

**United States Department of Labor  
Employees' Compensation Appeals Board**

T.G., Appellant	)	
	)	
and	)	
	)	
DEPARTMENT OF THE NAVY, PUGET	)	Docket No. 25-0452
SOUND NAVAL SHIPYARD &	)	Issued: April 18, 2025
INTERMEDIATE MAINTENANCE FACILITY,	)	
Bremerton, WA, 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  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On March 20, 2025 appellant filed a timely appeal from a December 20, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (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.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On September 8, 2023 appellant, then a 63-year-old rigger, filed an occupational disease claim (Form CA-2) alleging that he developed hearing loss due to factors of his federal employment, including working around loud noises caused by sandblast equipment, needle guns, grinders, diesel engines, chain saws, pneumatic tools, the engine room, and flight deck operations. He noted that he first became aware of his condition and realized its relation to his federal employment on December 14, 2022. Appellant stopped work on December 23, 2022.<sup>2</sup>

On January 25, 2024 OWCP referred appellant, along with the medical record, a statement of accepted facts (SOAF), and a series of questions, to Dr. Edward Treyve a Board-certified otolaryngologist, for an audiogram and second opinion examination to determine the nature, extent, and causal relationship of his hearing loss.

In a February 29, 2024 report, Dr. Treyve reviewed the SOAF, appellant's history of injury, and the medical evidence of record. He indicated that there was no significant variation from the SOAF and attributed appellant's hearing loss in part to his workplace exposures. Dr. Treyve noted that appellant's ears, tympanic membranes, and canals were normal. He diagnosed bilateral sensorineural hearing loss and bilateral tinnitus due to appellant's federal employment. Dr. Treyve reviewed an audiogram conducted by an audiologist on that date, which demonstrated losses of 10, 5, 0, and 50 decibels (dBs) for the right ear, and 10, 15, 10, and 65 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*),<sup>3</sup> he calculated that appellant had a monaural loss of 0 percent in the right ear and 0 percent in the left ear, for a bilateral loss of 0 percent. Dr. Treyve completed a tinnitus handicap inventory (THI) and rated the tinnitus diagnosis at three percent for moderate tinnitus. He opined that appellant had a total bilateral hearing impairment rating of three percent. Dr. Treyve determined that appellant had reached maximum medical improvement (MMI) on February 29, 2024.

By decision dated March 7, 2024, OWCP accepted the claim for bilateral sensorineural hearing loss and bilateral tinnitus.

On October 8, 2024 appellant filed a claim for compensation (Form CA-7) for a schedule award.

On November 8, 2024 OWCP referred the medical record and SOAF to Dr. Jeffrey M. 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.

In a November 20, 2024 report, Dr. Israel reviewed the evidence of record and applied the audiometric data to OWCP's standard for evaluating hearing loss under the sixth edition of the

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<sup>2</sup> Appellant resigned from the employing establishment, effective December 31, 2022.

<sup>3</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

A.M.A., *Guides*<sup>4</sup> to Dr. Treyve's report and February 29, 2024 audiology findings. He averaged appellant's right ear hearing levels of 10, 5, 0, and 50 dBs at 500, 1,000, 2,000, and 3,000 Hz, respectively, by adding the hearing loss at those 4 levels then dividing the sum by 4, which equaled 16.25. After subtracting the 25 dB fence, Dr. Israel multiplied the remaining 0 balance by 1.5 to calculate zero percent right ear monaural hearing loss. He then averaged appellant's left ear hearing levels 10, 15, 10, and 65 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 25. After subtracting the 25 dB fence, Dr. Israel multiplied the remaining 0 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 opined that he agreed with Dr. Treyve's calculations, other than his rating for three percent binaural hearing loss for tinnitus. He noted that a tinnitus award cannot be given when there is no ratable hearing impairment as stipulated on page 249 of the A.M.A., *Guides*.<sup>5</sup> Dr. Israel determined that appellant had reached MMI on February 29, 2024, the date of the most recent audiogram and Dr. Treyve's examination, and authorized hearing aids.

By decision dated December 20, 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.

### **LEGAL PRECEDENT**

The schedule award provisions of FECA<sup>6</sup> and its implementing regulations 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*<sup>7</sup> has been adopted by OWCP for evaluating schedule losses and the Board has concurred in such adoption.<sup>8</sup>

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<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 249.

<sup>6</sup> *Supra* note 1.

<sup>7</sup> *Supra* note 3.

<sup>8</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (March 2017); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010). *See also* *R.C.*, Docket No. 25-0348 (issued March 25, 2025); *N.Y.*, Docket No. 25-0052 (issued November 12, 2024); *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).

A claimant seeking compensation under FECA has the burden of proof to establish the essential elements of his or her claim.<sup>9</sup> 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.<sup>10</sup>

OWCP evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.<sup>11</sup> Using the frequencies of 500, 1,000, 2,000, and 3,000 Hz, the losses at each frequency are averaged.<sup>12</sup> 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.<sup>13</sup> The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.<sup>14</sup> 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.<sup>15</sup> The Board has concurred in OWCP's adoption of this standard for evaluating hearing loss.<sup>16</sup>

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.<sup>17</sup> 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.<sup>18</sup>

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

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<sup>9</sup> *R.C., id.*; *D.H.*, Docket No. 20-0198 (issued July 9, 2020); *John W. Montoya*, 54 ECAB 306 (2003).

<sup>10</sup> *R.C., id.*; *R.R.*, Docket No. 19-0750 (issued November 15, 2019); *Edward Spohr*, 54 ECAB 806, 810 (2003); *Tammy L. Meehan*, 53 ECAB 229 (2001).

<sup>11</sup> *Supra* note 3.

<sup>12</sup> *Id.* at 250.

<sup>13</sup> *Id.*; *R.C., supra* note 8; *W.W.*, Docket No. 21-0545 (issued June 21, 2023); *C.D.*, Docket No. 18-0251 (issued August 1, 2018).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *R.C.*, Docket No. 23-0334 (issued July 19, 2023); *H.M.*, Docket No. 21-0378 (issued August 23, 2021); *VM.*, *supra* note 8; *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).

<sup>17</sup> *Supra* note 3 at 249.

<sup>18</sup> *Id.*; *R.C., supra* note 16; *R.H.*, Docket No. 10-2139 (issued July 13, 2011); *see also Robert E. Cullison*, 55 ECAB 570 (2004).

rationale for the percentage of impairment specified.<sup>19</sup> It may follow the advice of its medical adviser or consultant where he or she has properly utilized the A.M.A., *Guides*.<sup>20</sup>

### 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. Treyve for a second opinion examination to evaluate his hearing loss. In his February 29, 2024 report, Dr. Treyve diagnosed binaural sensorineural hearing loss and binaural tinnitus. He opined that the conditions were due to noise exposure encountered in appellant's federal employment. Dr. Treyve determined that appellant sustained a right monaural loss of zero percent, a left monaural loss of zero percent, and a binaural hearing loss of three percent for tinnitus.

In its March 7, 2024 decision, OWCP accepted the claim for binaural sensorineural hearing loss and binaural tinnitus. On November 8, 2024 it forwarded appellant's medical record to Dr. Israel, OWCP's DMA, to assess his percentage of permanent employment-related hearing loss.

The DMA, Dr. Israel in a report dated November 20, 2024, reviewed Dr. Treyve's report, and determined that appellant had zero percent monaural hearing loss in each ear. He related that testing at the frequencies of 500, 1,000, 2,000, and 3,000 Hz revealed losses at 10, 5, 0, and 50 dBs for the right ear, respectively, and 10, 15, 10, and 65 dBs for the left ear, respectively. The decibel losses for the right ear were totaled at 65 and divided by 4 to obtain an average hearing loss of 16.25. The decibel losses for the left ear were totaled at 100 and divided by 4 to obtain an average hearing loss of 25. 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. The DMA then applied the formula for binaural hearing loss and found that as appellant had zero percent monaural loss of each ear, his binaural hearing loss was also zero percent. He explained that a tinnitus award cannot be rendered when there is no ratable hearing impairment found.

The Board finds that the DMA, Dr. Israel, properly concluded that appellant did not have ratable hearing loss warranting a schedule award.<sup>21</sup> Although appellant has accepted employment-related hearing loss, it is insufficiently severe to be ratable for schedule award purposes.<sup>22</sup>

The Board further finds that the DMA correctly explained that tinnitus may not be included with an impairment rating for hearing loss under the sixth edition of the A.M.A., *Guides* unless

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<sup>19</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, *supra* note 8; *D.J.*, Docket No. 19-0352 (issued July 24, 2020).

<sup>20</sup> *See R.C.*, *supra* note 16; *Ronald J. Pavlik*, 33 ECAB 1596 (1982).

<sup>21</sup> *J.G.*, Docket No. 24-0874 (issued September 25, 2024); *T.B.*, Docket No. 23-0303 (issued August 11, 2023).

<sup>22</sup> *J.G.*, *id.*; *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).

the hearing loss is ratable.<sup>23</sup> Accordingly, as appellant does not have ratable hearing loss, the Board finds that he is not entitled to a schedule award for tinnitus.<sup>24</sup>

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.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the December 20, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 18, 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

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<sup>23</sup> *R.C.*, *supra* note 16; *D.S.*, Docket No. 23-0048 (issued May 23, 2023); *J.S.*, Docket No. 22-0274 (issued September 13, 2022).

<sup>24</sup> *C.W.*, Docket No. 25-0139 (issued December 18, 2024); *P.C.*, Docket No. 23-1152 (issued January 19, 2024).