



his federal employment including daily exposure to loud noises from motor vehicles, construction at bridges, gunfire, horns, x-ray equipment, and tractor trailers. He noted that he first became aware of his condition and realized that it was caused or aggravated by factors of his federal employment on January 1, 2011.

An October 13, 2016 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 left ear of 10, 10, 5, and 10 decibels (dBs) and for the right ear 15, 10, 10, and 35 dBs. Appellant's August 7, 2012 baseline audiometric results at the same frequency levels revealed 5, 10, 5, and 10 dBs for the left ear and 5, 10, 10, and 30 dBs on the right.

On January 30, 2019 OWCP referred the case record, including a statement of accepted facts (SOAF) and a list of questions to Dr. John R. Austin, a Board-certified otolaryngologist, for a second opinion evaluation. In a February 20, 2019 report, Dr. Austin 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 10, 10, 15, and 35 dBs and for the left ear 15, 10, 20, and 30 dBs. Dr. Austin diagnosed a mild-to-moderately severe binaural high frequency sensorineural hearing loss with tinnitus. He opined that appellant's hearing loss was related to noise exposure encountered in his federal employment. Dr. Austin further found that, based on results of the February 20, 2019 audiogram, the impairment calculations under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*<sup>2</sup> (A.M.A., *Guides*) revealed a monaural loss of zero percent in each ear and zero percent binaural hearing loss.<sup>3</sup> He found zero percent impairment for tinnitus noting that there were no activities of daily living assessment.

By decision dated March 18, 2019, OWCP accepted appellant's claim for binaural sensorineural hearing loss.

On June 12, 2019 appellant filed a claim for a schedule award (Form CA-7).

On June 21, 2019 OWCP referred the case record, including Dr. Austin's February 20, 2019 report and audiogram, to a district medical adviser (DMA) to determine whether appellant had a ratable hearing loss. In a September 7, 2019 report, Dr. Jeffrey M. Israel, a Board-certified otolaryngologist serving as the DMA, reviewed appellant's medical records, the SOAF, and Dr. Austin's February 20, 2019 report and audiogram. He found that the date of maximum medical improvement was February 20, 2019 and agreed with Dr. Austin that appellant had hearing loss of zero percent under the A.M.A., *Guides*. Based upon the audiogram the total for the left ear was 75, while the total for the right ear was 70. These totals were divided by four, resulting in 18.75 for the left ear and 17.50 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. He recommended annual audiograms, noise protection for his ears, and authorization for hearing aids.

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

<sup>3</sup> Dr. Austin noted that the audiometer had last been calibrated on August 23, 2018.

By decision dated September 11, 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 entitled to medical benefits including hearing aids, if recommended by his physician.

### **LEGAL PRECEDENT**

The schedule award provisions of FECA<sup>4</sup> and its implementing regulations<sup>5</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 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.<sup>6</sup> For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition of the A.M.A., *Guides*, published in 2009.<sup>7</sup>

A claimant seeking compensation under FECA has the burden of proof to establish the essential elements of his or her claim.<sup>8</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>9</sup> The medical evidence must include a detailed description of the permanent impairment.<sup>10</sup>

OWCP evaluates occupational hearing loss in accordance with the standards contained in the A.M.A., *Guides*.<sup>11</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* points out, losses below 25 dBs result in no impairment in the ability to hear everyday speech under everyday conditions.<sup>12</sup> The remaining amount is multiplied by a factor of

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<sup>4</sup> *Supra* note 1 at § 8107.

<sup>5</sup> 20 C.F.R. § 10.404.

<sup>6</sup> *Id.*; see also *Jacqueline S. Harris*, 54 ECAB 139 (2002).

<sup>7</sup> 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).

<sup>8</sup> *C.U.*, Docket No. 18-1480 (issued February 6, 2019); *John W. Montoya*, 54 ECAB 306 (2003).

<sup>9</sup> *D.S.*, Docket No. 19-0292 (issued June 21, 2019); *Edward Spohr*, 54 ECAB 806, 810 (2003); *Tammy L. Meehan*, 53 ECAB 229 (2001).

<sup>10</sup> See *Vanessa Young*, 55 ECAB 575 (2004).

<sup>11</sup> *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 *supra* note 5.

<sup>12</sup> See A.M.A., *Guides* 250 (6<sup>th</sup> ed. 2009).

1.5 to arrive at the percentage of monaural hearing loss.<sup>13</sup> 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.<sup>14</sup> The Board has concurred in OWCP's adoption of this standard for evaluating hearing loss.<sup>15</sup>

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.<sup>16</sup>

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.<sup>17</sup>

### ANALYSIS

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

In a February 20, 2019 report, second opinion physician Dr. Austin noted binaural sensorineural hearing loss with 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 right ear of 10, 10, 15, and 35 dBs respectively, and for the left ear 15, 10, 20, and 30 dBs, respectively.

OWCP's DMA, Dr. Israel, on September 7, 2019, reviewed Dr. Austin's report and audiometric findings, properly applied OWCP's standardized procedures, and concurred with Dr. Austin in finding that appellant had no monaural or binaural hearing loss. He totaled the dB losses to equal 75 on the left and 70 on the right. These values, when divided by four, resulted in average hearing loss of 18.75 on the left and 17.50 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. Both the DMA and Dr. Austin found appellant had no ratable impairment. There is no other evidence of record establishing a ratable hearing loss.

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

<sup>14</sup> *Id.*

<sup>15</sup> *E.S.*, 59 ECAB 249 (2007); *Reynaldo R. Lichtenberger*, 52 ECAB 462 (2001).

<sup>16</sup> 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).

<sup>17</sup> *Supra* note 7 at Chapter 2.808.6(f) (March 2017).

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. Although appellant has an employment-related hearing loss, it is not significant enough to be ratable for schedule award purposes.<sup>18</sup>

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 for schedule award purposes.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 11, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 12, 2020  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>18</sup> See *L.H.*, Docket No. 18-0696 (issued November 28, 2018); *G.G.*, Docket No. 18-0566 (issued October 2, 2018); *D.G.*, Docket No. 16-1486 (issued December 16, 2016).