

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On February 5, 2024 appellant, then a 67-year-old machinist, filed an occupational disease claim (Form CA-2) alleging that he developed hearing loss due to factors of his federal employment, including working in a machine shop for over 25. He noted that he first became aware of his condition and that it was caused or aggravated by his federal employment on April 1, 2014. Appellant did not stop work.

In support of his claim, appellant submitted an employing establishment position description for a machinist.

In a development letter dated February 20, 2024, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence necessary to establish his claim and attached a questionnaire for his completion. OWCP afforded appellant 60 days to respond. In a separate development letter of even date, it requested that the employing establishment provide additional information regarding his exposure to noise due to factors of his federal employment, including comments from a knowledgeable supervisor regarding the accuracy of his statements. OWCP afforded the employing establishment 30 days to respond.

In a February 29, 2024 response to OWCP's development letter, R.G., appellant's supervisor, indicated that since 1999 appellant had been exposed to conventional lathe, milling machines, 600-ton press and hand tools, air grinders, air drills, and vertical saws, for nine hours per day Monday through Thursday, eight hours per day on Fridays, and eight hours of overtime on weekends, if worked. He further noted that, depending on the type of hearing protection worn, a 23 to 28 decibel (dB) noise reduction was provided.

OWCP received the results from audiograms dated from 1999 through 2023, a May 25, 2023 noise exposure study, and a September 11, 2023 sample of the noise levels appellant was exposed to as a machinist performing metal machining and metal forming work in 2002.

In a March 7, 2024 response to OWCP's development questionnaire, appellant described his history to noise exposure, noting that since 1999 he had been exposed for nine hours a day to machinery noise, grinding press operation lath, and milling machines. He indicated that he first became aware of his hearing loss in 2012. Appellant stated that he wore earplugs and earmuffs.

On May 17, 2024 OWCP referred appellant, along with the medical record, a statement of accepted facts (SOAF), and a series of questions, to Dr. Dennis G. Pappas, Jr., a Board-certified otolaryngologist, for an audiogram and second opinion examination to determine the nature, extent, and causal relationship of appellant's hearing loss.

In a July 25, 2024 report, Dr. Pappas reviewed the SOAF, history of injury, and the medical evidence of record. He indicated that appellant last used firearms approximately 10 years prior, but always wore ear protection. Dr. Pappas noted that appellant's ears, tympanic membranes and canals were normal, but the tuning fork did not localize. He diagnosed bilateral sensorineural hearing loss consistent with noise-induced damage, symmetric, which he opined was due to noise exposure encountered in appellant's federal employment and was not consistent with previous firearm use. Dr. Pappas also diagnosed bilateral tinnitus. He reviewed an audiogram conducted

by an audiologist on that date, which demonstrated losses of 15, 10, 20, and 50 dBs for the right ear, and 15, 10, 25, and 45 dBs for the left ear 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 Dr. Pappas calculated that appellant had a monaural loss of zero percent in each ear for a binaural loss of zero percent. He completed a tinnitus handicap inventory and rated the tinnitus diagnosis at two percent for mild tinnitus. Dr. Pappas opined that appellant had a total binaural hearing impairment rating of two percent.

On Augusts 16, 2024 OWCP accepted appellant's claim for binaural sensorineural hearing loss and bilateral tinnitus.

On August 23, 2024 appellant filed a claim for compensation (Form CA-7) for a schedule award.

In a September 13, 2024 report, Dr. Herbert White Jr., a Board-certified orthopedic surgeon 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 A.M.A., *Guides* to Dr. Pappas' July 25, 2024 report and audiology findings. He determined that appellant sustained right monaural loss of zero percent, left monaural loss of zero percent, and binaural hearing loss of zero percent, noting that a tinnitus award of two percent could not be given as there was no ratable binaural hearing loss. Dr. White averaged appellant's right ear hearing levels of 15, 10, 20, and 50 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 4, which equaled 23.75. After subtracting the 25 dB fence, he multiplied the remaining -1.25 balance by 1.5 to calculate zero percent right ear monaural hearing loss. Dr. White then averaged appellant's left ear hearing levels of 15, 10, 25, and 45 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 4, which equaled 23.75. After subtracting the 25 dB fence, he multiplied the remaining 0 balance by 1.5 to calculate zero percent left ear monaural hearing loss. Dr. White then calculated zero percent binaural hearing loss by multiplying the right ear loss of zero percent by 5, adding the zero percent left ear loss, and dividing this sum by 6, which equaled zero percent. He noted that he concurred with Dr. Pappas' calculations, other than his rating for two percent binaural hearing loss for tinnitus. Dr. White explained that a tinnitus award cannot be made when there is zero percent binaural hearing impairment. He did not recommend hearing aids. Dr. White determined that appellant had reached maximum medical improvement (MMI) on July 25, 2024, the date of the most recent audiogram and report.

By decision dated February 12, 2025, 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* 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 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

³ *Supra* note 1.

⁴ 20 C.F.R. § 10.404.

⁵ *Supra* note 2.

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5(a) (March 2017); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

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

¹² *Id.*

binaural 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 its 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 appellant has not met his burden of proof to establish ratable hearing loss, warranting a schedule award.

OWCP referred appellant to Dr. Pappas for a second opinion examination to evaluate his hearing loss. In a July 25, 2024 report, Dr. Pappas diagnosed binaural mild high frequency sensorineural hearing loss. He opined that the hearing loss was due to noise exposure encountered in appellant's federal employment. Dr. Pappas determined that appellant sustained a right monaural loss of zero percent, a left monaural loss of zero percent, and a binaural hearing loss of two percent for tinnitus. OWCP accepted the claim for bilateral sensorineural hearing loss and bilateral tinnitus and properly referred the second opinion physician report to the DMA, Dr. White, for review.

In a report dated September 13, 2024, the DMA, Dr. White reviewed Dr. Pappas' report and opined that appellant had zero percent monaural hearing loss in each ear. He explained that testing at the frequencies of 500, 1,000, 2,000, and 3,000 Hz revealed losses at 15, 10, 20, and 50 dBs for the right ear, respectively, and 15, 10, 25, and 45 dBs for the left ear, respectively. The DMA calculated that the losses for the right ear totaled 95 which he divided by 4 to obtain an average hearing loss of 23.75 and also found that the losses for the left ear totaled at 95 and divided

¹³ *Id.*

¹⁴ *R.C.*, Docket No. 23-0334 (issued July 19, 2023); *H.M.*, Docket No. 21-0378 (issued August 23, 2021); *V.M.*, Docket No. 18-1800 (issued April 23, 2019); *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.*; *R.H.*, Docket No. 10-2139 (issued July 13, 2011); *see also 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); *D.J.*, Docket No. 19-0352 (issued July 24, 2020).

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

by 4 averaged a hearing loss of 23.75. Dr. White noted that, after subtracting the 25-decibel fence, both the right and left ear losses were reduced to zero, and when multiplied by 1.5, the resulting monaural hearing loss in each ear was zero percent.

The Board finds that the DMA, Dr. White, properly calculated appellant's hearing results according to the A.M.A., *Guides* and concluded that appellant did not have ratable hearing loss warranting a schedule award.¹⁹ Although appellant has an accepted claim for 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 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.²³

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 *C.W.*, Docket No. 25-0139 (issued December 18, 2024); *T.B.*, Docket No. 23-0303 (issued August 11, 2023).

²⁰ *C.W.*, *id.*; *N.Y.*, Docket No. 25-0052 (issued November 12, 2024); *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).

²¹ *C.W.*, *id.*; *R.C.*, *supra* note 14; *D.S.*, Docket No. 23-0048 (issued May 23, 2023); *J.S.*, Docket No. 22-0274 (issued September 13, 2022).

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

²³ *C.W.*, *supra* note 19; *N.Y.*, *supra* note 20.

ORDER

IT IS HEREBY ORDERED THAT the February 12, 2025 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 16, 2025
Washington, DC

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

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

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