

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

R.K., Appellant)
and) Docket No. 25-0873
DEPARTMENT OF THE ARMY, U.S. ROCK)
ISLAND ARSENAL JOINT MANUFACTURING)
& TECHNOLOGY CENTER, Rock Island, IL,)
Employer)
Issued: December 1, 2025

Appearances:

Appellant, pro se

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge

JANICE B. ASKIN, Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 22, 2025 appellant filed a timely appeal from a March 21, 2025 merit decision and an April 21, 2025 nonmerit 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.

ISSUES

The issues are: (1) whether appellant has met his burden of proof to establish ratable hearing loss, warranting a schedule award; and (2) whether OWCP properly denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On December 19, 2012 appellant, then a 59-year-old equipment installer, filed an occupational disease claim (Form CA-2) alleging that he developed hearing loss and tinnitus due to factors of his federal employment, including prolonged exposure to hazardous noise. He noted that he first became aware of his condition and realized its relationship to his federal employment on May 7, 1985. Appellant did not stop work.

In support of his claim, appellant submitted a July 20, 2010 audiogram demonstrating normal hearing sensitivity at the frequencies of 250 to 2,000 Hertz (Hz) dropping to moderate hearing loss through 8,000 Hz bilaterally. He was noted to have poor speech discrimination ability in the left ear and poor discrimination in noise, bilaterally.

In a statement dated December 19, 2012, appellant explained that he was exposed to excessive noise from fighter jets, helicopters, and sirens five days per week, five hours per day. He also noted that he was not provided with hearing protection gear until after being seen for tinnitus on November 22, 2006.

The record reveals that appellant's last exposure to the implicated employment factors was December 19, 2012.

On October 22, 2013 OWCP referred appellant, along with the medical record, a statement of accepted facts (SOAF), and a series of questions, to Dr. Douglas Wayne Dvorak, a Board-certified otolaryngologist, for an audiogram and second opinion examination to determine the nature, extent, and causal relationship of appellant's hearing loss.

On November 18, 2013 Dr. Dvorak reviewed the SOAF, history of injury, and medical evidence of record. In his report, 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. Dvorak diagnosed bilateral sensorineural hearing loss and tinnitus causally related to noise exposure at work. He obtained audiology testing, which revealed the following decibel (dBs) losses at 500, 1,000, 2,000, and 3,000 Hz: 10, 15, 5, and 45 dBs for the right ear; and 10, 10, 10, and 55 dBs for the left ear, respectively. Dr. Dvorak recommended noise protection and hearing aids. 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 November 18, 2013 audiogram, and determined that appellant had zero percent right ear monaural hearing loss, zero percent left ear monaural hearing loss, and zero percent binaural hearing loss. Dr. Dvorak concluded that appellant reached maximum medical improvement (MMI) on November 18, 2013.

By decision dated December 4, 2013, OWCP accepted appellant's claim for bilateral sensorineural hearing loss and bilateral subjective tinnitus.

² A.M.A., *Guides* (6th ed. 2009).

On December 11, 2013 appellant filed a claim for compensation (Form CA-7) for a schedule award.

On December 13, 2013 OWCP referred the medical record and SOAF to Dr. Christopher Gross, a Board-certified orthopedic surgeon 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.

On December 14, 2013 Dr. Gross reviewed the evidence of record and applied OWCP's standard for evaluating hearing loss under the sixth edition of the A.M.A., *Guides*³ to the audiometric data utilizing Dr. Dvorak's report and November 18, 2013 audiology findings. He determined that appellant did not have a ratable hearing loss and sustained zero percent binaural hearing loss. Dr. Gross determined that appellant had reached MMI on November 18, 2013, the date of the most recent audiogram and Dr. Dvorak's examination.

By decision dated June 4, 2014, 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.

On May 14, 2015 appellant requested reconsideration.

By decision dated March 30, 2016, OWCP denied modification of the June 4, 2014 decision.

Appellant requested reconsideration of the March 30, 2016 decision on February 8, 2017 and by decision dated May 10, 2018, OWCP denied his request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

Appellant continued to submit evidence in support of his claim including a July 14, 2016 audiological evaluation and a July 26, 2016 audiology clinic visit summary from Kathrn L. Klauer, a hearing instrument specialist. Ms. Klauer noted that the clinical examination revealed bilateral-to-severe sensorineural high hearing loss with right ear worse. She reported that appellant had severe high frequency loss bilaterally which was mostly commonly caused by extended exposure to loud sounds. Ms. Klauer recommended bilateral hearing aids and directional microphones. Appellant also submitted a February 19, 2022 audiogram which noted his air conduction screening indicated his hearing abilities were not within normal limits.

On February 28, 2023 appellant filed a Form CA-7 for a schedule award.

On April 13, 2023 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.

³ *Id.*

In an April 18, 2023 report, Dr. Israel reviewed the evidence of record and applied OWCP's standard for evaluating hearing loss under the sixth edition of the A.M.A., *Guides*,⁴ to the audiometric data, including Dr. Dvorak's November 18, 2013 report and the August 1, 2013 audiology findings. He reported that while there were more recent audiograms of record which showed a worsening of appellant's hearing loss, including a more recent June 14, 2016 audiogram, he was using the August 1, 2013 audiogram relied upon by Dr. Dvorak in his November 18, 2013 second opinion report due to his assessment that appellant had reached MMI. Dr. Israel related that testing at the frequencies of 500, 1,000, 2,000, and 3,000 Hz revealed losses at 20, 20, 15, and 45 dBs for the right ear, respectively, and 15, 15, 15, and 25 dBs for the left ear, respectively. The decibel losses for the right ear were totaled at 100 and divided by 4 to obtain an average hearing loss of 25. The decibel losses for the left ear were totaled at 70 and divided by 4 to obtain an average hearing loss of 17.5. 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. 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 also 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 Dr. Israel 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 an award for tinnitus could not be given as there was no ratable binaural hearing loss. He opined that he concurred with Dr. Dvorak's calculations, but noted that there was no suggested tinnitus score mentioned when discussing appellant's severe tinnitus in the records to determine if tinnitus masking would be warranted. Dr. Israel recommended yearly audiograms, use of noise protection, and hearing aids for hearing loss and possible tinnitus. He determined that appellant had reached MMI on August 1, 2013, the date of the most recent audiogram at the time of Dr. Dvorak's November 18, 2013 second opinion evaluation with an established date of MMI as determined by Dr. Dvorak.

By decision dated May 4, 2023, 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.

On April 17, 2024 appellant requested reconsideration of the May 4, 2023 decision.

By decision dated June 20, 2024, OWCP denied modification of the May 4, 2023 decision.

On January 24, 2025 appellant requested reconsideration.

By decision dated January 27, 2025, OWCP denied modification of the June 20, 2024 decision.

⁴ A.M.A., *Guides* (6th ed. 2009).

⁵ *Id.* at 249.

On March 10, 2025 appellant requested reconsideration. In support of his claim, he submitted a January 10, 2025 audiological evaluation from Elise Rodgers, an audiologist and a clinic examination of even date from Dr. Jason Meier, a Board-certified otolaryngologist.

In a January 10, 2025 audiogram, Ms. Rodgers reported that appellant's audiogram demonstrated at 500, 1,000, 2,000, and 3,000 Hz: 40, 45, 40, and 80 dBs for the right ear and 40, 40, 50; and 75 dBs for the left ear, respectively. In an audiological evaluation of even date, she reported that the audiological testing revealed a moderate sloping to severe high frequency sensorineural hearing loss bilaterally with slight asymmetry between the left and right ear, speech reception threshold was consistent with the audiogram bilaterally, and word recognition at elevated levels was excellent bilaterally. Ms. Rodgers diagnosed bilateral sensorineural hearing loss and bilateral tinnitus.

In his January 10, 2025 report, Dr. Meier evaluated appellant for hearing loss and tinnitus, noting that he complained of bilateral ringing in the ears for several years and has a history of significant noise exposure in the military. He diagnosed bilateral sensorineural hearing loss, impacted cerumen in the left ear, and bilateral tinnitus. Dr. Meier reported that appellant had bilateral subjective tinnitus from severe hearing loss bilaterally and required adjustment of his hearing aids.

By decision dated March 21, 2025, OWCP denied modification of the January 27, 2025 decision.

On April 9, 2025 appellant filed another Form CA-7 for a schedule award claim.

On April 15, 2025 appellant requested reconsideration.

By decision dated April 21, 2025, OWCP denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

LEGAL PRECEDENT -- ISSUE 1

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 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.

⁶ 5 U.S.C. § 8107.

⁷ 20 C.F.R. § 10.404.

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 cycles per second, 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 2.

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 2.

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 4.

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 -- ISSUE 1

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

In its December 4, 2013 decision, OWCP accepted the claim for bilateral sensorineural hearing loss and bilateral tinnitus. Following development of the claim, on April 13, 2023 it forwarded appellant's 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 April 18, 2023, reviewed the medical record and relied on Dr. Dvorak's November 18, 2013 second opinion report who determined that MMI had been reached on August 1, 2013, the date of appellant's audiogram. Utilizing the August 1, 2013 audiogram, Dr. Israel 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 45 dBs for the right ear, respectively, and 15, 15, 15, and 25 dBs for the left ear, respectively. The decibel losses for the right ear were totaled at 100 and divided by 4 to obtain an average hearing loss of 25. The decibel losses for the left ear were totaled at 70 and divided by 4 to obtain an average hearing loss of 17.5. 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 Board finds that the DMA, Dr. Israel, properly concluded that appellant did not have ratable hearing loss warranting a schedule award.²² Although appellant has accepted employment-related hearing loss, it is insufficiently severe to be ratable for schedule award purposes.²³

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

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

²² *T.B.*, Docket No. 23-0303 (issued August 11, 2023).

²³ *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).

hearing loss is ratable.²⁴ Accordingly, as appellant does not have ratable hearing loss, the Board finds that he is not entitled to a schedule award for tinnitus.²⁵

The report of Dr. Meier, which was accompanied by an audiogram, failed to provide an impairment rating in accordance with the sixth edition of the A.M.A., *Guides*. Therefore, this evidence is insufficient to establish appellant's claim.

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.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation. The Secretary of Labor may review an award for or against compensation at any time on his or her own motion or on application.²⁶

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument which: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.²⁷

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.²⁸ If it chooses to grant reconsideration, it reopens

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).

²⁶ 5 U.S.C. § 8128(a); *see R.C.*, Docket No. 22-0612 (issued October 24, 2022); *M.S.*, Docket No. 19-1001 (issued December 9, 2019); *L.D.*, Docket No. 18-1468 (issued February 11, 2019); *V.P.*, Docket No. 17-1287 (issued October 10, 2017); *W.C.*, 59 ECAB 372 (2008).

²⁷ 20 C.F.R. § 10.606(b)(3); *see R.C.*, *id.*; *L.D.*, *id.*

²⁸ *Id.* at § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (September 2020). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in the Integrated Federal Employees' Compensation System (iFECS). *Id.* at Chapter 2.1602.4b.

and reviews the case on its merits.²⁹ If the request is timely, but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.³⁰

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).³¹

In connection with his April 15, 2025 reconsideration request, appellant has not alleged or demonstrated that OWCP erroneously applied or interpreted a specific point of law.³² Moreover, he did not advance a relevant legal argument not previously considered by OWCP. Consequently, appellant is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).³³

Appellant did not submit any evidence to support his April 15, 2025 reconsideration request.³⁴ Because he has not provided relevant and pertinent new evidence, he is not entitled to a review of the merits based on the third requirement under 20 C.F.R. § 10.606(b)(3).³⁵

The Board, accordingly, finds that appellant has not met any of the requirements of 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.³⁶

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a ratable hearing loss warranting a schedule award. The Board further finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

²⁹ *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

³⁰ *Id.* at § 10.608(b); *M.S.*, Docket No. 19-0291 (issued June 21, 2019); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

³¹ *T.R.*, Docket No. 23-0287 (issued June 23, 2023).

³² *K.G.*, Docket No. 22-1358 (issued June 27, 2023).

³³ *See L.W.*, Docket No. 21-0607 (issued October 18, 2022).

³⁴ *D.B.*, Docket No. 23-0392 (issued September 1, 2023); *L.K.*, Docket No. 22-0793 (issued August 26, 2022).

³⁵ *See M.H.*, Docket No. 23-0779 (issued October 16, 2023); *D.H.*, Docket No. 22-0875 (issued December 5, 2022); *see also D.J.*, Docket No. 21-0371 (issued November 24, 2021).

³⁶ *See D.M.*, Docket No. 18-1003 (issued July 16, 2020); *D.S.*, Docket No. 18-0353 (issued February 18, 2020); *Susan A. Filkins*, 57 ECAB 630 (2006) (when a request for reconsideration does not meet at least one of the three requirements enumerated under 20 C.F.R. § 10.606(b), OWCP will deny the request for reconsideration without reopening the case for a review on the merits).

ORDER

IT IS HEREBY ORDERED THAT the March 21 and April 21, 2025 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 1, 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