

FACTUAL HISTORY

On March 29, 2024 appellant, then a 55-year-old nuclear material courier, 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 loud sounds while conducting briefings for exercise participants. He noted that he first became aware of his condition on June 30, 2016, and realized its relationship to factors of his federal employment on February 13, 2024. Appellant did not stop work.

In a statement dated March 4, 2024, appellant explained that he had worked for the employing establishment since August 11, 2001. He recounted that during his employment, he had been exposed on a regular basis to small arms fire, diesel truck engine noise, flash bang explosives, explosive room entries, shotgun breaching, and ground burst simulators. Appellant stated that the exposure occurred in line with operational readiness training from 2002 through 2004 and biannual weapons qualifications in March and September since 2002. He noted that he wore hearing protection. Appellant stated that he first noticed constant tinnitus during the summer of 2016 and that it had only grown louder to date. He noted that in his current position he was no longer exposed to biannual weapons qualifications or training at weapons ranges, but that he was still exposed to ground burst simulations and blank fire engagements during exercises that he set up and conducted, most recently on February 13, 2024, for approximately six hours.

Audiometric testing obtained in 2001 at the frequencies of 500, 1,000, 2,000, and 3,000 Hertz (Hz) revealed losses at 0, 0, 5, and 15 decibels (dBs) for the left ear, respectively; and 0, 5, 0, and 15 dB for the right ear, respectively.

In a development letter dated April 15, 2024, OWCP informed appellant that additional factual evidence was necessary to establish his claim. It afforded him 60 days to submit the requested evidence. In a 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 the employing establishment 30 days to respond.

Appellant replied in a letter received on April 17, 2024, again noting exposure to high noise levels at work.

The employing establishment replied in a letter dated April 18, 2024. A supervisor described appellant's exposure to noise including extremely high impulse noise from live small arms fire, flash bang explosives, explosive simulators, and high explosives during breaching training operations, as well as diesel tractor engine noise at or above 85 dB for up to 32 continuous hours during operations. He noted that while the exposure was varied, it was up to 36 hours per week during most intensive training cycles for up to three weeks at a time; and up to five hours per day for three days a week as a consistent average of high noise exposure related to firearms.

On May 31, 2024 OWCP referred appellant, along with the medical record, a statement of accepted facts (SOAF), and a series of questions, to Dr. Benjamin Westbrook, a Board-certified

otolaryngologist serving as second opinion physician, regarding the nature, extent, and causal relationship of his hearing loss.

In a September 16, 2024 report, Dr. Westbrook reviewed the SOAF, history of injury, and medical evidence of record. Audiometric testing obtained on that date at the frequencies of 500, 1,000, 2,000, and 3,000 Hz revealed losses of 20, 20, 20, and 30 dBs for the left ear, respectively; and 20, 15, 20, and 35 dBs for the right ear, respectively. Dr. Westbrook diagnosed binaural high-frequency moderate sensorineural hearing loss and binaural tinnitus, opining that appellant's sensorineural hearing loss and tinnitus were due to noise exposure encountered in appellant's federal employment. He completed a tinnitus handicap inventory (THI) and rated the tinnitus impairment at three percent.

OWCP accepted appellant's claim for binaural sensorineural hearing loss and binaural tinnitus on September 26, 2024.

On October 10, 2024 appellant filed a claim for compensation (Form CA-7) for a schedule award.

In a December 1, 2024 report, Dr. Jeffrey Israel, a Board-certified otolaryngologist serving as an OWCP district medical adviser (DMA), reviewed the evidence of record and applied 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*)² to Dr. Westbrook's report and the audiology findings. He determined that appellant sustained left monaural loss of zero percent, right monaural loss of zero percent, and binaural hearing loss of zero percent, noting that a tinnitus award of three percent could not be given as there was no ratable binaural hearing loss. Dr. Israel averaged appellant's left ear hearing levels of 20, 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, equaling 22.5. After subtracting the 25 dB fence, he multiplied the remaining zero balance by 1.5 to calculate zero percent left ear monaural hearing loss. Dr. Israel then averaged appellant's right ear hearing levels of 20, 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, equaling 22.5. After subtracting the 25 dB fence, he multiplied the remaining zero balance by 1.5 to calculate zero percent right ear monaural hearing loss. 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, equaling zero percent. He suggested that appellant undergo yearly audiograms, use noise protection for the ears, and receive authorization for hearing aids for hearing loss with integrated tinnitus masking. Dr. Israel determined that appellant had reached maximum medical improvement (MMI) on September 16, 2024, the date of the most recent audiogram and Dr. Westbrook's examination.

By decision dated December 30, 2024, OWCP denied appellant's schedule award claim, finding that the evidence of record was insufficient to establish that his accepted hearing loss condition was severe enough to be considered ratable.

² A.M.A., *Guides* (6th ed. 2009).

LEGAL PRECEDENT

The schedule award provisions of FECA³ and its implementing regulations⁴ 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 A.M.A., *Guides*⁵ has been adopted by OWCP for evaluating schedule losses and the Board has concurred in such adoption.⁶

A claimant seeking compensation under FECA has the burden of proof to establish the essential elements of his or her claim.⁷ 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.⁸

OWCP evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.⁹ Using the frequencies of 500, 1,000, 2,000, and 3,000 Hz, the losses at each frequency are averaged.¹⁰ Then, the fence of 25 dBs is deducted because, as the A.M.A., *Guides* indicates, 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

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404.

⁵ *Supra* note 2.

⁶ *J.S.*, Docket No. 22-0274 (issued September 13, 2022); *V.M.*, Docket No. 18-1800 (issued April 23, 2019); *J.W.*, Docket No. 17-1339 (issued August 21, 2018).

⁷ *D.H.*, Docket No. 20-0198 (issued July 9, 2020); *John W. Montoya*, 54 ECAB 306 (2003).

⁸ *R.R.*, Docket No. 19-0750 (issued November 15, 2019); *Edward Spohr*, 54 ECAB 806, 810 (2003); *Tammy L. Meehan*, 53 ECAB 229 (2001).

⁹ *Supra* note 2.

¹⁰ *Id.* at 250.

¹¹ *Id.*; see *W.W.*, Docket No. 21-0545 (issued June 21, 2023); *C.D.*, Docket No. 18-0251 (issued August 1, 2018).

¹² *Id.*

hearing loss.¹³ The Board has concurred in OWCP's adoption of this standard for evaluating hearing loss.¹⁴

Regarding tinnitus, the A.M.A., *Guides* provide that tinnitus is not a disease, but rather a symptom that may be the result of disease or injury.¹⁵ 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.¹⁶

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.¹⁷ It may follow the advice of its medical adviser or consultant where he or she has properly utilized the A.M.A., *Guides*.¹⁸

ANALYSIS

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

OWCP referred appellant to Dr. Westbrook for a second opinion examination to evaluate his hearing loss. In his September 16, 2024 report, Dr. Westbrook diagnosed binaural high frequency moderate sensorineural hearing loss and binaural tinnitus. He opined that the conditions were due to noise exposure encountered in appellant's federal employment. OWCP accepted appellant's claim for bilateral sensorineural hearing loss and bilateral tinnitus and forwarded the case to Dr. Israel, OWCP's DMA, to assess his percentage of permanent employment-related hearing loss.

The DMA, Dr. Israel, in a report dated December 1, 2024, reviewed Dr. Westbrook's report, and determined that appellant had zero percent monaural hearing loss in each ear. He noted that testing at the frequencies of 500, 1,000, 2,000, and 3,000 Hz revealed losses at 20, 20, 20, and 30 dBs for the left ear, respectively; and 20, 15, 20, and 25 dBs for the right ear, respectively. The decibel losses for the left ear were totaled and divided by four to obtain an average hearing loss of 22.5. The decibel losses for the right ear were also totaled and divided by four to obtain an average hearing loss of 22.5. After subtracting the 25 dB fence, both the right and left ear losses were

¹³ *Id.*

¹⁴ *R.C.*, Docket No. 23-0334 (issued July 19, 2023); *H.M.*, Docket No. 21-0378 (issued August 23, 2021); *VM.*, *supra* note 6; *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).

¹⁵ *Supra* note 2 at 249.

¹⁶ *Id.*; *see R.H.*, Docket No. 10-2139 (issued July 13, 2011); *Robert E. Cullison*, 55 ECAB 570 (2004).

¹⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5.a (March 2017); *see also D.J.*, Docket No. 19-0352 (issued July 24, 2020).

¹⁸ *See Ronald J. Pavlik*, 33 ECAB 1596 (1982).

reduced to zero. When multiplied by 1.5, the resulting monaural hearing loss in each ear was zero percent. Thus, the binaural hearing loss was also calculated as zero percent.

The Board finds that the DMA, Dr. Israel, properly concluded, based on Dr. Westbrook's report, that appellant did not have ratable hearing loss warranting a schedule award.¹⁹ Although appellant has accepted employment-related hearing loss, it is insufficiently severe to be ratable for schedule award purposes.²⁰

The Board further finds that the DMA correctly explained that tinnitus may not be added to an impairment rating for hearing loss under the sixth edition of the A.M.A., *Guides* unless such hearing loss is ratable.²¹ Accordingly, as appellant does not have ratable hearing loss, the Board finds that he is not entitled to a schedule award for tinnitus.²²

As the medical evidence of record is insufficient to establish ratable hearing loss, warranting a schedule award, the Board finds that appellant has not met his burden of proof.

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.

¹⁹ See *N.Y.*, Docket No. 25-0052 (issued November 12, 2024); *T.B.*, Docket No. 23-0303 (issued August 11, 2023).

²⁰ 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).

²¹ See *R.C.*, Docket No. 23-0334 (issued July 19, 2023); *D.S.*, Docket No. 23-0048 (issued May 23, 2023); *J.S.*, Docket No. 22-0274 (issued September 13, 2022).

²² See *P.C.*, Docket No. 23-1152 (issued January 19, 2024).

ORDER

IT IS HEREBY ORDERED THAT the December 30, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 9, 2025
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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