



employment, including exposure to loud machinery. He noted that he first became aware of his condition on June 21, 1993 and realized its relation to his federal employment on March 22, 2021. Appellant explained that he had been exposed to these employment factors over his 28 years of federal service. He did not stop work. In an accompanying statement of even date, appellant related that his official duties required him to work around loud machineries, including boiler feed pumps, jet pumps, and stream and diesel turbines. He asserted that he noticed a significant decrease in his hearing during his federal employment.

Appellant submitted a copy of an employing establishment audiogram dated June 8, 1993.

A comprehensive hearing examination dated July 29, 2020 from Martha Meneses, a medical technician, revealed that appellant developed mild-to-moderate bilateral hearing loss.

In an undated statement, J.Q., an employing establishment manager, noted that appellant worked eight hours per day, five days a week. He related that appellant did not always perform his duties in high-noise areas, as he was required to also work in areas without exposure to operating equipment, including outdoors. J.Q. also noted that appellant was required to use personal protection equipment (PPE) for noise exposure and was afforded daily breaks.

OWCP also received an August 23, 2021 report from Lisa McIntosh, a nurse practitioner, who reviewed appellant's history of employment and medical evidence, including hearing questionnaires dated October 19, 2001 and October 25, 2002 and medical examination records. Ms. McIntosh noted his complaints of worsening issues with both ears beginning 2020.

OWCP referred appellant, along with a SOAF and the medical record, to Dr. Dennis Pappas, a Board-certified otolaryngologist, for a second opinion evaluation regarding the nature and extent of his hearing loss.

Appellant submitted forms outlining his job description, physical activities, working conditions, and employment history.

In an October 20, 2021 report, Dr. Pappas reviewed the SOAF, history of injury, and the medical evidence of record. He noted some asymmetry in discrimination of the right side and tinnitus. Dr. Pappas tested at the frequencies of 500, 1,000, 2,000, and 3,000 hertz (Hz), which revealed losses at 15, 15, 10, and 55 decibels (dBs) for the right ear, respectively, and 15, 15, 10, and 55 dBs for the left ear, respectively. He noted appellant's tinnitus handicap inventory scored a 66, which would result in severe tinnitus impairment, adding four percent overall for a total of four percent binaural hearing impairment. Dr. Pappas indicated that the ears, tympanic membranes, and canals were normal. He diagnosed bilateral sensorineural hearing loss and bilateral tinnitus, which was due to noise exposure encountered during appellant's federal employment.

In a letter dated December 14, 2021, OWCP referred the medical record, including a copy of Dr. Pappas' October 20, 2021 report, and SOAF to an OWCP district medical adviser (DMA), to determine the extent of appellant's hearing loss any and permanent impairment due to his employment-related noise exposure.

By decision dated December 15, 2021, OWCP accepted appellant's claim for bilateral sensorineural hearing loss and bilateral tinnitus.

OWCP thereafter received a December 22, 2021 report by Dr. Jeffrey Israel, an OWCP DMA and Board-certified otolaryngologist, who reviewed Dr. Pappas' examination report and agreed that the October 20, 2021 audiogram revealed normal hearing through 2,000 Hz bilaterally, followed by a drop at the 3,000 Hz level at 55 dB. Dr. Israel noted that the left ear recovers to 30 dB at 6,000 Hz with a final drop to 40 dB at 8 kHz, and the right ear recovers to 40 dB at 8,000 Hz. He opined that those patterns were suggestive of sensorineural hearing loss due at least in part to noise-induced work-related acoustic trauma. 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* (A.M.A., *Guides*),<sup>2</sup> 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 his right ear hearing levels of 15, 15, 10, and 55 dBs at 500, 1,000, 2,000, and 3,000 Hz, respectively, by adding the hearing loss at those 4 levels totaling 95 then dividing the sum by 4, which equaled 23.75. After subtracting the 25 dB fence, Dr. Israel multiplied the remaining zero balance by 1.5 to calculate zero percent right ear monaural hearing loss. He then averaged appellant's left ear hearing levels 15, 15, 10, and 55 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 of 95 by 4, which equaled 23.75. After subtracting the 25 dB fence, Dr. Israel multiplied the remaining zero balance by 1.5 to calculate zero percent left ear monaural hearing loss. He 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. Dr. Israel opined that he concurred with Dr. Pappas' calculations. He recommended yearly audiograms, use of noise protection, and hearing aids for hearing loss and tinnitus masking. Dr. Israel also determined that appellant had reached maximum medical improvement (MMI) on October 20, 2021, the date of the most recent audiogram and Dr. Pappas' examination.

By decision dated December 30, 2021, OWCP denied appellant a schedule award, 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

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

<sup>3</sup> 5 U.S.C. § 8107.

<sup>4</sup> 20 C.F.R. § 10.404.

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 ratable hearing loss, warranting a schedule award.

On December 22, 2021 Dr. Israel, OWCP's DMA, reviewed Dr. Pappas' second opinion report and determined that appellant had zero percent monaural hearing loss in bilateral ears. He noted that a four percent tinnitus award cannot be given as there was no ratable hearing impairment. Dr. Israel averaged appellant's right ear hearing levels of 15, 15, 10, and 55 dBs at the frequencies of 500, 1,000, 2,000, and 3,000 Hz, respectively, by adding the hearing loss at those four levels totaling 95 and then dividing the sum by four, which equaled 23.75. After subtracting the 25 dB fence, he multiplied the remaining balance of zero by 1.5 to calculate zero percent right ear monaural hearing loss. Dr. Israel then averaged appellant's left ear hearing levels of 15, 15, 10, and 55 dBs at 500, 1,000, 2,000, and 3,000 Hz, respectively, by adding the hearing loss at those four levels totaling 95 then dividing the sum by four, which equaled 23.75. After subtracting the 25 dB fence, he multiplied the remaining balance of zero by 1.5 to calculate zero percent left ear monaural hearing loss. Dr. Israel then calculated zero percent binaural hearing loss by multiplying the right ear hearing loss of zero percent by five, adding the zero percent left ear loss, and dividing this sum by six.

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<sup>5</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

<sup>6</sup> *H.M.*, Docket No. 21-0378 (issued August 23, 2021); *V.M.*, Docket No. 18-1800 (issued April 23, 2019); *J.W.*, Docket No. 17-1339 (issued August 21, 2018).

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

<sup>8</sup> *Id.*

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

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

<sup>11</sup> *V.M.*, *supra* note 6.

The DMA properly applied the A.M.A., *Guides*, and concluded that appellant did not have any 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 thus finds that appellant has not met his burden of proof.

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 permanent impairment.

### **CONCLUSION**

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

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<sup>12</sup> *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 December 30, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 6, 2023  
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge  
Employees' Compensation Appeals Board