United States Department of Labor
Employees' Compensation Appeals Board

K.P., Appellant	)	
and	)	**Docket No. 23-0041**
	)	**Issued: November 20, 2023**
DEPARTMENT OF THE ARMY, U.S. 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:
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On October 14, 2022 appellant filed a timely appeal from an October 6, 2022 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 greater than two percent monaural hearing loss in the right ear, for which he previously received a schedule award.

[1] 5 U.S.C. § 8101 *et seq*.

FACTUAL HISTORY

On June 11, 2021 appellant, then a 59-year-old painter, filed an occupational disease claim (Form CA-2) alleging that he developed hearing loss due to factors of his federal employment. He indicated that he first became aware of his condition and realized its relationship to his federal employment on June 29, 2020. In a June 10, 2021 statement, appellant recounted that he was exposed to occupational noise while working as a sandblaster and painter.

In reports dated July 23 and August 6, 2020, Dr. Richard K. Caldwell, a Board-certified otolaryngologist, described appellant's complaints of difficulty hearing and a sensation of water sloshing in his ears. He further noted that he had a history of tube placement as a child. Dr. Caldwell reviewed appellant's recent audiogram and recommended continued hearing conservation measures.

In a follow-up report dated February 8, 2021, Dr. Caldwell noted that appellant related symptoms of fullness in the ears and moderate hearing loss. He diagnosed other specific disorders of Eustachian tube, bilateral and chronic serous otitis media, bilateral.

In periodic industrial hygiene survey reports dated May 20 and June 8, 2021, the employing establishment indicated that hearing protection was required and that employees were exposed to occupational noise in ventilation areas, painting and blasting booths, and during forklift operation.

OWCP also received a position description for a painter with the employing establishment.

In a development letter dated July 2, 2021, OWCP advised appellant of the deficiencies of his claim. It informed him of 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.

In a July 18, 2021 response to OWCP's development questionnaire, appellant indicated that from October 2004 to September 2014, he had worked for the employing establishment as a sandblaster with an average of four to six hours per day, six days per week, of exposure to occupational noise in outdated blasting booths. From September 2014 to the present, he worked as a painter with four to six hours per day of high noise exposure from the paint booth and the paint line. The employing establishment concurred with appellant's allegations and description of noise exposure.

On January 5, 2022 OWCP referred appellant, a statement of accepted facts (SOAF), and an otologic evaluation questionnaire to Dr. Dennis G. Pappas, a Board-certified otolaryngologist, for a second opinion evaluation.

Dr. Pappas, in a January 17, 2022 report, reviewed the SOAF and noted that appellant was exposed to occupational noise at work since 2004, including sandblasting and painting. He performed a physical examination, which revealed some scarring on the tympanic membranes, and

also revealed that the eardrums were slightly retracted and did not move well with insufflation. Dr. Pappas further noted that appellant was unable to hear a whispered voice in either ear. He diagnosed bilateral asymmetric sensorineural hearing loss, bilateral tinnitus, and bilateral chronic Eustachian tube dysfunction. Dr. Pappas found that the sensorineural hearing loss was unrelated to employment, but attributed the tinnitus to noise exposure during appellant's federal employment. He requested the results of previous hearing tests to compare studies from the beginning of appellant's employment. Dr. Pappas reviewed a January 17, 2022 audiogram and noted that it demonstrated losses of 25, 15, 20, and 30 decibels (dBs) on the left and 30, 30, 20, and 25 dBs on the right at the frequencies of 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*),[2] he calculated that appellant sustained right ear monaural hearing loss of 1.8 percent, a left ear monaural hearing loss of 0 percent, and binaural hearing loss of .3 percent. Dr. Pappas provided 2 percent impairment for tinnitus and found a total of 2.3 percent binaural hearing loss. He recommended further evaluation of appellant's chronic Eustachian tube dysfunction and hearing amplification.

OWCP also received hearing conservation data from the employing establishment dated between November 5, 2003 and August 8, 2019.

On February 28, 2022 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 2, 2022 Dr. Israel reviewed Dr. Pappas' examination report and opined that appellant's sensorineural hearing loss was due, at least in part, to noise-induced work-related acoustic trauma. He applied the January 17, 2022 audiometric data to OWCP's standard for evaluating hearing loss under the A.M.A., *Guides* and determined that appellant sustained a right ear monaural hearing loss of 1.875 percent, a left ear monaural hearing loss of 0 percent, and a binaural hearing loss of .3, which he rounded down to 0 percent.[3] Dr. Israel averaged appellant's right ear hearing levels of 30, 30, 20, and 25 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 26.25. After subtracting the 25 dB fence and multiplying by 1.5, he found 1.875 percent monaural hearing loss for the right ear. Dr. Israel then averaged appellant's left ear hearing levels of 25, 15, 20, and 30 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 22.5. After subtracting out a 25 dB fence, he multiplied the remaining balance by 1.5 to calculate zero percent left ear monaural hearing loss. Dr. Israel then calculated the binaural hearing loss by multiplying the right ear loss of 1.875 percent by five, adding the 0 percent left ear loss, and dividing this sum by six, which equaled .3, which he rounded to 0 percent.[4] He recommended yearly audiograms, use of noise protection, and authorization for bilateral hearing aids. Dr. Israel noted that there was no applicable award for

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

[3] 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 .5 and up for .5 and over. *See V.M.*, Docket No. 18-1800 (issued April 23, 2019); *J.H.*, Docket No. 08-2432 (issued June 15, 2009); *Robert E. Cullison*, 55 ECAB 570 (2004).

[4] *Id*.

tinnitus as there was zero percent binaural hearing impairment. He opined that appellant had reached maximum medical improvement (MMI) on January 17, 2022, the date of the latest audiogram in the records and the one used by the Dr. Pappas to determine the current hearing impairment.

On March 31, 2022 OWCP requested clarification from Dr. Pappas including a rationalized medical opinion regarding causal relationship.

OWCP thereafter received a February 10, 2022 addendum report by Dr. Pappas, who indicated that he reviewed the additional prior hearing studies and noted that appellant demonstrated high frequency loss on the left at 6,000 Hz and mild loss on the right a 4,000 Hz in 2004 when he began his employment with the employing establishment. He found the January 17, 2022 audiogram did not suggest significant noise-induced damage, and that his tinnitus could be attributed to work-related noise.

By decision dated May 12, 2022, OWCP accepted appellant's claim for bilateral sensorineural hearing loss and bilateral tinnitus.

On July 19, 2022 appellant filed a claim for compensation (Form CA-7) for a schedule award.

On September 2, 2022 OWCP requested clarification from the DMA including a review of Dr. Pappas' February 10, 2022 addendum report.

In an addendum report dated September 11, 2022, Dr. Israel indicated that his review of Dr. Pappas' February 10, 2022 report did not alter his opinions or permanent impairment rating calculations. He noted that the frequency losses addressed by Dr. Pappas were not used in calculating hearing impairment.

By decision dated October 6, 2022, OWCP granted appellant a schedule award for two percent monaural hearing loss of the right ear.[5] It calculated the period of the award as 1.04 weeks from January 17 through 24, 2022.

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. 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

[5] *Id*.

[6] 5 U.S.C. § 8107.

[7] 20 C.F.R. § 10.404.

been adopted by OWCP as a standard for evaluation of schedule losses and the Board has concurred in such adoption.[8] For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition of the A.M.A., *Guides*, published in 2009.[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 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.[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 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 OWCP's adoption of this standard for evaluating hearing loss.[14]

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.[15]

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.[16] If tinnitus interferes with activities of daily

[8] *Id*.; *T.O.*, Docket No. 18-0659 (issued August 8, 2019); *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); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

[10] *W.W.*, Docket No. 21-0545 (issued June 21, 2023); *T.O.*, *supra* note 8; *R.D.*, 59 ECAB 127 (2007); *Bernard Babcock, Jr.*, 52 ECAB 143 (2000); *see also* 20 C.F.R. § 10.404.

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

[12] *Id*.

[13] *Id*.

[14] *D.S.*, Docket No. 23-0048 (issued May 23, 2023); *T.O.*, *supra* note 8; *E.S.*, 59 ECAB 249 (2007); *Reynaldo R. Lichtenberger*, 52 ECAB 462 (2001).

[15] *Supra* note 9 at Chapter 2.808.6f.

[16] *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.[17]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish greater than two percent monaural loss of hearing in the right ear, for which he previously received a schedule award.

OWCP referred appellant to Dr. Pappas for a second opinion examination relative to his hearing loss. In his January 17, 2022 report, Dr. Pappas reviewed audiometric testing at the frequencies of 500, 1,000, 2,000, and 3,000 Hz, revealing losses at 30, 30, 20, and 25 dBs for the right ear, respectively, and 25, 15, 20, and 30 dBs for the left ear, respectively. He diagnosed bilateral asymmetric sensorineural hearing loss, bilateral tinnitus, and bilateral chronic Eustachian tube dysfunction.

On March 4, 2022 Dr. Israel, the DMA, reviewed Dr. Pappas' report and found testing for the right ear at the frequency levels of 500, 1,000, 2,000, and 3,000 Hz revealed dB losses at 30, 30, 20, and 25 dBs, respectively. These dBs totaled 105 and were divided by 4 to obtain an average hearing loss at those cycles of 26.25 dBs. The average of 26.25 dBs was then reduced by 25 dBs (the first 25 dBs were discounted as discussed above) to equal 1.25, which was then multiplied by 1.5 to equal 1.875 or two percent hearing loss for the right ear.

Testing for the left ear at the frequency levels of 500, 1,000, 2,000, and 3,000 Hz revealed dB losses of 25, 15, 20, and 30, respectively. These dBs were totaled at 90 and were divided by 4 to obtain an average hearing loss at those cycles of 22.5 dBs. The average of 22.5 dBs was then reduced by 25 dBs (the first 25 dBs were discounted as discussed above) to equal less than zero, which was then multiplied by 1.5 to equal zero percent hearing loss for the left ear.

Dr. Israel determined the binaural loss by multiplying the lesser left-sided monaural loss of 0 by 5, adding the right-sided hearing loss of 1.875, and dividing the total by 6, to find 0.3 percent binaural loss, which he properly rounded down to zero.[18] 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 the appropriate provisions of the A.M.A., *Guides*.[19] The DMA's report therefore carries the weight of the medical evidence and establishes that appellant has 1.875 percent hearing loss of the right ear which, in accordance with OWCP policy, is rounded up to two percent.[20] Additionally, in the absence of ratable binaural

[17] *Id*.

[18] *Supra* note 3.

[19] *See A.G.*, Docket No. 22-0582 (issued October 4, 2022); *J.M.*, Docket No. 18-1387 (issued February 1, 2019).

[20] *Id*.

hearing loss, the Board further finds that a schedule award for tinnitus is not allowable pursuant to the A.M.A., *Guides*.[21]

The Board, therefore, finds that appellant has not met his burden of proof to establish greater than two percent hearing loss of the right ear for which he previously received a schedule award.

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 greater than two percent monaural loss of hearing in the right ear, for which he previously received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the October 6, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 20, 2023
Washington, DC

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

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

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

[21] *See J.R.*, Docket No. 21-0909 (issued January 14, 2022); *W.T.*, Docket No. 17-1723 (issued March 20, 2018); *E.D.*, Docket No. 11-0174 (issued July 26, 2011).