intact, well-aerated middle ear, right external auditory canal clear, tympanic membrane intact, and well-aerated middle ear. Dr. Theivagt diagnosed bilateral high frequency mild-to-moderate sensorineural hearing loss. He noted that appellant's sensorineural hearing loss was in excess of what would normally be predicated on the basis of presbycusis and opined that appellant's hearing loss was at least in part due to his workplace noise exposure. Dr. Theivagt noted the appellant's hearing loss pattern was consistent with noise exposure. He recommended ear protection in noisy environments and binaural hearing aids.

Audiometric testing was performed for Dr. Theivagt on October 25, 2016. Testing at the frequency levels of 500, 1,000, 2,000, and 3,000 cycles per second revealed the following: right ear 10, 20, 20, and 35 decibels; left ear 15, 20, 20, and 25 decibels. Dr. Theivagt opined that appellant had zero percent monaural permanent impairment in the left ear and zero percent monaural permanent impairment in the right ear.

On December 15, 2016 OWCP accepted appellant's claim for bilateral sensorineural hearing loss due to noise exposure. It also informed appellant how to proceed to obtain hearing aids.

On February 24, 2017 appellant filed a claim for a schedule award (Form CA-7).

On March 8, 2017 an OWCP medical adviser reviewed Dr. Theivagt's report and the audiometric test of October 25, 2016. He concluded that, in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (A.M.A., *Guides*),<sup>2</sup> appellant had zero percent monaural hearing loss in each ear and zero percent binaural hearing loss. The medical adviser determined that appellant's hearing loss was not severe enough to be ratable for a schedule award after applying OWCP's standards for evaluating hearing loss to the results of the October 25, 2016 audiogram. He noted that appellant reached maximum medical improvement on October 25, 2016. The medical adviser recommended yearly audiograms, noise protection for his ears, and authorization for hearing aids.

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<sup>2</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

By decision dated May 18, 2017, OWCP found that although appellant's hearing loss was employment related it was not severe enough to be considered ratable for purposes of a schedule award.

### **LEGAL PRECEDENT**

The schedule award provisions of FECA<sup>3</sup> and its implementing regulation<sup>4</sup> 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. However, FECA does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates 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 as the appropriate standard for evaluating schedule losses.<sup>5</sup>

OWCP evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup> The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.<sup>9</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 binaural hearing loss.<sup>10</sup> The Board has concurred in OWCP's adoption of this standard for evaluating hearing loss.<sup>11</sup>

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed to OWCP's medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the medical adviser

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<sup>3</sup> 5 U.S.C. § 8107.

<sup>4</sup> 20 C.F.R. § 10.404 (1999).

<sup>5</sup> *Id.* See also *Jacqueline S. Harris*, 54 ECAB 139 (2002).

<sup>6</sup> A.M.A., *Guides* 250 (6<sup>th</sup> ed. 2009).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

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

<sup>10</sup> *Id.*

<sup>11</sup> *Donald E. Stockstad*, 53 ECAB 301 (2002), *petition for recon. granted (modifying prior decision)*, Docket No. 01-1570 (issued August 13, 2002).

providing rationale for the percentage of impairment specified.<sup>12</sup> OWCP may follow the advice of its medical adviser or consultant whether he or she has properly utilized the A.M.A., *Guides*.<sup>13</sup>

### ANALYSIS

OWCP accepted that appellant sustained bilateral sensorineural hearing loss due to noise exposure from his federal employment. The issue is whether he has established ratable permanent impairment in accordance with the A.M.A., *Guides*, thereby warranting a schedule award. The Board finds that the evidence of record does not establish that appellant has ratable permanent impairment due to his accepted bilateral hearing loss. The October 25, 2016 audiogram results did not demonstrate ratable values in accordance with the sixth edition of the A.M.A., *Guides*.

OWCP properly referred appellant to Dr. Theivagt for an examination relative to his hearing loss. Dr. Theivagt's October 25, 2016 examination found that appellant's bilateral sensorineural hearing loss was due to his workplace noise exposure. On March 8, 2017 an OWCP medical adviser reviewed Dr. Theivagt's report and found that the hearing loss was not ratable for schedule award purposes. He applied the standardized procedures to the October 25, 2016 audiogram performed for Dr. Theivagt to determine if appellant's hearing loss was ratable for schedule award purposes.

Testing for the right ear at the frequency levels of 500, 1,000, 2,000, and 3,000 cycles per second revealed decibels losses of 10, 20, 20, and 35, respectively. These decibels were totaled at 85 and were divided by 4 to obtain an average hearing loss at those cycles of 21.25 decibels. The average of 21.25 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal zero percent hearing loss for the right ear.

Testing for the left ear at the frequency levels of 500, 1,000, 2,000, and 3,000 cycles per second revealed decibels losses of 15, 20, 20, and 25 respectively. These decibels were totaled at 80 and were divided by four to obtain the average hearing loss at those cycles of 20 decibels. The average of 20 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to zero which was multiplied by the established factor of 1.5 to compute zero percent hearing loss for the left ear. Thus, OWCP's medical adviser concluded that appellant does not have a permanent impairment.

The Board finds that OWCP's medical adviser applied the proper standards to the October 25, 2016 audiogram, finding zero percent binaural hearing loss.<sup>14</sup> Appellant has not submitted a medical report establishing a percentage of hearing loss which would refute the opinion of the medical adviser. Although he has an employment-related hearing loss, it is not

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<sup>12</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(f) (February 2013).

<sup>13</sup> See *Ronald J. Pavlik*, 33 ECAB 1596 (1982).

<sup>14</sup> 5 U.S.C. § 8107; 20 C.F.R. § 10.404.

significant enough to be ratable for schedule award purposes.<sup>15</sup> Appellant has, therefore, failed to meet his burden of proof to establish permanent, ratable hearing loss warranting a schedule award.

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 ratable hearing loss, warranting a schedule award.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 18, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 9, 2018  
Washington, DC

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

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

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

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<sup>15</sup> See *E.D.*, Docket No. 11-174 (issued July 26, 2011).