

loud noise while working on a flight line with running engines in hazardous noise areas while in the performance of duty. He indicated that he first became aware of his condition and its relation to his federal employment on January 1, 2003.

In a statement received on March 1, 2018, appellant explained that he had been exposed to aircraft noise since the start of his employment. He noted that he worked 10-hour shifts and there were times when he would spend an entire shift on the flight line with aircraft engines running on both sides of his work area.

OWCP received an April 12, 2017 medical report from Dr. Michael Clarke, an audiologist. Dr. Clarke indicated that appellant had been referred to him for a comprehensive audiologic evaluation. Appellant reported difficulty hearing the TV at times and an occasional “humming” in his ears, right more than left. Dr. Clarke diagnosed bilateral mild-high frequency sensorineural hearing loss and tinnitus.

By decision dated June 20, 2018, OWCP accepted the claim for binaural sensorineural hearing loss.

On March 14, 2018 appellant filed a claim for a schedule award (Form CA-7).

On March 28, 2018 OWCP referred appellant to Dr. William O’Connor, a Board-certified otolaryngologist, for a second opinion evaluation.

In a report dated May 9, 2018, Dr. O’Connor diagnosed bilateral, mild, very high frequency sensorineural hearing loss and tinnitus. He opined that appellant’s hearing loss was due, in part or all, to noise exposure encountered in his federal civilian employment. Dr. O’Connor obtained an audiogram at the frequency levels of 500, 1,000, 2,000, and 3,000 Hertz (Hz) revealing decibel (dB) losses in the right ear of 20, 15, 30, and 25 dBs, respectively; and dB losses in the left ear of 20, 20, 20, and 20 dBs, respectively.

In a July 24, 2018 report, Dr. Jeffrey M. Israel, a Board-certified otolaryngologist serving as a district medical adviser (DMA), noted that appellant served in the Federal Government from 1980 to 1989 and from 1998 to 2018. He indicated that, during that time, appellant had been exposed to hazardous noise. Dr. Israel reviewed the May 9, 2018 audiogram obtained by Dr. O’Connor and related that this was the only audiogram of record. He noted mild binaural hearing loss and calculated zero percent binaural hearing loss and thus concluded that 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 found that appellant had reached maximum medical improvement (MMI) as of May 9, 2018, the date of his most recent audiogram. He suggested that appellant have yearly audiograms, utilize noise protection for his ears, and that no authorization for hearing aids should be made at that time.

By decision dated August 15, 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 the purposes of a schedule award. It also informed him that he was not

² A.M.A., *Guides* (6th ed. 2009).

entitled to compensation for his tinnitus condition and that authorization for hearing aids was denied.

LEGAL PRECEDENT

The schedule award provision of FECA,³ and its implementing federal regulations,⁴ 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.⁵ As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.⁶

OWCP evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.⁷ Using the frequencies of 500, 1,000, 2,000, and 3,000 Hz, 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. 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 binaural hearing loss. The Board has concurred in OWCP's adoption of this standard for evaluating hearing loss.⁸

Regarding tinnitus, the A.M.A., *Guides* provide that tinnitus is not a disease but rather a symptom that may be the result of disease or injury.⁹ The A.M.A., *Guides* state that, if tinnitus interferes with 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.¹⁰ A schedule award for tinnitus is not payable

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404.

⁵ *Id.* at § 10.404(a).

⁶ 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).

⁷ A.M.A., *Guides* 248-51 (6th ed. 2009).

⁸ *See V.M.*, Docket No. 18-1800 (issued April 23, 2019).

⁹ A.M.A., *Guides* 249.

¹⁰ *Id.*; *V.M.*, *supra* note 8.

unless the medical evidence establishes that the condition caused or contributed to a ratable hearing loss.¹¹

ANALYSIS

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

In a May 9, 2018 report, second opinion physician Dr. O'Connor noted mild binaural high frequency hearing loss due, in part or all, to noise exposure encountered in appellant's federal civilian employment. An audiogram obtained by Dr. O'Connor at the frequency levels of 500, 1,000, 2,000, and 3,000 Hz revealed dB losses in the right ear of 20, 15, 30, and 25 dBs, respectively, and dB losses in the left ear of 20, 20, 20, and 20 dBs, respectively.

OWCP's DMA, Dr. Israel, on July 24, 2018, reviewed Dr. O'Connor's report and audiometric findings and properly applied OWCP's standardized procedures in finding that appellant had a zero percent bilateral hearing loss impairment.¹² He determined that appellant's right ear hearing loss resulted in an average loss of 22.5 ($90 \div 4$) dBs, and the left ear loss averaged 20 ($80 \div 4$) 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 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.¹³ As the August 23, 2018 audiogram did not demonstrate that appellant's hearing loss was ratable, he is not entitled to a schedule award.

The Board also notes that Dr. O'Connor diagnosed tinnitus. The A.M.A., *Guides* allows for compensation of up to 5 percent for tinnitus in the presence of measurable hearing loss, if the tinnitus impacts the ability to perform activities of daily living.¹⁴ The Board has repeatedly held, however, that there is no basis for paying a schedule award for a condition such as tinnitus unless the evidence establishes that the condition caused or contributed to a ratable hearing loss. As the medical evidence establishes that appellant's hearing loss is not ratable, the Board finds that the DMA properly determined that an additional impairment rating may not be added for tinnitus.¹⁵

¹¹ See *R.P.*, Docket No. 15-703 (issued June 1, 2015); *Charles H. Potter*, 39 ECAB 645 (1988).

¹² *Supra* note 8.

¹³ See *B.E.*, Docket No. 18-1785 (issued April 1, 2019); *R.S.*, Docket No. 18-1524 (issued February 5, 2019).

¹⁴ A.M.A., *Guides* 246; see *V.M.*, *supra* note 8.

¹⁵ *R.P.*, *supra* note 11; *Richard Larry Enders*, 48 ECAB 184 (1996).

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, warranting a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the August 15, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 11, 2019
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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