



## **FACTUAL HISTORY**

On December 12, 2018 appellant, then a 60-year-old maintenance worker, filed an occupational disease claim (Form CA-2) alleging that he developed hearing loss due to factors of his federal employment. He noted that he first became aware of his condition and first realized it was caused or aggravated by his federal employment on November 21, 2018. Appellant explained that he was exposed to very loud equipment and tools with loud decibel readings on a regular basis. He recounted that every day, after using the equipment, his ears would ring and his hearing seemed to get worse. Appellant did not stop work.

In development letter dated December 21, 2018, OWCP informed appellant that he submitted no evidence to establish that he actually experienced the employment factors alleged to have caused his injury. It provided a questionnaire for his completion. In a separate development letter of even date, OWCP requested that the employing establishment provide additional information regarding appellant's exposure to noise due to factors of his federal employment, including comments from a knowledgeable supervisor regarding the accuracy of his statements. It afforded both parties 30 days to respond.

In an October 28, 2018 statement, D.H., a maintenance worker supervisor, explained that appellant had operated numerous power tools since he began working at the employing establishment in 2000. He stated that some jobs would require appellant to operate power tools for five to seven hours at a time, for several days, and that he was provided with ear protection in the form of earplugs for these jobs.

Appellant submitted an October 30, 2018 hearing conservation sheet which provided a diagnosis for bilateral sensorineural hearing loss.

In a November 6, 2018 initial hearing test report, Dr. Daniel Guzman, a certified occupational hearing conservationist, performed audiometric testing. He noted test results dating from May 27, 2010 to September 27, 2018. In the most recent September 27, 2018 audiogram, Dr. Guzman found at 500, 1,000, 2,000, and 3,000 Hertz (Hz) losses of 10, 10, 5, and 15 decibels (dBs) on the right, and 5, 5, 10, and 20 dBs on the left, respectively.

In a December 3, 2018 medical report, Dr. Mark Hansen, Board-certified in family medicine, noted appellant's complaints of hearing loss due to a noisy work environment and reviewed past hearing examinations dated from May 27, 2010 to September 27, 2018. He diagnosed sensorineural hearing loss attributed to appellant's work environment and recommended hearing aids.

In an undated statement, appellant provided a review of his employment history and noted that he had been employed by the employing establishment since 2000. He explained that he was exposed to noise from heavy equipment and power tools for 10 hours per day and attached a list of power tools he utilized in his work environment. Appellant noted that he had no history of ear or hearing problems and was not involved with any hobbies that exposed him to loud noise.

On March 7, 2019 OWCP referred appellant, along with a statement of accepted facts (SOAF) and the medical record, to Dr. Jackson Holland, a Board-certified otolaryngologist serving

as a second opinion physician, regarding the nature, extent, and causal relationship of his hearing loss.

In his April 8, 2019 report, Dr. Holland reviewed the SOAF, history of injury, and the medical evidence of record. Testing at the frequencies of 500, 1,000, 2,000, and 3,000 Hz revealed losses at 15, 15, 15, and 20 dBs for the right ear; and 10, 15, 15, and 30 dBs for the left ear, respectively. Dr. Holland discussed appellant's hearing loss and opined that the industrial noise exposure was the primary factor causing his condition. He recommended bilateral hearing aid fitting to treat his condition. Dr. Holland diagnosed binaural neurosensory hearing loss, binaural noise-induced hearing loss, and tinnitus at one percent binaural impairment.

By decision dated May 9, 2019, OWCP accepted appellant's claim for bilateral sensorineural hearing loss and bilateral tinnitus. The same day, it referred the medical record and SOAF to Dr. Jeffrey Israel, an OWCP district medical adviser (DMA) and Board-certified otolaryngologist, to determine the extent of appellant's hearing loss and permanent impairment due to his employment-related noise exposure.

On May 15, 2019 Dr. Israel reviewed Dr. Holland's examination report and agreed that appellant's sensorineural hearing loss was due, at least in part, to noise-induced work-related acoustic trauma. He noted that appellant's audiograms displayed a history of progressive sensorineural hearing loss and tinnitus. Dr. Israel applied the audiometric data to OWCP's standard for evaluating hearing loss under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*,<sup>2</sup> (A.M.A., *Guides*) and determined that appellant sustained a right monaural loss of zero percent, a left monaural loss of zero percent and a binaural hearing loss of zero percent. He averaged appellant's right ear hearing levels of 15, 15, 15, and 20 dBs at 500, 1,000, 2,000, and 3,000 Hz, respectively, by adding the hearing loss at those four levels then dividing the sum by four which equaled 16.25. After subtracting out a 25 dB fence he multiplied the remaining zero balance by 1.5 to calculate a zero percent right ear monaural hearing loss. Dr. Israel then averaged appellant's left ear hearing levels of 10, 15, 15 and 30 dBs at 500, 1,000, 2,000, and 3,000 Hz, respectively, by adding the hearing loss at those four levels then dividing the sum by four, which equaled 17.5. After subtracting out a 25 dB fence, he multiplied the remaining five balance by 1.5 to calculate a zero percent left ear monaural hearing loss. Dr. Israel then calculated zero percent binaural hearing loss by multiplying the right ear loss of zero percent by five, adding the zero percent left ear loss, and dividing this sum by six. He acknowledged that appellant was due a one percent tinnitus award based on its impact on his activities of daily living (ADL), but noted that a tinnitus award could not be rendered when there is a zero percent binaural hearing impairment. Dr. Israel recommended yearly audiograms, use of noise protection, and authorization for hearing aids. He determined that appellant had reached maximum medical improvement (MMI) on April 8, 2019, the date of Dr. Holland's examination.

On May 28, 2019 appellant filed a claim for a schedule award (Form CA-7).

---

<sup>2</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

By decision dated June 6, 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 FECA<sup>3</sup> and its implementing regulations<sup>4</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. 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*<sup>5</sup> has been adopted by OWCP for evaluating schedule losses and the Board has concurred in such adoption.<sup>6</sup>

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 averaged.<sup>7</sup> 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.<sup>8</sup> The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.<sup>9</sup> 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 binaural hearing loss.<sup>10</sup> The Board has concurred in OWCP's adoption of this standard for evaluating hearing loss.<sup>11</sup>

### **ANALYSIS**

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

---

<sup>3</sup> 5 U.S.C. § 8107.

<sup>4</sup> 20 C.F.R. § 10.404.

<sup>5</sup> *Supra* note 3.

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

<sup>7</sup> A.M.A., *Guides* 250.

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

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

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

OWCP properly referred appellant to Dr. Holland for a second opinion examination to evaluate his hearing loss. In his April 8, 2019 report, Dr. Holland discussed appellant's hearing loss and opined that the industrial noise exposure was the primary factor causing his condition. He recommended bilateral hearing aid fitting to treat appellant's condition. Dr. Holland diagnosed binaural neurosensory hearing loss, binaural noise-induced hearing loss, and tinnitus at one percent binaural impairment caused by the noise exposure in his workplace.

In its May 9, 2019 decision, OWCP accepted the claim for bilateral sensorineural hearing loss and bilateral tinnitus and informed appellant that his case had been forward to OWCP's DMA to assess his percentage of permanent employment-related hearing loss.

On May 15, 2019 the DMA reviewed Dr. Holland's report and determined that appellant had zero percent monaural hearing loss in each ear. Dr. Israel related that testing at the frequencies of 500, 1,000, 2,000, and 3,000 Hz revealed losses at 15, 15, 15, and 20 dBs for the right ear, respectively; and 10, 15, 15, and 30 dBs for the left ear, respectively. He averaged appellant's right ear hearing levels and added four, which totaled 16.25. The decibel losses for the left ear were totaled at 75 and divided by 4 to obtain an average hearing loss of 17.5. 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 zero percent. The Board finds that the DMA 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.<sup>12</sup>

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*.<sup>13</sup> Accordingly, as appellant does not have ratable hearing loss, the Board finds that he is not entitled to a schedule award for tinnitus.

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 a ratable hearing loss for schedule award purposes.

---

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

<sup>13</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 6, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 1, 2020  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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