

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

D.V., Appellant

and

**DEPARTMENT OF HOMELAND SECURITY,
U.S. CUSTOMS AND BORDER PROTECTION,
U.S. BORDER PATROL, Tucson, AZ, Employer**

**Docket No. 25-0690
Issued: December 8, 2025**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge

JANICE B. ASKIN, Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 13, 2025 appellant filed a timely appeal from a June 24, 2025 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 January 20, 2025 appellant, then a 46-year-old border patrol agent, filed an occupational disease claim (Form CA-2) alleging that he developed hearing loss due to factors of his federal employment resulting from prolonged exposure to hazardous noise over the course of

¹ 5 U.S.C. § 8101 *et seq.*

his employment for 21 years including noise from firearms training, construction machinery, diesel generators, all-terrain vehicles, and 35-wheel motorcycles. He noted that he first became aware of his condition on November 15, 2024, and realized its relationship to his federal employment on January 13, 2025. Appellant did not stop work.

In support of his claim, appellant provided additional evidence and statements describing his employment history and exposure to occupational noise including noise from firearms, vehicles, helicopters, equipment, and machinery.

Appellant also submitted a September 5, 2002 report from Dr. Alberto S. Armas, a treating physician,² who provided audiogram findings which demonstrated losses of 10, 5, 5, and 0 decibels (dBs) in the left ear, and 10, 0, 0, and 0 dBs in the right ear, at frequency levels of 500, 1,000, 2,000, and 3,000 Hertz (Hz), respectively.

Appellant further submitted a January 13, 2025 audiogram which demonstrated losses of 10, 10, 5, and 0 dBs in the left ear, and 10, 5, 10, and 5 dBs in the right ear, at frequency levels of 500, 1,000, 2,000, and 3,000 Hz, respectively.

On February 11, 2025 OWCP referred appellant, along with the medical record, a statement of accepted facts (SOAF), and a series of questions, to Dr. Ben E. Leff, a Board-certified otolaryngologist, for an audiogram and second opinion examination on March 13, 2025 to determine the nature, extent, and causal relationship of appellant's hearing loss.

In a March 13, 2025 report, Dr. Leff noted his review of the SOAF, performed an audiologic evaluation and completed OWCP's evaluation questionnaire. He obtained audiology testing, which revealed the following dBs losses at 500, 1,000, 2,000, and 3,000 Hz: 20, 20, 15, and 30 dBs for the right ear, and 20, 25, 15, and 20 dBs for the left ear, respectively. Dr. Leff diagnosed bilateral sensorineural hearing loss and tinnitus causally related to noise exposure at work. He referred to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),³ applied OWCP's standard for evaluating hearing loss to the March 13, 2025 audiogram, and determined that appellant had zero percent right ear monaural hearing loss, zero percent left ear monaural hearing loss, and three percent binaural hearing loss due to tinnitus. Dr. Leff reported appellant's right ear hearing loss of 20, 20, 15, and 30 dBs at 500, 1,000, 2,000, and 3,000 Hz, respectively, which totaled 85, and divided by 4, to find an average of 21.25. As the average fell below the 25 dBs fence, he found zero percent right ear monaural hearing loss. For the left ear, Dr. Leff added appellant's hearing loss of 20, 25, 15, and 20 dBs at 500, 1,000, 2,000, and 3,000 Hz, respectively, which totaled 80, and divided by 4 to find an average of 20. As the average fell below the 25 dBs fence, he found zero percent left ear monaural hearing loss. As he calculated a monaural loss of zero percent in each ear, Dr. Leff found a binaural hearing loss of zero percent. He completed a tinnitus handicap inventory (THI) and rated the tinnitus diagnosis at three percent. Dr. Leff arrived at a total binaural hearing impairment rating of three percent due to moderate tinnitus. He did not recommend a trial of hearing aids and concluded that appellant reached maximum medical improvement (MMI) on March 13, 2025.

² The Board is unable to identify Dr. Armas' specialty.

³ A.M.A., *Guides* (6th ed. 2009).

On March 25, 2025 appellant filed a claim for compensation (Form CA-7) for a schedule award.

On May 6, 2025 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 causally related to his employment-related noise exposure.

In a May 14, 2025 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 A.M.A., *Guides*⁴ to Dr. Leff's report and March 13, 2025 audiology findings. He 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, 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 right ear hearing levels of 20, 20, 15, 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 4, which equaled 21.25. After subtracting the 25 dB fence, he multiplied the remaining 0 balance by 1.5 to calculate zero percent right ear monaural hearing loss. Dr. Israel then averaged appellant's left ear hearing levels 20, 25, 15, and 20 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 20. 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. 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. He opined that he concurred with Dr. Leff's calculations, other than his rating for three percent binaural hearing loss for tinnitus. Dr. Israel noted that a tinnitus award cannot be rendered when there is zero percent binaural hearing impairment as stipulated on page 249 of the A.M.A., *Guides*.⁵ He recommended yearly audiograms, use of noise protection, and hearing aids for hearing loss tinnitus. Dr. Israel determined that appellant had reached MMI on March 13, 2025, the date of the most recent audiogram and Dr. Leff's examination.

By decision dated June 24, 2025, OWCP accepted appellant's claim for bilateral sensorineural hearing loss and bilateral tinnitus.

By separate decision also dated June 24, 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.

LEGAL PRECEDENT

The schedule award provisions of FECA,⁶ and its implementing federal regulations,⁷ set forth the number of weeks of compensation payable to employees sustaining permanent

⁴ *Id.*

⁵ *Id.* at 249.

⁶ 5 U.S.C. § 8107.

⁷ 20 C.F.R. § 10.404.

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. The sixth edition of the A.M.A., *Guides*⁸ has been adopted by OWCP for evaluating schedule losses and the Board has concurred in such adoption.⁹

A claimant seeking compensation under FECA has the burden of proof to establish the essential elements of his or her claim.¹⁰ 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.¹¹

OWCP evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.¹² Using the frequencies of 500, 1,000, 2,000, and 3,000 Hz, the losses at each frequency are added up and averaged.¹³ 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.¹⁴ The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.¹⁵ 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 binaural hearing loss.¹⁶ The Board has concurred in OWCP's adoption of this standard for evaluating hearing loss.¹⁷

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.¹⁸ If tinnitus interferes with activities of daily living, including sleep, reading (and other tasks requiring concentration), enjoyment of quiet

⁸ *Supra* note 1.

⁹ *W.R.*, Docket No. 22-0051 (issued August 9, 2022); *J.R.*, Docket No. 21-0909 (issued January 14, 2022); *H.M.*, Docket No. 21-0378 (issued August 23, 2021); *V.M.*, Docket No. 18-1800 (issued April 23, 2019); *J.W.*, Docket No. 17-1339 (issued August 21, 2018).

¹⁰ *D.H.*, Docket No. 20-0198 (issued July 9, 2020); *John W. Montoya*, 54 ECAB 306 (2003).

¹¹ *R.R.*, Docket No. 19-0750 (issued November 15, 2019); *Edward Spohr*, 54 ECAB 806, 810 (2003); *Tammy L. Meehan*, 53 ECAB 229 (2001).

¹² *Supra* note 3.

¹³ *Id.* at 250.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *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).

¹⁸ *Supra* note 5.

recreation and emotional well-being, up to five percent may be added to a measurable binaural hearing impairment.¹⁹

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.²⁰ It may follow the advice of its medical adviser or consultant where he or she has properly utilized the A.M.A., *Guides*.²¹

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. Leff for a second opinion examination to evaluate his hearing loss. In his March 13, 2025 report, Dr. Leff diagnosed bilateral sensorineural hearing loss and bilateral tinnitus. He opined that the conditions were due to noise exposure encountered in appellant's federal employment. Dr. Leff 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.

On May 6, 2025 OWCP forwarded appellant's case to Dr. Israel, OWCP's DMA, to assess his percentage of permanent employment-related hearing loss.

Dr. Israel, in a report dated May 14, 2025, reviewed Dr. Leff'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 20, 20, 15, and 30 dBs for the right ear, respectively, and 20, 25, 15, and 20 dBs for the left ear, respectively. The decibel losses for the right ear were totaled at 85 and divided by 4 to obtain an average hearing loss of 21.25. The decibel losses for the left ear were totaled at 80 and divided by 4 to obtain an average hearing loss of 20. 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, amounting to zero percent binaural hearing loss.

Although appellant has accepted employment-related hearing loss, it is insufficiently severe to be ratable for schedule award purposes.²² The DMA, Dr. Israel, properly concluded that appellant did not have ratable hearing loss warranting a schedule award.²³ He also correctly explained that tinnitus may not be added to an impairment rating for hearing loss under the sixth

¹⁹ *Id.*; *R.H.*, Docket No. 10-2139 (issued July 13, 2011); *see also Robert E. Cullison*, 55 ECAB 570 (2004).

²⁰ *See D.J.*, Docket No. 19-0352 (issued July 24, 2020).

²¹ *See B.B.*, Docket No. 25-0789 (issued September 19, 2025); *Ronald J. Pavlik*, 33 ECAB 1596 (1982).

²² *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).

²³ *J.N.*, Docket No. 24-0508 (issued June 18, 2024); *T.B.*, Docket No. 23-0303 (issued August 11, 2023).

edition of the A.M.A., *Guides* unless such hearing loss is ratable.²⁴ The Board finds, therefore, that the opinion of Dr. Israel constitutes the weight of the medical evidence and establishes that appellant is not entitled to a schedule award.²⁵ Thus, 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 a ratable hearing loss, warranting a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the June 24, 2025 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 8, 2025
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

²⁴ *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).

²⁵ *P.C.*, Docket No. 23-1152 (issued January 19, 2024).