



employment duties. He noted that he first became aware of his claimed condition on March 9, 2003, but did not realize the relationship to factors of his federal employment until August 16, 2016. Appellant did not stop work and continued to be exposed to noise.

Appellant submitted a detailed statement of his employment history dated May 15, 2017 in which he indicated that he had been exposed to loud noise while employed as a secret service agent with the Department of the Treasury from 1995 to 2003 and as a criminal investigator with the employing establishment from 2003 to 2017. He also identified exposure to high noise pollution and toxic levels of environmental noise pollution during his temporary assignment to Beijing, China from 2009 to 2012. Appellant also submitted an August 16, 2016 audiogram report.

In a June 15, 2017 statement of accepted facts (SOAF), OWCP accepted that appellant worked from 1995 to 2003 for the Department of the Treasury as a secret service agent and from 2003 to 2017 with the employing establishment as a criminal investigator. It also accepted that he had been exposed to high noise pollution and toxic levels of environmental noise pollution during his temporary assignment to Beijing, China from 2009 to 2012.

On September 26 and October 5 and 24, 2017 OWCP referred appellant, together with the SOAF, to Dr. Jerome Kosoy, a Board-certified otolaryngologist, for a second opinion otologic evaluation regarding the nature, extent, and relationship of appellant's hearing loss to his federal employment. It also referred him to Anna McCraney, Au.D, ABA, for an audiological examination.

In a November 9, 2017 report, Dr. Kosoy reviewed the SOAF and found that appellant's employment-related noise exposure was sufficient to have caused his hearing loss. He diagnosed binaural noise-induced sensorineural hearing loss. Dr. Kosoy opined that this hearing loss was due to noise exposure encountered in appellant's federal employment. Audiometric testing was performed for Dr. Kosoy by Ms. McCraney on November 9, 2017. Testing at the frequencies of 500, 1,000, 2,000, and 3,000 cycles per second revealed the following: right ear 15, 10, 5, and 25 decibels; left ear 15, 10, 10, and 20 decibels. Dr. Kosoy determined that appellant had no ratable hearing impairment and listed November 9, 2018 as the date of maximum medical improvement.

On January 9, 2018 OWCP accepted appellant's claim for binaural sensorineural hearing loss due to his employment-related hearing exposure.

On January 24, 2018 an OWCP district medical advisor (DMA) reviewed Dr. Kosoy's report and the audiometric test of November 9, 2017. He concluded that, in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*,<sup>2</sup> (A.M.A., *Guides*), appellant had zero percent monaural hearing loss in each ear and zero percent binaural hearing loss. The DMA determined that appellant's hearing loss was not sufficiently severe to be ratable for schedule award purposes after applying OWCP's standards for evaluating hearing loss to the results of the November 9, 2017 audiogram. He recommended yearly audiograms, hearing aids, and noise protection for appellant's ears.

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

By decision dated February 22, 2018, OWCP found that although appellant's hearing loss was employment related it was insufficient to be considered ratable for purposes of a schedule award.

### **LEGAL PRECEDENT**

The schedule award provisions of FECA<sup>3</sup> and its implementing federal regulations<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 for all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.<sup>5</sup> As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.<sup>6</sup>

OWCP evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.<sup>7</sup> Using the frequencies of 500, 1,000, 2,000, and 3,000 hertz, the losses at each frequency are added up and averaged. Then, the fence of 25 decibels is deducted because, as the A.M.A., *Guides* point out, losses below 25 decibels result in no impairment in the ability to hear everyday speech under everyday conditions. The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss. 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 binaural hearing loss. The Board has concurred in OWCP's adoption of this standard for evaluating hearing loss.<sup>8</sup>

### **ANALYSIS**

The Board finds that appellant has not met his burden of proof to establish ratable hearing loss, warranting a schedule award.

Appellant submitted an August 16, 2016 audiogram from an audiologist. However, this audiogram does not constitute probative medical evidence of hearing loss because it was not certified by a physician as being accurate. The Board has held that, if an audiogram is prepared

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<sup>3</sup> 5 U.S.C. § 8107.

<sup>4</sup> 20 C.F.R. § 10.404.

<sup>5</sup> *Id.* at § 10.404(a).

<sup>6</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5(a) (March 2017); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

<sup>7</sup> A.M.A., *Guides* 250 (6<sup>th</sup> ed. 2009).

<sup>8</sup> *See J.H.*, Docket No. 08-2432 (issued June 15, 2009); *J.B.*, Docket No. 08-1735 (issued January 27, 2009).

by an audiologist, it must be certified by a physician as being accurate before it can be used to determine the percentage of hearing loss.<sup>9</sup>

OWCP properly referred appellant to Dr. Kosoy for a second opinion examination relative to his hearing loss. Dr. Kosoy's November 9, 2017 report related appellant's audiogram findings and also concluded that appellant's binaural hearing loss was due to his workplace noise exposure. He determined that appellant had no ratable hearing impairment.

On January 24, 2018 the DMA reviewed Dr. Kosoy's report and concurred that appellant's employment-related hearing loss was not 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 decibel losses of 15, 10, 5, and 25, respectively. These decibels were totaled at 55 and were divided by 4 to obtain an average hearing loss at those cycles of 13.75 decibels. The average of 13.75 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 decibel losses of 15, 10, 10, and 20, respectively. These decibels were similarly totaled at 55 and were divided by 4 to obtain the average hearing loss at those cycles of 13.75 decibels and then reduced by 25 decibels to compute 0 percent hearing loss for the left ear. Thus, the DMA concluded that appellant did not have permanent impairment of his hearing warranting a schedule award. Although he has accepted employment-related hearing loss, it is not sufficiently severe to be ratable for schedule award purposes.<sup>10</sup>

Regarding appellant's claim that he is entitled to a schedule award for tinnitus, the A.M.A., *Guides* provides that tinnitus is not a disease, but rather a symptom that may be the result of disease or injury.<sup>11</sup> The A.M.A., *Guides* notes that, if tinnitus interferes with the 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>12</sup> For the reasons explained above, appellant has not established a measurable binaural hearing impairment under the A.M.A., *Guides* and therefore he would not be entitled to receive schedule award compensation for his tinnitus.<sup>13</sup>

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.

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<sup>9</sup> See *Joshua A. Holmes*, 42 ECAB 231, 236 (1990); *J.O.*, Docket No. 17-1618 (issued June 14, 2018).

<sup>10</sup> *W.T.*, Docket No. 17-1723 (issued March 20, 2018); *E.D.*, Docket No. 11-174 (issued July 26, 2011).

<sup>11</sup> See A.M.A., *Guides* 249.

<sup>12</sup> *Id.* See also *Robert E. Cullison*, 55 ECAB 570 (2004).

<sup>13</sup> See *J.O.*, *supra* note 9.

**CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish ratable hearing loss, warranting a schedule award.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated February 22, 2018 is affirmed.

Issued: November 20, 2018  
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