United States Department of Labor
Employees' Compensation Appeals Board

A.L., Appellant	)	
and	)	**Docket No. 21-1233**
	)	**Issued: January 31, 2022**
DEPARTMENT OF THE ARMY, MANEUVER AREA TRAINING EQUIPMENT SITE, Jackson, MS, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 12, 2021 appellant filed a timely appeal from a May 14, 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.[2]

ISSUE

The issue is whether appellant has greater than three percent binaural hearing loss for which he previously received a schedule award.

[1] 5 U.S.C. § 8101 *et seq*.

[2] The Board notes that following the May 14, 2021 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id*.

FACTUAL HISTORY

On January 21, 2020 appellant, then a 55-year-old heavy mobile equipment worker, filed an occupational disease claim (Form CA-2) alleging that he sustained hearing loss causally related to factors of his federal employment. He submitted a reference audiogram dated October 26, 2012.

In a development letter dated January 29, 2020, OWCP requested that appellant submit additional information in support of his claim, including his employment history and noise exposure data. It afforded him 30 days to submit the requested information.

In a response dated February 6, 2020, appellant described his history of noise exposure at work beginning in May 1988. His supervisor reviewed and concurred with his description of his employment and noise exposure.

On March 24, 2020 OWCP referred appellant, together with the case record and a statement of accepted facts (SOAF), to Dr. Robert G. Brousse, a Board-certified otolaryngologist, for a second opinion examination.

In a report dated May 20, 2020, Dr. Brousse diagnosed high-frequency sensorineural hearing loss causally related to noise exposure at work. He recommended noise protection and a trial of hearing aids. Dr. Brousse reviewed an audiogram conducted by an audiologist on the same date, which demonstrated losses of 15, 15, 15, and 35 decibels (dBs) on the right and 20, 15, 20, and 70 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*),[3] he calculated that appellant had a monaural loss of zero percent in the right ear and 9.4 percent in the left ear, for a binaural loss of 1.6 percent. Dr. Brousse added an additional 2 percent impairment for tinnitus, to find a binaural hearing impairment of 3.6 percent. He opined that appellant had reached maximum medical improvement (MMI).

On May 30, 2020 Dr. Jeffrey M. Israel, a Board-certified otolaryngologist serving as a district medical adviser (DMA), reviewed the May 20, 2020 report from Dr. Brousse. He applied OWCP's standard for evaluating hearing loss under the sixth edition of the A.M.A., *Guides* to the findings from the May 20, 2020 audiogram and determined that appellant had no right monaural hearing loss, 9.38 percent left monaural hearing loss, and 3.6 percent binaural hearing loss. The DMA added appellant's right ear hearing loss of 15, 15, 15, and 35 dBs at 500, 1,000, 2,000, and 3,000 Hz, respectively, which totaled 80, and divided by 4, to find an average of 20. He subtracted the 25 dBs fence and multiplied by 1.5 to find 0 percent right ear monaural hearing loss. For the left ear, Dr. Israel added appellant's hearing loss of 20, 15, 20, and 70 dBs at 500, 1,000, 2,000, and 3,000 Hz, respectively, which totaled 125, and divided by 4 to find an average of 31.25. He subtracted the 25 dBs fence, multiplied the remaining 6.25 balance by 1.5, to calculate 9.375 left ear monaural hearing loss. Dr. Israel calculated the binaural hearing loss by multiplying the lesser right ear loss of 0 percent by 5, adding the 9.38 percent left ear loss, and dividing this sum by 6, which resulted in 1.6 binaural hearing loss. He added 2 percent for tinnitus and opined that appellant had 3.6 percent total binaural hearing loss. The DMA agreed with Dr. Brousse's recommendation for hearing aids.

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

On June 8, 2020 OWCP accepted appellant's claim for bilateral tinnitus and bilateral sensorineural hearing loss.

On June 16, 2020 appellant filed a claim for compensation (Form CA-7) for a schedule award.

By decision dated July 21, 2020, OWCP granted appellant a schedule award for four percent binaural hearing loss with tinnitus.[4] The period of the award ran for eight weeks from May 20 to July 14, 2020. OWCP noted that the award for bilateral hearing loss with tinnitus of 8 weeks exceeded the award for nine percent monaural hearing loss in the left ear of 4.68 weeks.

Thereafter, appellant submitted a July 21, 2020 audiologic evaluation performed by an audiologist with the employing establishment. The results revealed hearing loss of 20, 25, 30, and 70 decibels at 500, 1,000, 2,000, and 3,000 Hz on the right and 15, 15, 20, and 35 decibels on the left at the same frequencies.

In a report dated October 13, 2020, an audiologist diagnosed bilateral sensorineural hearing loss and bilateral tinnitus. She performed an air-only audiogram that showed hearing loss of 5, 10, 5, and 35 decibels at 500, 1,000, 2,000, and 3,000 Hz on the right and 15, 15, 15, and 70 decibels on the left at the same frequencies. The audiologist reviewed the July 21, 2020 audiogram and found that the facility had switched ears in recording the results.

On April 26, 2021 appellant requested reconsideration.

On May 6, 2021 OWCP requested that appellant clarify whether he was requesting an increased schedule award based on new work exposure or a review of the prior award. In a May 7, 2021 response, appellant advised that he had been last exposed to hazardous noise at work on March 28, 2020 and was requesting a review of the July 21, 2020 award.

On May 12, 2021 Dr. Israel reviewed the October 13, 2020 audiogram. Applying the standards set forth in the A.M.A., *Guides* for evaluating hearing loss to the audiometric data, he found 0 monaural hearing loss on the right, 5.625 monaural hearing loss on the left, and .9 percent binaural hearing loss. Dr. Israel added 2 percent for tinnitus and opined that appellant had 2.9 percent total binaural hearing loss, which he rounded to 3 percent.

By decision dated May 14, 2021, OWCP modified its July 21, 2020 decision to reflect that appellant had three percent permanent impairment due to binaural sensorineural hearing loss.

LEGAL PRECEDENT

The schedule award provision of FECA,[5] and its implementing federal regulation,[6] 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

[4] The 3.6 percent binaural loss was rounded up by OWCP to the nearest whole number of 4 percent.

[5] *Supra* note 1.

[6] 20 C.F.R. § 10.404.

not specify the manner in which the percentage loss of a member shall be determined. The method used in making such a determination is a matter which rests in the 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. OWCP evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides*, published in 2009.[7] The Board has approved the use by OWCP of the A.M.A., *Guides* for the purpose of determining the percentage loss of use of a member of the body for schedule award purposes.[8]

For hearing loss claims, the Board requires that the employee undergo both audiometric and otologic examination, that the audiometric testing precede the otologic examination, and that the audiometric testing be performed by an appropriately certified audiologist. The Board has explained that all audiological equipment authorized for testing meet the calibration protocol contained in the accreditation manual of the American Speech and Hearing Association. The audiometric test results must include both bone conduction and pure tone air conduction thresholds, speech reception thresholds and monaural discrimination scores, and the otolaryngologist's report must include: date and hour of examination; date and hour of employee's last exposure to loud noise; and a statement of the reliability of the tests.[9]

OWCP evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.[10] 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* points out, losses below 25 dBs result in no impairment in the ability to hear everyday speech under everyday conditions.[11] The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.[12] 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.[13] The Board has concurred in OWCPs' adoption of this standard for evaluating hearing loss.[14]

The A.M.A., *Guides* provides that if tinnitus interferes with activities of daily living, including sleep, reading (and other tasks requiring concentration), enjoyment of quiet recreation,

[7] For decisions issued after May 1, 2009 the sixth edition of the A.M.A., *Guides* is used. A.M.A., *Guides*, (6th ed. 2009); 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, Exhibit 1 (January 2010).

[8] *P.R.*, Docket No. 19-0022 (issued April 9, 2018); *Isidoro Rivera*, 12 ECAB 348 (1961).

[9] *See E.E.*, Docket No. 19-1763 (issued March 24, 2020); *J.G.*, Docket No. 12-1469 (issued January 11, 2013).

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

[11] *Id.*; *C.D.*, Docket No. 18-0251 (issued August 1, 2018).

[12] *Id*.

[13] *Id*.

[14] *See D.R.*, Docket No. 20-1570 (issued April 14, 2021); *V.M.*, Docket No. 18-1800 (issued April 23, 2019).

and emotional well-being, up to five percent may be added to a measurable binaural hearing impairment.[15]

ANALYSIS

The Board finds that appellant has a total of four percent binaural hearing loss.

In a report dated May 20, 2020, Dr. Brousse diagnosed employment-related high-frequency sensorineural hearing loss. Based on an audiogram obtained that date, he found no hearing loss in the right ear and a 9.4 percent loss of hearing in the left ear. Dr. Brousse opined that appellant had a 1.6 percent binaural hearing loss, with an additional 2 percent impairment for tinnitus.

On May 30, 2020 Dr. Israel, a DMA, properly applied OWCP's standardized procedures to the May 20, 2020 audiogram obtained by Dr. Brousse. He found that testing of the right ear at the frequencies of 500, 1,000, 2,000, and 3,000 Hz revealed losses of 15, 15, 15, and 35, which he added to total 80. Dr. Israel divided by 4 to find an average loss of 20, from which he deducted the threshold fence of 25 dB to find a balance of 0. He multiplied 0 by 1.5 to find no monaural loss on the right side. For the left ear, Dr. Israel found that appellant had losses of 20, 15, 20, and 70 at the frequencies 500, 1,000, 2,000, and 3,000 Hz, for a total of 125 and an average loss of 31.25. Subtracting the fence of 25 dB yielded a balance of 6.25, which he multiplied by 1.5 to find 9.375 percent monaural loss. Dr. Israel calculated the binaural hearing loss by multiplying the lesser right ear loss of 0 percent by 5, adding the greater 9.38 percent left ear loss, and dividing this sum by 6, which resulted in 1.6 percent binaural hearing loss. He added 2 percent for tinnitus and opined that appellant had 3.6 percent total binaural hearing loss, which rounded to a 4 percent binaural hearing loss.[16] As four percent binaural hearing loss yielded 8 weeks of compensation, and nine percent monaural loss yielded 4.68 weeks, OWCP properly granted appellant a schedule award on July 21, 2020 for four percent binaural hearing loss with tinnitus.[17]

Subsequently appellant submitted an October 13, 2020 audiologist's report and the results of an audiogram obtained on that date. Dr. Israel, on May 12, 2021, reviewed the audiogram and found that it demonstrated three percent binaural hearing loss. Based on the DMA's report, OWCP modified its July 21, 2020 decision to find that appellant had three percent binaural hearing loss rather than four percent binaural hearing loss. However, the October 13, 2020 audiogram does not comply with the requirements for audiograms set forth by OWCP. The test lacked bone conduction scores as required by OWCP's procedures.[18] Additionally, the audiogram was not prepared or

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

[16] OWCP procedures provide that fractions should be rounded down from .49 or up from .50. *See supra* note 7 at Chapter 3.700.4b(2)(b) (January 2010).

[17] FECA provides that a claimant is entitled to 52 weeks of compensation for 100 percent loss of hearing in one ear and 200 weeks of compensation for 100 percent hearing loss in both ears. 5 U.S.C. § 8107(c)(3). Multiplying four percent by 100 yields 8 weeks of compensation, and multiplying nine percent by 52 yields 4.68 weeks of compensation.

[18] Federal (FECA) Procedure Manual, Part 3, Medical, *Requirements for Medical Reports*, Chapter 3.600.8, Exhibit 4 (September 1995). *See also K.G.*, Docket No. 14-1827 (issued January 5, 2015).

certified as accurate by a physician as defined by FECA.[19] If an audiogram is prepared by an audiologist, it must be certified by a physician as accurate before it can be used to determine the percentage of hearing loss.[20] Consequently, OWCP erred in relying on this audiogram in modifying its schedule award determination.

The Board finds that Dr. Brousse's May 20, 2020 report and audiogram constitutes the weight of the evidence. Dr. Israel, the DMA, properly applied the standards for rating hearing loss under the A.M.A., *Guides* to the May 20, 2020 audiogram and found that appellant had four percent binaural hearing loss. Accordingly, the Board will modify the binaural hearing loss schedule award from three percent to four percent.[21]

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 a total of four percent binaural hearing loss.

[19] A doctor of audiology is not a physician as defined by FECA. 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). *See also L.C.*, Docket No. 14-1954 (issued January 5, 2015).

[20] *See D.L.*, Docket No. 17-1440, n.10 (issued September 10, 2018); *Joshua A. Holmes*, 42 ECAB 231 (1990).

[21] *See J.C.*, Docket No. 20-0322 (issued July 8, 2020).

ORDER

IT IS HEREBY ORDERED THAT the May 14, 2021 decision of the Office of Workers' Compensation Programs is affirmed as modified.

Issued: January 31, 2022
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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