

federal employment duties including repetitively using pneumatic grinders, rivet guns, drills, chisels, impact guns, grit blast booths with blowers and vacuums, and sanding booths with blowers and vacuums. He noted that he first became aware of his condition, and its relationship to factors of his federal employment, on July 18, 2018.

In a development letter dated August 22, 2018, OWCP advised appellant that the evidence submitted was insufficient to establish his claim. It informed him of the type of evidence needed to establish his claim and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence.

In a separate development letter dated November 27, 2018, OWCP notified the employing establishment of appellant's occupational disease claim. It requested additional information regarding his exposure to noise due to factors of his federal employment. OWCP also afforded the employing establishment 30 days to submit the requested information.

The employing establishment responded in a November 27, 2018 letter concurring with appellant's description of his employment duties and noise exposures.

On December 6, 2018 OWCP referred appellant, along with a statement of accepted facts (SOAF) and medical history, for audiometric testing with Dr. Kenneth Walker, a Board-certified otolaryngologist serving as a second opinion physician, regarding the nature, extent, and causal relationship of his hearing loss.

In a report dated January 15, 2019, Dr. Walker noted his evaluation of appellant's hearing loss. Audiometric testing was performed on January 8, 2019. Testing at the frequencies of 500, 1,000, 2,000, and 3,000 Hertz (Hz) revealed losses at 5, 15, 20, and 25 decibels (dBs) for the right ear, respectively; and 10, 15, 25, and 35 dBs for the left ear, respectively. Dr. Walker noted normal-to-moderate noise-induced bilateral sensorineural hearing loss with excellent speech discrimination. He recommended annual audiograms, ear protection, and hearing aid evaluations. Dr. Walker diagnosed bilateral noise effects on inner ear and bilateral tinnitus, and opined that these conditions were caused by the noise exposure in appellant's workplace.

On January 24, 2019 OWCP accepted appellant's claim for binaural sensorineural hearing loss and tinnitus. It noted that the medical evidence of record established that he would benefit from hearing aids and advised him of the procedures for requesting authorization for hearing aids. OWCP further informed appellant that his case had been forwarded to an OWCP district medical adviser (DMA) to assess the percentage of his permanent employment-related hearing loss.

In a report dated January 29, 2019, Dr. Stephen Maturo, a Board-certified otolaryngologist serving as a DMA, indicated that he had reviewed the SOAF and medical records. He noted that an initial 2007 audiogram revealed a mild high frequency hearing loss, and annual audiograms demonstrated a slow progression of this hearing loss. An audiometry report dated November 2, 2018 showed that testing at the frequencies of 500, 1,000, 2,000, and 3,000 Hz revealed losses at 5, 15, 20, and 25 dBs for the right ear, respectively; and 10, 15, 25, and 35 dBs for the left ear, respectively. The dB losses for the right ear totaled 45 and were then divided by 4 to obtain the average hearing loss of 11.25. The losses of 10, 15, 25, and 35 dBs for the left ear totaled 85 and were divided by 4 to obtain an average hearing loss of 21.25. After subtracting the 25 dB fence,

both the right and left ear losses were reduced to zero. When multiplied by 1.5, the resulting monaural hearing loss in each ear was 0 percent. Dr. Maturo therefore found a total of 0 percent binaural hearing loss. He indicated that the audiogram dated November 2, 2018 revealed moderate hearing loss from 4,000 Hz to 8,000 Hz bilaterally, and related that appellant subjectively complained of tinnitus. Dr. Maturo concluded that appellant had zero percent hearing loss and was not entitled to a schedule award for tinnitus under the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).²

On March 12, 2019 appellant filed a claim for a schedule award (Form CA-7).

By decision dated March 21, 2019, OWCP denied appellant's schedule award claim, finding that the evidence of record was insufficient to establish that his accepted hearing loss condition was severe enough to be considered ratable.

LEGAL PRECEDENT

The schedule award provisions of FECA³ and its implementing regulations⁴ 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 sixth edition of the A.M.A., *Guides*⁵ has been adopted by OWCP for evaluating schedule losses and the Board has concurred in such adoption.⁶

OWCP evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*. Using the frequencies of 500, 1,000, 2,000, and 3,000 Hz, the losses at each frequency are added up and averaged.⁷ 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.⁸ The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.⁹ The binaural loss of hearing 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

² A.M.A., *Guides* (6th ed. 2009).

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404.

⁵ *Supra* note 2.

⁶ *V.M.*, Docket No. 18-1800 (issued April 23, 2019); *see J.W.*, Docket No. 17-1339 (issued August 21, 2018).

⁷ A.M.A., *Guides* 250.

⁸ *Id.*; *C.D.*, Docket No. 18-0251 (issued August 1, 2018).

⁹ *Id.*

binaural hearing loss.¹⁰ The Board has concurred in OWCP's adoption of this standard for evaluating hearing loss.¹¹

ANALYSIS

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

OWCP properly referred appellant to Dr. Walker for a second opinion examination to evaluate his hearing loss. In his January 15, 2019 report, he noted normal-to-moderate noise-induced bilateral sensorineural hearing loss with excellent speech discrimination. Dr. Walker recommended annual audiograms, ear protection, and hearing aid evaluations. He diagnosed bilateral noise effects on inner ear and bilateral tinnitus, and opined that these conditions were caused by the noise exposure in his workplace.

In its January 24, 2019 decision, OWCP accepted the claim for binaural sensorineural hearing loss and tinnitus and informed appellant that his case had been forwarded to OWCP's DMA to assess his percentage of permanent employment-related hearing loss.

On January 29, 2019 the DMA reviewed Dr. Walker's report and determined that appellant had zero percent monaural hearing loss in each ear. He related that testing at the frequencies of 500, 1,000, 2,000, and 3,000 Hz revealed losses at 5, 15, 20, and 25 dBs for the right ear, respectively; and 10, 15, 25, and 35 dBs for the left ear, respectively. While the DMA mistakenly added the decibel losses for the right ear to total 45, when the total was 65, the proper total when divided by 4 results in an average hearing loss of 16.25. The decibel losses for the left ear were totaled at 85 and divided by 4 to obtain an average hearing loss of 21.25. After subtracting the 25 decibel fence, both the right and left ear losses were reduced to zero. When multiplied by 1.5, the resulting monaural hearing loss in each ear was 0 percent. The Board finds that despite the DMA's mathematical error when totaling the right ear dB loss, he nonetheless properly concluded that appellant did not have ratable permanent impairment of his hearing warranting a schedule award. Although appellant has accepted employment-related hearing loss, it is not sufficiently severe to be ratable for schedule award purposes.¹²

The Board has held that, in the absence of ratable hearing loss, a schedule award for tinnitus is not allowable pursuant to the A.M.A., *Guides*.¹³ Accordingly, as appellant does not have ratable hearing loss, the Board finds that appellant is not entitled to a schedule award for tinnitus.

¹⁰ *Id.*

¹¹ *V.M.*, Docket No. 18-1800 (issued April 23, 2019).

¹² *B.E., id.; W.T.*, Docket No. 17-1723 (issued March 20, 2018); *E.D.*, Docket No. 11-0174 (issued July 26, 2011).

¹³ *Id.*

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 for schedule award purposes.

ORDER

IT IS HEREBY ORDERED THAT the March 21, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 13, 2019
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