United States Department of Labor
Employees' Compensation Appeals Board

J.G., Appellant	)	
and	)	**Docket No. 23-0119**
	)	**Issued: November 13, 2023**
DEPARTMENT OF HOMELAND SECURITY, U.S. CUSTOMS & BORDER PROTECTION Euless, TX, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On November 2, 2022 appellant filed a timely appeal from an October 27, 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 ratable hearing loss, warranting a schedule award.

FACTUAL HISTORY

On December 2, 2021 appellant, then a 53-year-old customs and border protection agent, filed an occupational disease claim (Form CA-2) alleging that he developed hearing loss and

[1] 5 U.S.C. § 8101 *et seq.*

ringing in his ears due to factors of his federal employment, including high levels of noise exposure at work for the past 25 years. He noted that he first became aware of his conditions on May 1, 2012 and realized their relation to his federal employment on November 30, 2021. Appellant did not stop work.

In a December 6, 2021 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of evidence necessary to establish his claim and provided a factual questionnaire for his completion. In a separate development letter of even date, OWCP requested that the employing establishment provide additional information including comments from a knowledgeable supervisor regarding appellant's occupational noise exposure. It afforded both parties 30 days to submit the requested evidence.

Thereafter, appellant submitted an undated response detailing his employment history from 1987 to 2021 and noting that he had no ear or hearing issues prior to his federal employment and no hobbies that involved loud noises. He described his work duties, which included exposure to tractor trailers and commercial buses at vehicle crossings and noise exposure from quarterly firearms qualification. Appellant advised that he had difficulty understanding what conversations. He asserted that he often experienced ringing of the ears and vertigo, and that coworkers and relatives told him that he speaks very loudly.

On January 7, 2022 OWCP referred appellant, along with a statement of accepted facts (SOAF) and the medical record, to Dr. Paul W. Loeffler, a Board-certified otolaryngologist serving as second opinion physician, regarding the nature and extent of appellant's hearing loss, and whether there was causal relationship between his diagnosed hearing loss and his accepted employment exposure.

In a February 8, 2022 report, Dr. Loeffler reviewed the SOAF, history of injury, and the medical evidence of record. He indicated that there was no significant variation from the SOAF, and no other relevant medical history or condition related to appellant's hearing loss. Audiometric testing obtained on February 8, 2022 at the frequencies of 500, 1,000, 2,000, and 3,000 hertz (Hz) revealed losses at 25, 15, 20, and 25 decibels (dBs) for the right ear, respectively, and 25, 20, 20, and 30 dBs for the left ear, respectively. Dr. Loeffler diagnosed bilateral sensorineural hearing loss and bilateral tinnitus and noted that the workplace exposure described was of sufficient intensity and duration to have caused the hearing loss. He opined that appellant's sensorineural hearing loss and tinnitus were due to noise exposure encountered in his federal employment. Dr. Loeffler found that appellant had two percent impairment due to mild tinnitus. He determined that appellant had reached maximum medical improvement (MMI) on February 8, 2022 and recommended hearing aids.

On February 15, 2022 OWCP accepted the claim for bilateral sensorineural hearing loss and bilateral tinnitus.

OWCP referred the medical record and SOAF to Dr. Jeffrey Israel, a Board-certified otolaryngologist serving as a district medical adviser (DMA), to determine the extent of appellant's hearing loss and permanent impairment due to his employment-related noise exposure.

In a February 25, 2022 report, Dr. Israel reviewed Dr. Loeffler's examination report and concurred that the February 8, 2022 audiogram revealed normal to low normal hearing up to 2,000 Hz in the left ear and 3,000 Hz in the right ear, followed by a drop at the 3,000-4,000 Hz level to 30 dB on the left and a drop at the 4,000-6,000 Hz level to 30 dB on the right. 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*,[2] (A.M.A., *Guides*) 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 appellant's right ear hearing levels of 25, 15, 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 21.25. 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 of 25, 20, 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 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 noted that there was no applicable award for tinnitus as there was zero percent binaural hearing impairment. He determined that appellant had reached MMI on February 8, 2022 the date of the most recent audiogram and Dr. Loeffler's examination. Dr. Israel recommended yearly audiograms, use of noise protection, and hearing aids for hearing loss and tinnitus masking.

By decision dated October 27, 2022, OWCP denied appellant's schedule award claim, finding that the medical evidence of record was insufficient to establish that his accepted hearing loss condition was severe enough to be considered ratable. It noted that he was entitled to hearing aids if recommended by his physician.

LEGAL PRECEDENT

The schedule award provisions of FECA[3] and its implementing federal regulations[4] 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. 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.[5] The sixth

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

[3] 5 U.S.C. § 8107.

[4] 20 C.F.R. § 10.404.

[5] *Id*. at § 10.404(a).

edition of the A.M.A., *Guides*[6] has been adopted by OWCP for evaluating schedule losses and the Board has concurred in such adoption.[7]

OWCP evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.[8] Using the frequencies of 500, 1,000, 2,000, and 3,000 Hz, the losses at each frequency are averaged.[9] 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.[10] The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.[11] 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.[12] The Board has concurred in OWCP's adoption of this standard for evaluating hearing loss.[13]

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.[14] If tinnitus interferes with activities of daily living, including sleep, reading, and other tasks requiring concentration, up to five percent may be added to a measurable binaural hearing impairment.[15]

ANALYSIS

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

OWCP properly referred appellant to Dr. Loeffler for a second opinion examination to evaluate his hearing loss. In his February 8, 2022 report, Dr. Loeffler reviewed audiometric testing at the frequencies of 500, 1,000, 2,000, and 3,000 Hz, revealing losses at 25, 15, 20, and 25 dBs for the right ear, respectively, and 25, 20, 20, and 30 dBs for the left ear, respectively. He diagnosed bilateral sensorineural hearing loss and bilateral tinnitus and opined that appellant's

[6] *Supra* note 2.

[7] *V.M.*, Docket No. 18-1800 (issued April 23, 2019); *see J.W.*, Docket No. 17-1339 (issued August 21, 2018).

[8] *Supra* note 2.

[9] *Id.* at 250.

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

[11] *Id.*

[12] *Id.*

[13] *M.S.*, Docket No. 22-0458 (issued May 3, 2023); *S.M.*, Docket No. 21-0648 (issued May 4, 2023); *H.M.*, Docket No. 21-0378 (issued August 23, 2021); *V.M.*, *supra* note 7.

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

[15] *Id.*

conditions were due to noise exposure encountered in his federal employment. Dr. Loeffler found two percent permanent impairment due to tinnitus.

On February 25, 2022 Dr. Israel, serving as DMA, reviewed Dr. Loeffler's report and determined that appellant had zero percent monaural hearing loss in each ear. He noted that a tinnitus award could not be given as there was no ratable binaural hearing loss. Dr. Israel averaged appellant's right ear hearing levels of 25, 15, 20, and 25 dBs at 500, 1,000, 2,000, and 3,000 Hz, respectively, by adding the hearing loss at those levels then dividing the sum by four, which equaled 21.25. He then averaged appellant's left ear hearing levels of 25, 20, 20, and 30 dBs at 500, 1,000, 2,000, and 3,000 Hz, respectively, by adding the hearing loss at those levels then dividing the sum by four, which equaled 23.75. After subtracting the 25-decibel fence, both the right and left ear losses were reduced to zero. When multiplied by 1.5, the resulting monaural hearing loss in each ear was zero percent. Dr. Israel 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.

The Board finds that the DMA properly concluded that appellant did not have ratable hearing loss warranting a schedule award. Although appellant has accepted employment-related hearing loss, it is insufficiently severe to be ratable for schedule award purposes.[16]

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*.[17] 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.

[16] *S.L.*, Docket No. 23-0241 (issued May 17, 2023); *J.R.*, Docket No. 21-0909 (issued January 14, 2022); *see W.T.*, Docket No. 17-1723 (issued March 20, 2018); *E.D.*, Docket No. 11-0174 (issued July 26, 2011).

[17] *Id*.

ORDER

IT IS HEREBY ORDERED THAT the October 27, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 13, 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