



## **ISSUE**

The issue is whether appellant has met his burden of proof to establish ratable hearing loss for schedule award purposes.

## **FACTUAL HISTORY**

On May 1, 2019 appellant, then a 59-year-old sheet metal mechanic supervisor, filed an occupational disease claim (Form CA-2) alleging that he developed bilateral hearing loss due to factors of his federal employment. He indicated that he first became aware of his hearing loss and its relationship to his federal employment on July 10, 2005, and he noted that it had only recently come to his attention that he could file a claim for hearing loss. On the reverse side of the claim form, the employing establishment indicated that appellant was last exposed to the conditions alleged to have caused his hearing loss on March 30, 2019.

A March 8, 2019 report by Dr. Mavis Garrett, an audiologist, indicated that appellant experienced moderate binaural hearing loss.

In a March 28, 2019 response to a hearing loss development letter and questionnaire, appellant indicated that from January 1986 to January 2009 he was exposed to noise at work from various pneumatics tools, grinding, sanding, hammering, drilling, sandblasting, and machinery for an average of 40 hours per week and was provided with earplugs. From January 2009 to April 2016, he was exposed to noise at work from the same sources for an average of 35 hours per week and was provided with earplugs. From April 2016 to the present, appellant was exposed to noise at work from the same sources for 10 hours a week and was provided with protection in the form of earplugs. He also indicated that from October 1984 to October 1985 he was a private-sector maintenance worker and was exposed to noise at work from a lawnmower for six hours per day.

In a May 2, 2019 development letter, OWCP informed appellant that the evidence of record was insufficient to establish his claim. It advised him of the type of medical evidence needed and indicated that it was scheduling a second opinion examination for him to address this deficiency.

In a May 2, 2019 development letter to the employing establishment, OWCP requested that it review appellant's claim and provide comments from a knowledgeable supervisor regarding appellant's employment-related exposure to noise.

An August 1, 2011 letter from the employing establishment's occupational audiologist indicated that appellant had a significant threshold shift in his hearing that was most likely permanent, as there was a change in his hearing when compared with his reference audiogram. A June 15, 2017 letter from the employing establishment's audiology division indicated that appellant's recent hearing tests demonstrated that he had a permanent threshold shift (PTS) that may or may not be work related, as there was a change in his hearing in comparison to his reference audiogram.

A May 3, 2019 memorandum by the employing establishment indicated that appellant was routinely exposed to noise at work and his statements regarding his employment history were accurate.

OWCP received the results from audiograms performed by the employing establishment as part of a hearing conservation program dated from September 23, 1985 through May 29, 2019.

A May 29, 2019 report from Dr. Erica Wenner, an employing establishment audiologist, indicated that appellant had mild-to-moderate sensorineural hearing loss of three to eight kilohertz in both ears. In a letter dated June 14, 2019, Dr. Wenner compared appellant's most recent audiogram dated May 29, 2019 with his earliest audiogram dated September 23, 1985 and indicated that his most recent audiometric thresholds showed a hearing loss in the left ear that is in excess of what would normally be predicted on the basis of presbycusis, and that in her opinion appellant's hearing loss was just as likely as not to have been caused, aggravated, precipitated, or accelerated by noise exposure encountered during his employment.

On June 21, 2019 OWCP referred appellant, along with a statement of accepted facts (SOAF) and the medical record, to Dr. Charles Beasley, a Board-certified otolaryngologist, for a second opinion evaluation.

In a report dated July 22, 2019, Dr. Beasley noted that he had performed a physical examination and reviewed appellant's medical records and SOAF, and he noted that there was no significant variation in the SOAF. He reviewed an audiogram conducted by an audiologist on the same date, which he found demonstrated losses of 15, 30, 15 and 35 decibels (dBs) on the right and 10, 25, 20, and 50 dBs on the left at 500, 1,000, 2,000, and 3,000 Hertz (Hz), respectively. Utilizing the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),<sup>4</sup> Dr. Beasley calculated appellant's total monaural hearing loss for his right ear by adding his right ear dB losses to a total of 95 and then dividing by 4 to obtain the average hearing loss of 23.75 dBs. This average loss was then reduced by 25 dBs to equal -1.25, which was multiplied by the established factor of 1.5 to compute a -1.875 percent monaural hearing loss in the right ear. Dr. Beasley calculated appellant's total monaural hearing loss for his left ear by adding his left ear dB losses to a total of 105 and then dividing by 4 to obtain the average hearing loss of 26.25 dBs. This average loss was then reduced by 25 dBs to equal 1.25, which was multiplied by the established factor of 1.5 to compute a 1.875 percent monaural hearing loss in the left ear.<sup>5</sup> Dr. Beasley did not calculate appellant's binaural hearing loss percentage. He diagnosed binaural sensorineural hearing loss and opined that compared to the audiometric findings at the beginning of appellant's noise exposure from federal employment, which indicated that he had normal hearing at that time, he displayed sensorineural loss in excess of what would be normally predicated on the basis of presbycusis. Dr. Beasley opined that appellant's sensorineural hearing loss was due to his noise exposure encountered in his federal employment, and he recommended noise protection, a hearing aid evaluation, and an annual audiogram.

By decision dated September 5, 2019, OWCP accepted appellant's claim for binaural sensorineural hearing loss.

On September 5, 2019 OWCP referred appellant's medical records and SOAF to Dr. Jeffrey M. Israel, a Board-certified otolaryngologist serving as a district medical adviser

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<sup>4</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

<sup>5</sup> The Board notes that Dr. Beasley transposed the decibel losses for the right and left ear from the audiogram in his calculation of the percentage of hearing loss.

(DMA), for calculation of appellant's percentage of permanent hearing impairment and assignment of the date of maximum medical improvement (MMI).

On September 11, 2019 appellant filed a claim for a schedule award (Form CA-7).

In a September 12, 2019 report, Dr. Israel indicated that he reviewed appellant's SOAF and medical records, including Dr. Beasley's July 22, 2019 report. He determined that appellant had reached MMI on July 22, 2019 because it was the date of the audiogram which was used by Dr. Beasley to calculate his hearing impairment and was his most recent audiogram. Dr. Israel reviewed appellant's July 22, 2019 audiogram and found demonstrated 0 percent monaural hearing loss in the right ear and 1.875 percent monaural hearing loss in the left ear. He indicated that he agreed with Dr. Beasley's calculations of appellant's monaural hearing loss in both ears. Dr. Israel then calculated appellant's binaural hearing loss. He multiplied 0, the smaller percentage of hearing loss sustained by the right ear, by 5 and then added 1.88, the larger percentage of hearing loss sustained by the left ear. Dr. Israel then divided by six to compute 0.3 percent binaural hearing loss, which he rounded to 0 percent. He recommended that appellant have yearly audiograms, noise protection, and hearing aids.

By decision dated October 9, 2019, OWCP denied appellant's schedule award claim finding that his hearing loss was not sufficiently severe to demonstrate a ratable impairment, and he was therefore not entitled to schedule award compensation.

### **LEGAL PRECEDENT**

The schedule award provisions of FECA<sup>6</sup> and its implementing regulations<sup>7</sup> 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.<sup>8</sup> As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.<sup>9</sup>

A claimant seeking compensation under FECA has the burden of proof to establish the essential elements of his or her claim.<sup>10</sup> 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.<sup>11</sup> A claimant may seek an increased schedule award

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<sup>6</sup> 5 U.S.C. § 8107.

<sup>7</sup> 20 C.F.R. § 10.404.

<sup>8</sup> *Id.* at § 10.404(a).

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

<sup>10</sup> *B.B.*, Docket No. 19-1491 (issued February 3, 2020); *John W. Montoya*, 54 ECAB 306 (2003).

<sup>11</sup> *R.R.*, Docket No. 19-0750 (issued November 15, 2019); *Edward Spohr*, 54 ECAB 806, 810 (2003); *Tammy L. Meehan*, 53 ECAB 229 (2001).

if the evidence establishes that he or she sustained an increased impairment causally related to an employment injury.<sup>12</sup> The medical evidence must include a detailed description of the permanent impairment.<sup>13</sup>

OWCP evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.<sup>14</sup> 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* point out, losses below 25 dBs 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.<sup>15</sup>

It is well established that, if calculations based on the monaural hearing loss would result in greater compensation than calculations for binaural loss, then the monaural hearing loss calculations should be used.<sup>16</sup>

### ANALYSIS

The Board finds that appellant has established two percent left-sided monaural hearing loss.

OWCP referred appellant to Dr. Beasley for a second opinion examination to evaluate his hearing loss. In his July 22, 2019 report, Dr. Beasley reviewed an audiogram conducted on the same date which he stated demonstrated losses of 10, 25, 20, and 50 decibels (dBs) on the left and 15, 30, 15, and 35 dBs on the right at 500, 1,000, 2,000, and 3,000 Hertz (Hz), respectively. He conducted a physical examination and determined that appellant sustained work-related binaural hearing loss. Dr. Beasley transposed appellant's right and left ear decibel losses, but recognizing this error, the Board finds that he calculated his total monaural hearing loss for his right ear of zero percent hearing loss. He calculated appellant's total monaural hearing loss for his left ear by adding his left ear dB losses to a total of 105 and then divided by 4 to obtain the average hearing loss of 26.25 dBs. This average loss was then reduced by 25 dBs to equal 1.25, which was multiplied by the established factor of 1.5 to compute 1.875 percent hearing loss in the left ear.

In a September 12, 2019 report, OWCP's DMA Dr. Israel indicated that he reviewed the July 22, 2019 report by Dr. Beasley and he determined that appellant's date of MMI was July 22, 2019. He reviewed appellant's July 22, 2019 audiogram and concurred with Dr. Beasley's monaural hearing loss calculations, of zero percent right monaural loss and 1.85 percent left

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<sup>12</sup> *B.B.*, *supra* note 10; *Rose V. Ford*, 55 ECAB 449 (2004).

<sup>13</sup> *B.B.*, *supra* note 10; *Vanessa Young*, 55 ECAB 575 (2004).

<sup>14</sup> A.M.A., *Guides* 250.

<sup>15</sup> *J.E.*, Docket No. 19-1325 (issued December 13, 2019); *E.C.*, Docket No. 19-1007 (issued November 8, 2019).

<sup>16</sup> *B.B.*, Docket No. 16-0512 (issued May 17, 2016); *Reynoldo R. Lichtenberger*, 52 ECAB 462 (2001).

monaural loss. Dr. Israel then multiplied 0, the smaller percentage of hearing loss sustained by the right ear, by 5 and then added 1.88, the larger percentage of hearing loss sustained by the left ear. He then divided by six to compute a 0.3 binaural percent hearing loss, which he rounded down to 0 percent.

While section 8107(c)(13) provides separate calculations for loss of hearing in one ear and for loss of hearing in both,<sup>17</sup> as noted above, if calculations based on the monaural hearing loss would result in greater compensation than calculations for binaural loss, then the monaural hearing loss calculations should be used.<sup>18</sup> Herein, appellant's rating is greater under the procedures used for calculating monaural hearing loss and therefore the Board finds that he has established left-sided monaural hearing loss. FECA provides that a claimant is entitled to 52 weeks of compensation for 100 percent loss of hearing in one ear and 200 weeks compensation for 100 percent hearing loss in both ears.<sup>19</sup> Appellant's binaural hearing loss was 0.3 percent, which Dr. Israel properly rounded down to zero in its calculations.<sup>20</sup> However, the 1.875 percent left monaural loss should have been rounded up to 2 percent and multiplied by 52 weeks.<sup>21</sup> Appellant's left-sided monaural hearing loss results in 1.04 weeks of compensation. As his monaural hearing loss resulted in both a ratable hearing loss for schedule award purposes and in greater compensation, the Board finds that OWCP incorrectly denied appellant's schedule award claim based on his left-sided monaural hearing loss. On return of the case record OWCP shall grant appellant a schedule award for two percent left-sided monaural hearing loss.

### CONCLUSION

The Board finds that appellant has two percent left-sided monaural hearing loss.

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<sup>17</sup> 5 U.S.C. § 8107(c)(13).

<sup>18</sup> *J.H.*, Docket No. 08-2432 (issued June 15, 2009); *J.B.*, Docket No. 08-1735 (issued January 27, 2009).

<sup>19</sup> *See M.P.*, Docket No. 17-1736 (issued February 14, 2018).

<sup>20</sup> The policy of OWCP is to round the calculated percentage of impairment to the nearest whole number. Results should be rounded down for figures less than .5 and up for .5 and over. *See V.M.*, Docket No. 18-1800 (issued April 23, 2019); *Robert E. Cullison*, 55 ECAB 570 (2004). *See also* Federal (FECA) Procedure Manual, *supra* note 8 at Chapter 3.700.3(b) (January 2010).

<sup>21</sup> The Board notes OWCP's policy to round the calculated percentage of impairment to the nearest whole number. *See V.M.*, *id.*; *J.H.*, *supra* note 18; *Robert E. Cullison*, *id.* *See also* Federal (FECA) Procedure Manual, *supra* note 8 at Chapter 3.700.3(b) (January 2010).

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 9, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: July 9, 2020  
Washington, DC

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

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board