

he became aware of his condition, and April 23, 2018 as the date when he first realized it was related to factors of his federal employment. Appellant attributed his hearing loss to exposure to jet engines, hydraulic pumps, helicopter rotor systems, and power tools while in the performance of duty.

OWCP received the results of audiograms administered by the employing establishment between May 22, 1985 and October 18, 2013. It also received April 19, 2018 audiogram results and a position description for appellant's position of an engineering technician.

In response to a May 15, 2018 OWCP development letter, G.F., the Chief of the Wind Tunnel Operations Branch, indicated in a letter dated May 24, 2018, that the employing establishment agreed that appellant was exposed to high levels of noise during the course of his career. He explained that the work sites involved high levels of noise, including that from jet engines, helicopter rotor systems, wind tunnel fan drives, motor generators, hydraulic units, high pressure air, power tools, and other machinery. G.F. estimated appellant's noise exposure to be, on average, an approximate four hours per day, two-to-three days per week. He further indicated that the employing establishment provides employees with ear protection, and that appellant would continue to be exposed to noise until his retirement on May 31, 2018. With his letter, G.F. also included appellant's Notification of Personnel Action (SF-50), Personal Qualification Statement (SF-171), and his appointment affidavits from May 28, 1985, as well as duplicate copies of the May 2004 letter and its attachments from the employing establishment's health unit.

On June 5, 2018 OWCP prepared a statement of accepted facts (SOAF), which indicated that appellant worked as an engine mechanic with the U.S. Navy between 1976 and 1980, a jet engine repairer with the Naval Air Rework Facility between 1982 and May 1985, and in his current position between May 1985 and May 31, 2018.

OWCP referred appellant for additional audiometric testing and a second opinion examination by Dr. Barry C. Baron, a Board-certified otolaryngologist. An August 23, 2018 audiogram noted losses at the frequencies of 500, 1,000, 2,000, and 3,000 Hertz (Hz). The left ear losses were recorded as 5, 0, 5, and 40 decibels (dBs); the right ear losses were recorded as 10, 10, 15, and 45 dBs. In his report, Dr. Baron diagnosed appellant with bilateral sensorineural hearing loss and tinnitus. He checked the box indicating his belief that these mild left ear hearing losses were due to noise exposure encountered within appellant's employment. In the audiological evaluation section of Dr. Baron's report, the monaural hearing impairment for the right ear was calculated as zero percent, and the left ear calculation was the same. As a result, he determined that appellant had zero percent binaural hearing impairment.

By decision dated September 7, 2018, OWCP accepted appellant's claim for "bilateral noise effects on the inner ear." It further advised him that the record established that he would benefit from the use of hearing aids. Lastly, OWCP indicated that appellant should file for a claim for a schedule award.

On September 10, 2018 appellant submitted a claim for a schedule award (Form CA-7).

On September 18, 2018 OWCP routed the case to its district medical adviser (DMA) to determine whether appellant had ratable employment-related hearing impairment.

In a report dated September 20, 2018, Dr. Jeffrey M. Israel, a Board-certified otolaryngologist serving as a DMA, noted that appellant had served in the Federal Government between 1982 and May 2018, first as an engine mechanic and jet engine repairer before becoming an engineering technician. He reviewed the series of audiograms dating back to May 1985, and noted the progressive sensorineural hearing loss over time. Based on the findings from the second opinion report by Dr. Baron, Dr. Israel determined that appellant did not have ratable hearing loss based on the August 23, 2018 audiogram. Specifically, he determined that the monaural hearing loss of each ear was zero percent and resulted in binaural loss of zero percent, and thus the hearing loss was not ratable under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).² Dr. Israel concluded his report by suggesting authorization for hearing aids, and that appellant undergo yearly audiograms and utilize noise protection for his ears.

By decision dated September 24, 2018, OWCP denied appellant's claim for a schedule award. It explained that under the A.M.A., *Guides*, appellant's hearing loss was not sufficiently severe to be considered ratable for purposes of a schedule award.

LEGAL PRECEDENT

Section 8107 of FECA³ 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.⁴ 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.⁵ Effective May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (2009).⁶

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 dB 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

² A.M.A., *Guides* (6th ed. 2009).

³ 5 U.S.C. § 8101 *et seq.*

⁴ 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.*

⁵ 20 C.F.R. § 10.404.

⁶ 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 2.808.5 (March 2017).

⁷ See Section 11.2, Hearing and Tinnitus, A.M.A., *Guides* 248-51 (6th ed. 2009).

⁸ *Id.* at 250.

percentage of monaural hearing loss.⁹ 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.¹⁰

ANALYSIS

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

In an August 23, 2018 report, second opinion physician Dr. Baron noted losses at the frequencies of 500, 1,000, 2,000, and 3,000 Hz. The left ear losses were recorded as 5, 0, 5, and 40 dBs and the right ear losses were recorded as 10, 10, 15, and 45 dBs. Dr. Baron found zero percent monaural hearing impairment for the right and left ears. As a result, he found zero percent binaural hearing impairment.

OWCP's DMA, Dr. Israel, on September 20, 2018, reviewed the case record, including the findings of Dr. Baron, and determined that appellant's right ear hearing loss resulted in an average loss of 20 ($80 \div 4$) dBs, and the left ear loss averaged 12.5 ($50 \div 4$) dBs. After subtracting the 25 dB fence, both the right ear and left ear losses were reduced to zero. When multiplied by 1.5, the resulting monaural loss in each ear was zero percent. Dr. Israel therefore found a total of zero percent binaural hearing loss.

The Board finds that there is no current medical evidence of record sufficient to establish ratable hearing loss under OWCP's standardized procedures for rating hearing impairment. Although appellant has an employment-related hearing loss, it is not sufficiently severe to be ratable for schedule award purposes.¹¹ As the August 23, 2018 audiogram did not demonstrate that appellant's hearing loss was ratable, he is not entitled to a schedule award.

Appellant may request a schedule award or increased schedule award at any time based on 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, warranting a schedule award.

⁹ *Id.* at 250-51.

¹⁰ *Id.* at 251.

¹¹ *See B.E.*, Docket No. 18-1785 (issued April 1, 2019); *R.S.*, Docket No. 18-1524 (issued February 5, 2019).

ORDER

IT IS HEREBY ORDERED THAT the September 24, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 10, 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