United States Department of Labor
Employees' Compensation Appeals Board

R.J., Appellant	)	
and	)	**Docket No. 21-0781**
	)	**Issued: February 24, 2022**
DEPARTMENT OF THE ARMY, TANK AUTOMOTIVE & ARMAMENTS COMMAND, ANNISTON ARMY DEPOT, Anniston, AL, Employer	)	

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 April 26, 2021 appellant filed a timely appeal from an April 8, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (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 four percent binaural hearing loss for which he previously received schedule award compensation.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board.[2] The facts and circumstances as set forth in the Board's prior order are incorporated herein by reference. The relevant facts are as follows.

On September 5, 2019 appellant, then a 63-year-old crane operator, filed an occupational disease claim (Form CA-2) alleging that he sustained hearing loss and ringing in both ears, as along with pressure in his left ear, due to factors of his federal employment, including constant noise exposure. He indicated that he first became aware of his condition on January 6, 2011 and first realized that it was caused or aggravated by his federal employment on May 11, 2017. In a July 15, 2019 supplemental statement, appellant indicated that he experienced an aggravation of previous hearing loss due to noise at work. OWCP assigned the claim OWCP File No. xxxxxx392.

Appellant had filed a prior occupational disease claim (Form CA-2) on August 28, 2015 under OWCP File No. xxxxxx524 for binaural hearing loss due to factors of his federal employment, including exposure to noise from disassembling army tanks.[3] On March 29, 2017 OWCP accepted the claim for bilateral sensorineural hearing loss.

By decision dated April 26, 2017, OWCP granted appellant a schedule award for three percent binaural hearing loss. The award ran for six weeks from March 9 through April 19, 2017.

In a development letter dated September 13, 2019, OWCP advised appellant of the deficiencies of his claim. It advised him as to the type of additional factual and medical evidence required and provided a questionnaire for his completion. By 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.

OWCP received additional evidence. On September 4, 2019 Dr. Fred A. McLeod, a Board-certified otolaryngologist, diagnosed dizziness, active cochlear Meniere's disease of the right ear and Eustachian tube dysfunction. An audiogram dated September 10, 2019 performed by Paul V. Stephens, an audiologist, revealed sensorineural hearing loss consistent with noise exposure and 7.8 percent binaural hearing loss. Similarly, on September 26, 2019, Lori G. McCollum, an audiologist, opined that appellant's high frequency hearing loss included a notch in the high frequencies suggestive of noise-induced loss.

In a statement dated September 27, 2019, appellant reported working as a crane operator and was exposed to different pneumatic tools including grinders, drills, chipping hammers, impact wrenches, and cranking and texting of engines on heavy machinery. He noted that his crane was

[2] *Order Remanding Case*, Docket No. 20-1222 (issued February 23, 2021).

[3] On July 22, 2016 appellant appealed a June 28, 2016 decision denying his claim for an occupational disease. By decision dated January 9, 2017, the Board set aside the June 28, 2016 decision and remanded the case for further medical development. The Board instructed OWCP to refer appellant to a second opinion physician for an opinion on whether appellant's work-related noise exposure caused or aggravated his hearing loss. *See R.J.*, Docket No. 16-1525 (issued January 9, 2017).

three feet above where the combat vehicles were built and moved in and out of the shop. Appellant noted working nine hours a day for five to six days a week in this environment. He believed that the decibel level in the building to be 85 or higher and indicated that he was provided with hearing protection.

On October 17, 2019 OWCP referred appellant, along with a statement of accepted facts (SOAF) and the medical record, to Dr. Dennis G. Pappas, Jr., an otolaryngologist, for a second opinion evaluation. In a report dated November 20, 2019, Dr. Pappas reviewed appellant's medical record and the SOAF, performed a physical examination, and completed OWCP's evaluation questionnaire. He indicated that there was no significant variation from the SOAF. Dr. Pappas diagnosed bilateral sensorineural hearing loss, bilateral tinnitus and left chronic serous otitis media, opining that they were due to noise exposure related to appellant's federal employment. He further indicated that appellant's hearing loss progressed since the 2017 study. Dr. Pappas reviewed an audiogram conducted by an audiologist on that same date, which demonstrated losses of 5, 10, 25 and 35 decibels (dBs) on the right and 20, 25, 30, and 40 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*),[4] he calculated that appellant sustained a right monaural loss of zero percent and left monaural loss of 5.625 percent and a binaural hearing loss of .9 percent or 1 percent. Dr. Pappas provided a three percent impairment for tinnitus, which was difficult to mask and interfered with appellant's sleep and activities of daily living. He, therefore, found a total of 3.9 or 4 percent binaural hearing loss. Dr. Pappas recommended that appellant continue to wear hearing aids and continue noise protection.

On January 23, 2020 OWCP accepted the claim for bilateral sensorineural hearing loss and bilateral tinnitus.

On January 30, 2020 appellant filed a claim for compensation (Form CA-7) for a schedule award.

On January 31, 2020 OWCP referred the medical record and SOAF to Dr. Jeffrey Israel, a Board-certified otolaryngologist serving as an OWCP district medical adviser (DMA), to determine the extent of appellant's hearing loss and permanent impairment due to his employment-related noise exposure. On March 14, 2020 Dr. Israel reviewed Dr. Pappas' examination report and agreed that appellant's sensorineural hearing loss was due, at least in part, to noise-induced work-related acoustic trauma. He applied the audiometric data to OWCP's standard for evaluating hearing loss under the A.M.A., *Guides* and determined that appellant sustained a right monaural loss of zero percent, a left monaural loss of 5.625 percent, and a binaural hearing loss of .9 or 1 percent. Dr. Israel averaged appellant's right ear hearing levels of 5, 10, 25, and 35 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 18.75. After subtracting the 25 dB fence and multiplying by 1.5 (as explained above), he found zero percent monaural hearing loss for the right ear. Dr. Israel then averaged appellant's left ear hearing levels of 20, 25, 30 and 40 dBs at 500, 1,000, 2,000, and 3,000 Hz, respectively, by adding the hearing loss at those four levels then dividing the

[4] A.M.A., *Guides* (6th ed. 2009).

sum by four, which equaled 28.75. After subtracting out a 25 dB fence, he multiplied the remaining 3.75 balance by 1.5 to calculate a 5.625 percent left ear monaural hearing loss. Dr. Israel then calculated .9 percent binaural hearing loss by multiplying the right ear loss of zero percent by five, adding the 5.625 percent left ear loss, and dividing this sum by six. He recommended yearly audiograms, use of noise protection, and authorization for bilateral hearing aids. Dr. Israel concurred with Dr. Pappas' recommendation for three percent tinnitus award noting its impact on appellant's activities of daily living. He added 3 percent to the .9 percent binaural loss, appellant would receive a total award of 3.9 percent. Dr. Israel noted that appellant had reached maximum medical improvement on November 20, 2019, the date of the latest audiogram in the records and the one used by the Dr. Pappas to determine the current hearing impairment.

Dr. Israel noted providing an impairment rating on March 30, 2017 under OWCP File No. xxxxxx524; however, there was no reference to the prior evaluation in the current records. At that time he calculated a 2.6 percent binaural hearing impairment award. Dr. Israel indicated that as there was past binaural hearing impairment award of 2.6 percent rendered it must be considered as part of the new impairment calculation. He noted that 3.9 percent rating minus the prior 2.6 percent rating equaled the revised award of 1.3 percent.

By decision dated March 19, 2020, OWCP granted appellant an additional one percent permanent impairment for binaural hearing loss, for a total four percent binaural hearing loss. The award ran for two weeks from November 20 through December 3, 2019 and was based on the November 20, 2019 report of Dr. Pappas and the March 14, 2020 DMA report.

On May 13, 2020 appellant appealed to the Board.

By order dated February 23, 2021, the Board set aside OWCP's March 19, 2020 decision and remanded the case with instructions to administratively combine OWCP File Nos. xxxxxx392 and xxxxxx524.[5] On remand, OWCP administratively combined the files with OWCP File No. xxxxxx524 serving as the master file.

In a development letter dated March 4, 2021, OWCP requested that appellant submit a narrative medical report from his physician, which contained a detailed description of findings and diagnoses, explaining how his employment duties caused or aggravated his medical condition entitling him to additional permanent impairment due to bilateral hearing loss.

By decision dated April 8, 2021, OWCP denied appellant's claim for an additional schedule award. It noted that he did not respond to an OWCP development letter requesting updated medical evidence to support an increase in permanent impairment for binaural hearing loss.

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[5] *Id.*

LEGAL PRECEDENT

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

OWCP evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.[12] Using the frequencies of 500, 1,000, 2,000, and 3,000 Hz, the losses at each frequency are 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 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 binaural hearing loss.[13] The Board has concurred in OWCP's adoption of this standard for evaluating hearing loss.[14]

Regarding tinnitus, the A.M.A., *Guides* provides that tinnitus is not a disease, but rather a symptom that may be the result of disease or injury.[15] If tinnitus interferes with activities of daily

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[6] 5 U.S.C. § 8107.

[7] 20 C.F.R. § 10.404.

[8] *Id.* at § 10.404(a); *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); *id.* at Chapter 3.700.2 and Exhibit 1 (January 2010).

[10] *D.H.*, Docket No. 20-0198 (issued July 9, 2020); *John W. Montoya*, 54 ECAB 306 (2003).

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

[12] A.M.A., *Guides* 250.

[13] *Id.*

[14] *G.T.*, Docket No. 19-1705 (issued April 16, 2020); *E.S.*, 59 ECAB 249 (2007); *Reynaldo R. Lichtenberger*, 52 ECAB 462 (2001).

[15] *See* A.M.A., *Guides* 249.

living, including sleep, reading, and other tasks requiring concentration, up to five percent may be added to a measurable binaural hearing impairment.[16]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish more than four percent binaural hearing loss, for which he previously received schedule award compensation.

OWCP referred appellant to Dr. Pappas for a second opinion examination to evaluate his hearing loss. In his November 20, 2019 report, Dr. Pappas discussed appellant's work history and opined that the industrial noise exposure was the primary factor causing his condition. He diagnosed bilateral high frequency sensorineural hearing loss and bilateral tinnitus caused by the noise exposure in his workplace.

On March 14, 2020 the DMA reviewed Dr. Pappas' report and indicated that testing at the frequency levels of 500, 1,000, 2,000, and 3,000 Hz revealed dB losses of 5, 10, 25, and 35 for the right ear and dB losses of 20, 25, 30, and 40 for the left ear, respectively. Following the rating protocols, the DMA properly calculated a total binaural hearing loss of four percent.

The Board finds that the DMA accurately summarized the relevant medical evidence, provided detailed findings on examination, and reached conclusions, which comported with his findings, and with the appropriate provisions of the A.M.A., *Guides*.[17] The DMA's report therefore carries the weight of the medical evidence and establishes that appellant has 3.9 percent binaural hearing loss which, in accordance with OWCP's policy, is rounded up to 4 percent.[18]

The Board therefore finds that appellant has not met his burden of proof to establish that he has more than four percent binaural hearing loss, for which he previously received schedule award compensation.

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 greater than four percent binaural hearing loss for which he previously received schedule award compensation.

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[16] *Id.*

[17] *See J.M.*, Docket No. 18-1387 (issued February 1, 2019).

[18] *See F.T.*, Docket No. 16-1236 (issued March 12, 2018). 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 0.5 and up for 0.5 and over; Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.4b. (January 2010). *See also R.M.*, Docket No. 18-0752 (issued December 6, 2019); *V.M.*, Docket No. 18-1800 (issued April 23, 2019); *J.H.*, Docket No. 08-24329; *Robert E. Cullison*, 55 ECAB 570 (2004).

ORDER

IT IS HEREBY ORDERED THAT the April 8, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 24, 2022
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