

**United States Department of Labor
Employees' Compensation Appeals Board**

R.R., Appellant

and

**DEPARTMENT OF THE NAVY, MILITARY
SEALIFT COMMAND, Norfolk, VA, Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 20-0245
Issued: June 22, 2020**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge

JANICE B. ASKIN, Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 12, 2019 appellant filed a timely appeal from an October 23, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met his burden of proof to establish more than 7.5 percent monaural (left ear) hearing loss, for which he previously received a schedule award.

FACTUAL HISTORY

On February 13, 2019 appellant, then a 57-year-old retired boatswain, filed an occupational disease claim (Form CA-2) alleging that he suffered hearing loss in both ears due to factors of his federal employment. He noted that he first became aware of his condition and first realized that it

¹ 5 U.S.C. § 8101 *et seq.*

was caused or aggravated by his federal employment on April 5, 2000. Appellant explained that he spent all of his time working and living aboard employing establishment ships and that his job involved maintaining the ship with pneumatic devices, conducting helicopter operations, and firing weapons. He noted that annual employing establishment audiograms demonstrated hearing loss and on two occasions an audiologist changed his baseline after appellant failed the audiogram. Appellant insisted that as he continued working, his hearing loss increased until he retired on January 31, 2019.

Appellant provided hearing conservation data and audiological evaluation results dated from October 24, 2007 to January 28, 2019. In a January 28, 2019 report, Dr. Danielle Rosier, a Board-certified audiologist, contained a review of appellant's audiogram results dating back to August 25, 1993. Appellant presented with tinnitus in the left ear, described as a constant high-pitched ringing sound, which he reported began over 15 years ago. Dr. Rosier reviewed appellant's employment history beginning in 1993 and described his exposure to noises including chipping, painting and grinding using a pneumatic machine, loud ventilation, and sound systems in the ships he was stationed on, shooting M14 rifles, pistols and shotguns, as well as exposure to helicopter noise when loading and unloading equipment. She referred to a January 24, 2019 audiological evaluation in which she found at 500, 1,000, 2,000, and 3,000 Hertz (Hz) losses of 45, 15, 10, and 40 decibel (dBs) on the right, respectively, and 20, 20, 40, and 55 dBs on the left, respectively. Dr. Rosier noted good word understanding with a score of 88 percent in the right ear and 84 percent in the left ear when tested at a comfortable listening level in quiet. Appellant had poor word understanding with a score of 52 percent in the right ear and good word understanding in the left ear with 80 percent corrected when tested at 50 dB hearing loss in quiet. Dr. Rosier diagnosed bilateral sensorineural hearing loss and reduced word recognition and opined based on reasoned medical judgment that appellant's hearing loss arose from the occupational requirements and excessive noise associated with his multiple employment duties throughout his 26 years of employment. She noted that his audiogram history evidenced a consistent decline in hearing throughout his work history. Dr. Rosier concluded that the relationship between the consistent occupational noise exposure and appellant's subsequent decline in hearing was undeniable.

In a February 5, 2019 statement, appellant explained that from the time he was employed by the employing establishment he has lived aboard ships for four to six months at a time with one month off. While aboard these ships, he was exposed to loud noises whether he was working or not. Appellant asserted that the employing establishment sent him to an audiologist twice to change his baseline, at which time he was informed that he had substantial hearing loss in both ears that was believed to be work related. He explained that his duties involved various loud chipping tools, including needle guns, chipping hammers, impact hammers, and sanders which he used for 8 to 12 hours per day, seven days a week. Appellant noted that he was also required to fire and qualify with a pistol, shotgun, and M14 rifle and to man the flight deck for helicopter arrivals and departures. Even while off work, he provided that he was exposed to the ship announcement system, ship bells and horns, and the ventilation system. Appellant indicated that he was employed by the employing establishment from 1993 until his retirement on January 31, 2019.

In a development letter dated February 14, 2019, OWCP advised appellant of the deficiencies of his claim and instructed him as to the factual and medical evidence necessary to establish his claim. 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 occupational disease claim, including comments from a knowledgeable supervisor regarding the accuracy of his statements. It afforded both parties 30 days to respond.

In response to OWCP's questionnaire, appellant submitted a copy of his February 5, 2019 statement, a copy of Dr. Rosier's January 28, 2019 medical report, and audiological evaluations previously received by OWCP.

In a March 28, 2019 follow-up development letter, OWCP referenced its initial development letter and requested that appellant provide a response to its questionnaire.

On April 2, 2019 appellant submitted a March 29, 2019 statement in response to OWCP's questionnaire, in which he stated that his annual hearing tests demonstrated that he had suffered hearing loss. He recounted his history of employment with the employing establishment and asserted that his hearing loss was related to his federal employment. Appellant explained that his audiograms demonstrated a gradual hearing loss and that he spent 22 of his 26 years employed with employing establishment aboard ships, thus his hearing loss could not have happened anywhere else.

Appellant provided sea service letters dated from July 26, 2007 to April 26, 2018 in which multiple naval officers certified that he had been deployed aboard a vessel, periodically, from March 15, 2007 to April 30, 2018. He also submitted hearing conservation data and reference audiograms dated December 12, 1994 to September 6, 2016 of, as well as certificates of sea service logs recording voyages beginning October 3, 1993 to April 2018. Additionally, appellant submitted a position description detailing his employment duties as an able seaman and a boatswain.

On May 31, 2019 OWCP referred appellant, along with a statement of accepted facts (SOAF) and copy of the medical record to Dr. Robert Loper, Board-certified in otolaryngology, for a second opinion evaluation to determine the nature and extent of any employment-related hearing loss.

In his June 20, 2019 otologic examination report, Dr. Loper reviewed the SOAF, history of injury, and the medical evidence of record. He noted that appellant's baseline results were normal before appellant's exposure to significant noise and commented that his audiometric findings demonstrated a sensorineural loss to which his workplace exposure was sufficient to have caused. Dr. Loper also found consistent indication of tinnitus in appellant's left ear, but noted that it was "not imposing any reported limitations." He reviewed appellant's audiogram and found at 500, 1,000, 2,000, and 3,000 Hz losses of 45, 10, 10, and 30 dBs on the right, respectively, and 15, 15, 35, and 45 dBs on the left, respectively. Dr. Loper diagnosed binaural sensorineural hearing loss and checked boxes to indicate his opinion that appellant's hearing loss and tinnitus were due to his federal employment.

By decision dated July 1, 2019, OWCP accepted appellant's occupational disease claim for binaural sensorineural hearing loss.

On July 15, 2019 OWCP 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.

Dr. Israel reviewed Dr. Loper's June 20, 2019 otologic examination report on July 21, 2019 and agreed that appellant's sensorineural hearing loss was due, at least in part, to noise-induced work-related acoustic trauma. He suggested that the low frequency loss in the right ear may be due to a diving incident early in appellant's federal career. Dr. Loper applied the audiometric data to OWCP's standard for evaluation of hearing loss under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*,² (A.M.A., *Guides*) and determined that appellant sustained a right ear monaural loss of zero percent, a left ear monaural loss of 7.5 percent and a binaural hearing loss of 1.3 percent. Dr. Israel averaged appellant's right ear hearing levels of 45, 10, 10, and 30 dBs at 500, 1,000, 2,000, and 3,000 Hz, respectively, and divided by four which totaled 23.75. 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 15, 15, 35, and 55 dBs at 500, 1,000, 2,000, and 3,000 Hz, respectively, and divided by four, which totaled 30. After subtracting out a 25 dB fence, he multiplied the remaining five balance by 1.5 to calculate a 7.5 percent left ear monaural hearing loss. Dr. Israel then calculated 1.3 percent binaural hearing loss by multiplying the right ear loss of zero percent by five, adding the 7.5 percent left ear loss, and dividing this sum by six. He added no percentage for tinnitus. Dr. Israel acknowledged that Dr. Loper mentioned appellant's tinnitus, but noted that there was no suggested tinnitus score for appellant. He recommended yearly audiograms, use of noise protection and authorization for hearing aids. Dr. Israel determined that appellant had reached maximum medical improvement (MMI) on June 20, 2019 the date of Dr. Loper's examination.

In an October 23, 2019 decision, OWCP granted appellant a schedule award for 7.5 percent monaural hearing loss in the left ear. It found that he reached MMI on June 20, 2019. The period of the award was for 4.16 weeks to run during the period June 20 to July 19, 2019.

LEGAL PRECEDENT

The schedule award provision of FECA³ and its implementing regulations⁴ 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 to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The

² A.M.A., *Guides* (6th ed. 2009).

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404.

A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.⁵

OWCP evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.⁶ Using the frequencies of 500, 1,000, 2,000, and 3,000 cycles per second (cps), the losses at each frequency are added up and averaged.⁷ 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.⁸ The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.⁹ 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 the binaural hearing loss.¹⁰ The Board has concurred in OWCP's adoption of this standard for evaluating hearing loss.¹¹

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.¹²

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.¹³ The A.M.A., *Guides* also provide that, if tinnitus interferes with Activities of Daily Living (ADLs), 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.¹⁴

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed to OWCP's DMA for an opinion concerning the nature and percentage in

⁵ *Id.* See also *Jacqueline S. Harris*, 54 ECAB 139 (2002).

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

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Donald E. Stockstad*, 53 ECAB 301 (2002), *petition for recon. granted (modifying prior decision)*, Docket No. 01-1570 (issued August 13, 2002); *Reynaldo R. Lichtenberger*, 52 ECAB 462 (2001).

¹² See *Reynaldo R. Lichtenberger, id.*; see also *B.B.*, Docket No. 16-0512 (issued May 17, 2016).

¹³ See A.M.A., *Guides* 249 (6th ed. 2009).

¹⁴ *Id.* See also *Robert E. Cullison*, 55 ECAB 570 (2004); *R.H.*, Docket No. 10-2139 (issued July 13, 2011).

accordance with the A.M.A., *Guides* with the DMA providing rationale for the percentage of impairment specified.¹⁵

ANALYSIS

The Board finds that the evidence of record establishes that appellant has eight percent monaural hearing loss in his left ear.

OWCP accepted that appellant sustained binaural sensorineural hearing loss due to noise exposure at work and granted him a schedule award for 7.5 percent permanent impairment of the left ear, monaural, loss of hearing based on the June 20, 2019 second opinion report from Dr. Loper, as reviewed by OWCP's DMA. The losses at the frequencies of 500, 1,000, 2,000, and 3,000 cps were added and averaged and the fence of 25 dBs was deducted.¹⁶ The remaining amount was multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss. For levels recorded in the left ear of 15, 15, 35, and 55, the above formula derives 7.5 percent monaural loss and for levels recorded in the right ear of 45, 10, 10, and 30 the above formula derives zero percent monaural loss. Therefore, appellant's right ear impairment was not ratable.¹⁷

While section 8107(c)(13) provides separate calculations for loss of hearing in one ear and for loss of hearing in both,¹⁸ 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.¹⁹ In this case, appellant's compensation is greater under the procedures used for calculating 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.²⁰ Appellant's binaural hearing loss was 1.3 percent; multiplying 200 weeks by 1.3 percent results in 2.6 days of compensation. His left ear monaural loss was 7.5 percent; multiplying 52 weeks by 7.5 percent results in 4.16 weeks of compensation, or 29.12 days. As the monaural loss results in a greater compensation, the Board finds that OWCP correctly issued a schedule award based on appellant's left ear hearing impairment.²¹

¹⁵ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6(f) (February 2013); *Hildred I. Lloyd*, 42 ECAB 944 (1991).

¹⁶ The A.M.A., *Guides* points out that the loss below an average of 25 dBs is deducted as it does not result in impairment in the ability to hear every day sounds under everyday listening conditions.

¹⁷ *B.B.*, *supra* note 12.

¹⁸ 5 U.S.C. § 8107(c)(13).

¹⁹ *B.B.*, *supra* note 12.

²⁰ See *M.P.*, Docket No. 17-1736 (issued February 14, 2018).

²¹ See *W.C.*, Docket No. 18-0290 (issued July 13, 2018).

The Board notes that OWCP's policy to round the calculated percentage of impairment to the nearest whole number.²² Figures should be rounded down for figures less than .5 and up for figures .5 and over.²³ Thus, the Board finds that appellant has sustained 8 percent monaural hearing loss of the left ear (rounded up from 7.5 percent).

On appeal appellant contends that he is entitled to a greater schedule award due to his binaural hearing loss and that OWCP's DMA erred by failing to include additional percentage hearing loss for tinnitus. The Board notes the A.M.A., *Guides* provide that, if tinnitus interferes with ADLs, 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.²⁴ Although Dr. Loper concluded that appellant had tinnitus causally related to his exposure to noise at work, he concluded that it was "not imposing any reported limitations." Therefore, an additional percentage of hearing loss has not been established 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.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish greater than eight percent monaural hearing loss in his left ear.

²² See The Federal (FECA) Procedure Manual, Part 3 Medical, *Schedule Awards*, Chapter 3.700.3(b) (January 2010); see also *V.M.*, Docket No. 18-1800 (issued April 23, 2019); *M.F.*, Docket No. 16-0565 (issued March 15, 2017).

²³ *Id.*

²⁴ *Supra* note 14.

ORDER

IT IS HEREBY ORDERED THAT the October 23, 2019 decision of the Office of Workers' Compensation Programs is affirmed as modified.

Issued: June 22, 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