



allegedly occurred at both firearms and explosives ranges. Appellant stated that on three occasions firearms were fired at ranges when he did not have hearing protection in place. He also reported unprotected exposure during the detonation of explosives. Appellant identified October 26, 1993 as the date he first became aware of his condition, and it was not until August 30, 2016 that he first realized his condition was caused or aggravated by his federal employment. The employing establishment indicated that appellant was last exposed to the alleged conditions on August 25, 2016.

OWCP received the results of various audiograms administered between October 26, 1993 and June 18, 2012, as well as a November 23, 2004 letter from the employing establishment advising appellant that based on a recent examination he had not satisfied the hearing standard for his then-position as a special agent.

After further development of the record regarding appellant's occupational noise exposure, OWCP prepared a statement of accepted facts (SOAF) and referred him for a second opinion examination.

In a January 30, 2017 report, Dr. Barry C. Baron, a Board-certified otolaryngologist and OWCP referral physician, noted appellant's history of noise exposure during his federal employment. He also examined appellant, obtained a current audiogram, and reviewed the results of appellant's previous audiograms dating back to 1993. Dr. Baron advised that the ear canals and tympanic membranes were clear. He noted that the latest audiometric testing (January 30, 2017) revealed a bilateral symmetrical high frequency sensorineural hearing loss, especially at 40 and 50 Hertz (Hz). Dr. Baron also reported that speech reception thresholds were 10 decibels bilaterally. He diagnosed high frequency sensorineural hearing loss of both ears and mild tinnitus. Dr. Baron attributed 90 percent of appellant's hearing loss to industrial causes, and the remaining 10 percent to nonindustrial causes. Lastly, he noted there was no medical or surgical treatment for sensorineural hearing loss and tinnitus, and that appellant did not currently require hearing aids.

By decision dated March 2, 2017, OWCP accepted appellant's claim for bilateral sensorineural hearing loss and bilateral tinnitus. It also provided appellant information on filing a claim for a schedule award and/or wage-loss compensation (Form CA-7).

On March 7, 2017 appellant filed a Form CA-7 requesting a schedule award.

OWCP prepared an amended SOAF dated April 14, 2017, and forwarded the case, including Dr. Baron's January 30, 2017 second opinion evaluation and audiogram, to its district medical adviser (DMA) for an assessment of whether appellant had any permanent functional loss of hearing.

In a May 1, 2017 report, Dr. Charles R. Pettit, a Board-certified otolaryngologist and DMA, reviewed the otologic and audiologic testing performed by Dr. Baron and applied OWCP's standardized procedures to his evaluation. The DMA determined that maximum medical improvement was achieved on January 30, 2017. He utilized the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6<sup>th</sup> ed. 2009) (A.M.A., *Guides*) and determined that appellant had zero percent binaural hearing loss because appellant's hearing was

in the “near-normal range.”<sup>2</sup> The DMA also explained that he did not allow any disability/loss for tinnitus because appellant’s tinnitus appeared to be “light” in severity, episodic, and did not appear to significantly affect his daily activity. Lastly, the DMA noted that hearing aids were not indicated.

By decision dated May 10, 2017, OWCP explained that while the claim had been accepted for employment-related hearing loss, based on the most recent audiogram (January 30, 2017) appellant did not have a permanent functional hearing loss, and thus, he was not entitled to a schedule award. It noted the DMA’s comment that, as appellant’s hearing was in the “near-normal range,” his percentage of hearing loss “would be zero.”

### **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>3</sup> FECA, 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>4</sup> Effective May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (2009).<sup>5</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>6</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>7</sup> The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.<sup>8</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

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<sup>2</sup> Testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second (cps) revealed decibel losses of 10, 0, 5 and 50 respectively. Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 10, 5, 10 and 45 respectively.

<sup>3</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.*

<sup>4</sup> 20 C.F.R. § 10.404.

<sup>5</sup> See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6a (February 2013).

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

<sup>7</sup> *Id.* at 250.

<sup>8</sup> *Id.* at 250-51.

added to the greater loss and the total is divided by six to arrive at the amount of the binaural hearing loss.<sup>9</sup>

### ANALYSIS

The Board finds that the evidence of record is insufficient to establish that appellant is entitled to a schedule award for his hearing loss in accordance with the sixth edition of the A.M.A., *Guides*.

On May 1, 2017 the DMA reviewed the otologic and audiologic testing performed on appellant by the second opinion physician, Dr. Baron, a Board-certified otolaryngologist, and properly applied OWCP's standardized procedures to this evaluation. Testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 Hz revealed decibel losses of 10, 0, 5 and 50 respectively. These decibel losses were totaled at 65 decibels and were divided by 4 to obtain the average hearing loss of 16.25 decibels. This average loss was then reduced by 25 decibels, "the fence," to equal a negative figure, or zero (0) percent right monaural loss. Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 Hz revealed decibel losses of 10, 5, 10 and 45 respectively. These decibel losses total 70 decibels and when divided by 4 result in an average hearing loss of 17.5 decibels. This average loss when reduced by 25 decibels equals a negative figure, or zero (0) percent left monaural loss. The DMA properly concluded that the calculations showed that appellant did not have ratable hearing loss under the relevant standards of the A.M.A., *Guides*.

The Board finds that there is no current medical evidence of record supporting that appellant has ratable hearing loss under OWCP's standardized procedures for rating hearing impairment.<sup>10</sup> Although appellant has employment-related hearing loss, it is not sufficiently severe to be ratable for schedule award purposes.<sup>11</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 or increased impairment.

### CONCLUSION

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

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<sup>9</sup> *Id.* at 251.

<sup>10</sup> Although the record includes the results of audiograms administered during the period October 1993 through June 2012, these results do not satisfy OWCP's quality standards. See *J.H.*, 59 ECAB 377, 380 (2008). If an audiogram is prepared 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. See *Joshua A. Holmes*, 42 ECAB 231, 236 (1990).

<sup>11</sup> *L.H.*, Docket No. 17-1957 (issued June 13, 2018); *W.T.*, Docket No. 17-1723 (issued March 20, 2018).

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 10, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 10, 2018  
Washington, DC

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

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

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