

federal employment including daily exposure to loud noise from mining equipment commencing in August 2011.² He noted that he first became aware of his condition and realized that it was caused or aggravated by factors of his federal employment when he was advised by the employing establishment on July 17, 2018 that a June 5, 2018 screening audiogram demonstrated a bilateral standard threshold shift (STS).

A June 5, 2018 employing establishment audiogram reflected testing at the frequency levels of 500, 1,000, 2,000, and 3,000 hertz (Hz) and revealed findings for the right ear of 20, 20, 20, and 20 decibels (dBs) and for the left ear 20, 20, 20, and 20 dBs. These levels indicated a bilateral STS when compared to appellant's August 5, 2011 baseline audiometric results at the same frequency levels of 15, 10, 5, and 5 dBs for the right ear and 15, 5, 10, and 0 dBs on the left.³

On February 26, 2019 OWCP referred the case record, including a statement of accepted facts (SOAF) listing appellant's noise exposure, and lists of questions to Dr. Mitchell D. Kaye, a Board-certified otolaryngologist, for a second opinion evaluation. In a March 20, 2019 report, Dr. Kaye examined appellant and administered an audiogram. The audiogram reflected testing at the frequency levels of 500, 1,000, 2,000, and 3,000 Hz and revealed findings for the right ear of 20, 20, 20, and 20 dBs and for the left ear 15, 15, 10, and 15 dBs. Dr. Kaye diagnosed a nonratable binaural hearing loss with intermittent, bilateral tinnitus. He opined that appellant's hearing loss was in excess of expected presbycusis and related it to noise exposure encountered in his federal employment. Dr. Kaye further found that, based on results of the February 20, 2019 audiogram, the impairment calculations under the American Medical Association, *Guides to the Evaluation of Permanent Impairment*⁴ (A.M.A., *Guides*) revealed a monaural loss of zero percent in each ear.⁵ He indicated that tinnitus was present and added one percent to arrive at a total permanent binaural hearing loss of one percent.

By decision dated April 23, 2019, OWCP accepted appellant's claim for binaural hearing loss.

On April 23, 2019 OWCP referred the case record, including Dr. Kaye's March 20, 2019 report and audiogram, to a district medical adviser (DMA) to determine whether appellant had a ratable hearing loss. In a May 2, 2019 report, Dr. Jeffrey M. Israel, a Board-certified otolaryngologist serving as the DMA, reviewed appellant's medical records, the SOAF, and Dr. Kaye's March 20, 2019 report and audiogram. He found that the date of maximum medical improvement was March 20, 2019 and that appellant had hearing loss of zero percent under the A.M.A., *Guides*. The DMA noted that, although Dr. Kaye had added one percent permanent impairment for tinnitus, this was contrary to the A.M.A., *Guides*, which only permitted the addition of up to five percent for tinnitus to a measurable hearing impairment, and because appellant did

² Appellant also disclosed a history of noise exposure in private sector quarrying and mining positions from May 2005 through January 2007, May to August 2007, and May 2008 through August 2011.

³ Employing establishment audiograms performed on July 1 and 21, 2015 and April 7, 2016 did not indicate an STS compared to the baseline August 5, 2011 audiogram.

⁴ A.M.A., *Guides* (6th ed. 2009).

⁵ Dr. Kaye noted that the audiometer had last been calibrated on March 13, 2019.

not have a measurable hearing impairment the addition was improper. Based upon the audiogram the total for the left ear was 55, while the total for the right ear was 80. These totals were divided by four, resulting in 13.75 for the left ear and 20 for the right ear. These averages were reduced by the 25 dBs fence, resulting in zero percent monaural loss for both ears, and zero percent binaural loss. The DMA thus concluded that appellant did not have a ratable permanent hearing loss and did not require hearing aids.

On May 9, 2019 appellant filed a claim for a schedule award (Form CA-7).

By decision dated May 14, 2019, OWCP found that appellant's hearing loss was not sufficiently severe to be considered ratable and he was therefore not entitled to schedule award compensation. It further found that he was not entitled to hearing aids or other medical benefits.

LEGAL PRECEDENT

The schedule award provisions of FECA⁶ and its implementing regulations⁷ 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 of 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 A.M.A., *Guides* has been adopted by OWCP as a standard for evaluation of schedule losses and the Board has concurred in such adoption.⁸ For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition of the A.M.A., *Guides*, published in 2009.⁹

A claimant seeking compensation under FECA has the burden of proof to establish the essential elements of his or her claim.¹⁰ With respect to a schedule award, it is the claimant's burden of proof to establish permanent impairment of a scheduled member or function of the body as a result of his or her employment injury.¹¹ The medical evidence must include a detailed description of the permanent impairment.¹²

⁶ 5 U.S.C. § 8107.

⁷ 20 C.F.R. § 10.404.

⁸ *Id.*; see also *Jacqueline S. Harris*, 54 ECAB 139 (2002).

⁹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (March 2017); see also Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

¹⁰ *C.U.*, Docket No. 18-1480 (issued February 6, 2019); *John W. Montoya*, 54 ECAB 306 (2003).

¹¹ *D.S.*, Docket No. 19-0292 (issued June 21, 2019); *Edward Spohr*, 54 ECAB 806, 810 (2003); *Tammy L. Meehan*, 53 ECAB 229 (2001).

¹² See *Vanessa Young*, 55 ECAB 575 (2004).

OWCP evaluates occupational hearing loss in accordance with the standards contained in the A.M.A., *Guides*.¹³ 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 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.¹⁴ The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.¹⁵ The binaural loss is determined by calculating the loss in each ear using the formula for monaural loss and 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 binaural hearing loss.¹⁶ The Board has concurred in OWCP's adoption of this standard for evaluating hearing loss.¹⁷

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.¹⁸

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed to a DMA for an opinion concerning the nature and percentage of permanent impairment in accordance with the A.M.A., *Guides*, with the DMA providing rationale for the percentage of impairment specified.¹⁹

ANALYSIS

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

In a March 20, 2019 report, second opinion physician Dr. Kaye noted binaural hearing loss with intermittent bilateral tinnitus due to noise exposure encountered in appellant's federal employment. An audiogram he obtained at the frequency levels of 500, 1,000, 2,000, and 3,000 Hz, respectively revealed dB losses in the right ear of 20, 20, 20, and 20 dBs, respectively, and for the left ear of 15, 15, 10, and 15 dBs, respectively.

OWCP's DMA, Dr. Israel, on May 2, 2019, reviewed Dr. Kaye's report and audiometric findings and properly applied OWCP's standardized procedures in finding that appellant had zero

¹³ *T.O.*, Docket No. 18-0659 (issued August 8, 2019); *R.D.*, 59 ECAB 127 (2007); *Bernard Babcock, Jr.*, 52 ECAB 143 (2000); *see also* 20 C.F.R. § 10.404.

¹⁴ *See* A.M.A., *Guides* 250 (6th ed. 2009).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *E.S.*, 59 ECAB 249 (2007); *Reynaldo R. Lichtenberger*, 52 ECAB 462 (2001).

¹⁸ A.M.A., *Guides* 249; *G.G.*, Docket No. 18-0373 (issued September 25, 2019); *see also R.H.*, Docket No. 10-2139 (issued July 13, 2011).

¹⁹ *Supra* note 9 at Chapter 2.808.6f (March 2017).

percent binaural hearing loss. He totaled the dB losses to equal 55 on the left and 80 on the right. These values, when divided by four, resulted in average hearing loss of 13.75 on the left and 20 on the right, which when reduced by the 25 dBs fence, resulted in zero percent loss.

The Board finds that, as the March 20, 2019 audiogram did not demonstrate that appellant's hearing loss was ratable, he is not entitled to a schedule award for his accepted hearing loss condition. While Dr. Kaye noted that he had tinnitus and added one percent to his impairment rating based on his observation, the DMA correctly explained that tinnitus may not be added to an impairment rating for hearing loss under the sixth edition of the A.M.A., *Guides* unless such hearing loss is ratable.²⁰

On appeal, appellant contends that the accepted binaural hearing loss makes it difficult to hear conversations and interferes with other activities of daily living. As explained above, he has not established that the accepted hearing loss is ratable for schedule award purposes.

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 permanent impairment.

CONCLUSION

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

²⁰ *G.G.*, *supra* note 18; *see W.G.*, Docket No. 17-1090 (issued March 12, 2018); *Juan A. Trevino*, 54 ECAB 358, 360 (2003).

ORDER

IT IS HEREBY ORDERED THAT the May 14, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 3, 2020
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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