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C.G., Appellant)	
)	
and)	Docket No. 23-0916
)	Issued: March 11, 2024
DEPARTMENT OF THE NAVY, NAVAL AIR)	
SYSTEMS COMMAND, FLEET READINESS)	
CENTER SOUTHEAST, Jacksonville, FL,)	
Employer)	
)	

Case Submitted on the Record

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JAMES D. MCGINLEY, Alternate Judge

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On December 8, 2016 appellant, then a 61-year-old aircraft sheet metal mechanic, filed an occupational disease claim (Form CA-2) alleging that he developed hearing loss and tinnitus due to factors of his federal employment, including exposure to hazardous noise from pneumatic tools, jet engines, and machinery over 21 years. He noted that he first became aware of his hearing loss and realized its relationship to his federal employment on October 31, 2016.

In an October 31, 2016 narrative statement, appellant described his history of noise exposure at work beginning in November 1995. His supervisor reviewed and concurred with his description of his employment-related noise exposure.

On January 10, 2017 OWCP referred appellant, along with the medical record, and a statement of accepted facts (SOAF) to Dr. John F. Ansley, a Board-certified otolaryngologist, for an audiogram and second opinion examination. In a March 13, 2017 report, Dr. Ansley obtained audiology testing on that date, which revealed the following decibel (dBs) losses at 500, 1000, 2000, and 3000 Hertz (Hz) 35, 35, 40, and 60 for the right ear and 40, 35, 50, and 75 for the left ear. He noted that appellant's hearing was normal at the start of his federal employment, which resulted in bilateral sensorineural hearing loss from his federal employment-related noise exposure. Dr. Ansley diagnosed bilateral sensorineural hearing loss causally related to noise exposure at work. He recommended noise protection and a trial of hearing aids.

On April 6, 2017 Dr. Jeffrey M. Israel, a Board-certified otolaryngologist serving as a district medical adviser (DMA), reviewed Dr. Ansley's March 13, 2017 report. He referred to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),² and applied OWCP's standard for evaluating hearing loss to the March 13, 2017 audiogram, and determined that appellant had 26.25 percent right monaural hearing loss, 37.5 percent left monaural hearing loss, and 28.1 percent binaural hearing loss. Dr. Israel reported appellant's right ear hearing loss of 35, 35, 40, and 60 dBs at 500, 1,000, 2,000, and 3,000 Hz, respectively, which totaled 170, and divided by 4, to find an average of 42.5. He subtracted the 25 dBs fence and multiplied by 1.5 to find 26.25 percent right ear monaural hearing loss. For the left ear, Dr. Israel added appellant's hearing loss of 40, 35, 50, and 75 dBs at 500, 1,000, 2,000, and 3,000 Hz, respectively, which totaled 200, and divided by 4 to find an average of 50. He subtracted the 25 dBs fence, multiplied the remaining 25 balance by 1.5, to calculate 37.5 percent left ear monaural hearing loss. Dr. Israel calculated the binaural hearing loss by multiplying the lesser right ear loss of 26.25 percent by 5, adding the 37.5 percent left ear loss, and dividing this sum by 6, which resulted in 28.1 percent binaural hearing loss. He agreed with Dr. Ansley's recommendation for hearing aids.

By decision dated April 11, 2017, OWCP accepted appellant's claim for bilateral sensorineural hearing loss.

On April 27, 2017 appellant filed a claim for compensation (Form CA-7) for a schedule award.

² A.M.A., *Guides* (6th ed. 2009).

By decision dated May 2, 2017, OWCP granted appellant a schedule award for 28 percent binaural hearing loss. The award ran for 56 weeks for the period March 13, 2017 through April 8, 2018 and was based on the schedule award ratings of Dr. Ansley and Dr. Israel.

In a report dated June 14, 2022, Dr. Sue Stone, a Board-certified audiologist, diagnosed bilateral sensorineural hearing loss. She reported left and right ear progression of sensorineural hearing loss and noted that the Tinnitus Handicap Inventory (THI) score was 56, indicative of severe disturbance from tinnitus. Dr. Stone further reported that the Tinnitus Functional Index score amounted to 80 percent, which impacted activities of daily living.

On August 10, 2022 appellant filed a Form CA-7 claim for an additional schedule award.

On March 6, 2023 OWCP referred appellant, together with the case record and a SOAF, to Dr. Francisco Moreno, a Board-certified otolaryngologist, for a second opinion examination.

In a report dated April 5, 2023, Dr. Moreno diagnosed sensorineural hearing loss, tinnitus, and serous otitis media. He recommended noise protection and a trial of hearing aids. Dr. Moreno reviewed an audiogram conducted by Dr. Nancy Dehart, an audiologist, on the same date, which indicated that testing at the frequency levels of 500, 1,000, 2,000, and 3,000 Hz revealed dBs losses of 35, 20, 40, and 60 for the right ear and dBs losses of 50, 40, 45, and 65 for the left ear, respectively. Utilizing the sixth edition of the A.M.A., *Guides*, he calculated that appellant had a monaural loss of 21 percent in the right ear, 38 percent monaural loss in the left ear, for a binaural loss of 23.83 percent. Dr. Moreno added an additional 4 percent impairment for tinnitus, to find a binaural hearing impairment of 28 percent. He opined that appellant had reached maximum medical improvement (MMI) on April 5, 2023.

On April 20, 2023 the DMA, Dr. Israel, reviewed the otologic and audiologic testing performed by Dr. Moreno's April 5, 2023 examination and advised that he concurred with his findings. He reported that the April 5, 2023 audiometric and indicated testing at frequency levels of 500, 1,000, 2,000, and 3,000 Hz revealed dBs losses of 35, 20, 40, and 60 for the right ear and dBs losses of 50, 40, 45, and 65 for the left ear, respectively. The dBs losses for the right ear were totaled at 155 and then divided by 4 to obtain the average hearing loss of 38.75 dBs. The dB losses for the left ear were totaled at 200 and then divided by 4 to obtain the average hearing loss of 50 db. After subtracting the 25 dBs fence, both the right ear and left ear were multiplied by 1.5 respectively to find 21 percent right ear monaural hearing loss and 38 percent left ear monaural hearing loss. Multiplying the lesser right ear loss of 20.63 percent by 5, adding the 37.5 percent left ear loss, and dividing this sum by 6 resulted in 23.8 percent binaural hearing loss.³ Dr. Israel allotted 4 percent for tinnitus based on the completed THI questionnaire yielding a score of 60, Grade 4 handicap listed as severe, for a total permanent impairment of 27.4 percent binaural hearing loss. He noted that appellant had reached MMI on April 5, 2023 the date of the latest audiogram. Dr. Israel recommended yearly audiograms, use of noise protection, and bilateral hearing aids.

By decision dated May 4, 2023, OWCP denied appellant's claim for an additional schedule award. It explained that he previously received a schedule award for 28 percent permanent

³ See *A.G.*, Docket No. 14-1143 (issued December 10, 2014).

impairment for binaural hearing loss and his current rating for binaural hearing loss with tinnitus did not exceed the prior award received.

LEGAL PRECEDENT

The schedule award provisions of FECA,⁴ and its implementing federal regulations,⁵ 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 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 2009.⁶ 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.⁷

A claimant seeking compensation under FECA has the burden of proof to establish the essential elements of his or her claim.⁸ 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.⁹

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 cycles per second, 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.¹⁰ The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss. 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

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404.

⁶ 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 Award and Permanent Disability Claims*, Chapter 2.808.5a (March 2017); *see also* Chapter 3.700, Exhibit 1 (January 2010).

⁷ *P.R.*, Docket No. 19-0022 (issued April 9, 2018); *Isidoro Rivera*, 12 ECAB 348 (1961).

⁸ *D.H.*, Docket No. 20-0198 (issued July 9, 2020); *John W. Montoya*, 54 ECAB 306 (2003).

⁹ *R.R.*, Docket No. 19-0750 (issued November 15, 2019); *Edward Spohr*, 54 ECAB 806, 810 (2003); *Tammy L. Meehan*, 53 ECAB 229 (2001).

¹⁰ *See* A.M.A., *Guides* 250.

binaural hearing loss. The Board has concurred in OWCP's adoption of this standard for evaluating hearing loss.¹¹

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.¹² If tinnitus interferes with activities of daily living, including sleep, reading (and other tasks requiring concentration), enjoyment of quiet recreation and emotional well-being, up to five percent may be added to a measurable binaural hearing impairment.¹³

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed to OWCP's medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the medical adviser providing rationale for the percentage of impairment specified.¹⁴ It may follow the advice of its medical adviser or consultant where he or she has properly utilized the A.M.A., *Guides*.¹⁵

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish greater than 28 percent binaural hearing loss, for which he previously received a schedule award.

On April 20, 2023 Dr. Israel, serving as the DMA, reviewed Dr. Moreno's April 5, 2023 audiometric report and indicated that testing at the frequency levels of 500, 1,000, 2,000, and 3,000 Hz revealed dBs losses of 35, 20, 40, and 60 for the right ear and dBs losses of 50, 40, 45, and 65 for the left ear, respectively. The dBs losses for the right ear were totaled at 155 and then divided by 4 to obtain the average hearing loss of 38.75 dBs. The dBs losses for the left ear were totaled at 200 and then divided by 4 to obtain the average hearing loss of 50 dBs. After subtracting the 25 dBs fence, both the right ear and left ear were multiplied by 1.5 respectively to find 20.63 percent right ear monaural hearing loss and 38.5 percent left ear monaural hearing loss. Multiplying the lesser right ear loss of 20.63 percent by 5, adding the 37.5 percent left ear loss, and dividing this sum by 6 results in 23.83 percent binaural hearing loss.¹⁶ Following the rating protocols, Dr. Israel concurred with Dr. Moreno's calculations for a total binaural hearing loss of 23.8 percent and also allotted an additional four percent for tinnitus based on the completed THI questionnaire yielding a score of 60, Grade 4 handicap listed as severe, for a total permanent impairment rating of 28 percent binaural hearing loss.

¹¹ See *E.S.*, 59 ECAB 249 (2007); *Donald Stockstad*, 53 ECAB 301 (2002), *petition for recon. granted* (modifying prior decision), Docket No. 01-1570 (issued August 13, 2002).

¹² See A.M.A., *Guides* 249.

¹³ *Id.*; *R.H.*, Docket No. 10-2139 (issued July 13, 2011); see also *Robert E. Cullison*, 55 ECAB 570 (2004).

¹⁴ See *D.J.*, Docket No. 19-0352 (issued July 24, 2020).

¹⁵ See *Ronald J. Pavlik*, 33 ECAB 1596 (1982).

¹⁶ *A.L.*, Docket No. 21-1233 (issued January 31, 2022).

The Board finds that Dr. Moreno's April 5, 2023 report and audiogram 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*.¹⁷ Utilizing this report, Dr. Israel, the DMA, properly applied the standards for rating hearing loss under the A.M.A., *Guides* to the April 5, 2023 audiogram and found that appellant had 27.4 percent binaural hearing loss. The medical reports establish that appellant has 27.4 percent binaural hearing loss which, in accordance with OWCP policy, is rounded down to 27 percent.¹⁸

The Board, therefore, finds that appellant has not met his burden of proof to establish greater than 28 percent binaural hearing loss, for which he previously received a schedule award.¹⁹

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 28 percent binaural hearing loss, for which he previously received a schedule award.

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. *Supra* note 6 at 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); *Robert E. Cullison*, *supra* note 13.

¹⁹ *A.G.*, Docket No. 22-0582 (issued October 4, 2022).

ORDER

IT IS HEREBY ORDERED THAT the May 4, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 11, 2024
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