

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## **ISSUE**

The issue is whether appellant has met his burden of proof to establish ratable hearing loss, warranting a schedule award.

## **FACTUAL HISTORY**

On July 5, 2022, appellant, then a 48-year-old air marshal, filed a traumatic injury claim (Form CA-1) alleging that on April 20, 2022 he developed ringing in his ears while in the performance of duty. He indicated that he had worn proper hearing protection and noticed the ringing after a quarterly practical shooting qualification. On the reverse side of the claim form, appellant's supervisor acknowledged that the injury occurred in the performance of duty.

In a development letter dated July 13, 2022, OWCP informed appellant of the deficiencies in his claim. It advised him of the type of additional factual and medical evidence necessary to establish his claim and provided a questionnaire for his completion. In a separate development letter of even date, OWCP requested that the employing establishment provide additional information regarding the claim, including comments from a knowledgeable supervisor. It afforded 30 days for response.

In a narrative statement received on July 22, 2022, appellant indicated that he had been employed by the employing establishment since 2002 and had conducted "numerous" firearms trainings.

In subsequent development letter dated July 22, 2022, OWCP informed appellant that his claim had been converted to an occupational disease claim, based on his statement that his noise exposure had occurred over a period since 2002. It advised him of the type of additional factual and medical evidence necessary to establish his claim and provided a questionnaire for his completion. OWCP afforded appellant 30 days to respond.

An audiogram dated June 17, 2022 indicated that testing at the frequencies of 500, 1,000, 2,000, and 3,000 Hertz (Hz) demonstrated losses for the left ear of 20, 15, 20, and 20 decibels (dBs) and losses for the right ear of 35, 45, 35, and 40 dBs. On July 6, 2022, testing at 500, 1,000, 2,000, and 3,000 Hz demonstrated losses for the left ear of 10, 15, 25, and 35 dBs and losses for the right ear of 10, 15, 25, and 35 dBs.

On September 27, 2022, OWCP referred appellant, along with a statement of accepted facts (SOAF) and the medical record to Dr. Mark Dettelbach, a Board-certified otolaryngologist, for a second opinion examination regarding the nature and extent of appellant's hearing loss, and whether there was any causal relationship between his diagnosed hearing loss and his accepted employment exposure.

In a November 23, 2022 report, Dr. Dettelbach reviewed the SOAF, appellant's history of injury, and medical evidence of record. He discussed appellant's history of military service from 1993 to 1998 and as a police officer from 1998 to 2002. Dr. Dettelbach noted that his current employment required weapons training four times per year. He advised that appellant had no hearing test taken at the start of his federal employment and thus it was not possible to know if

exposure to noise at work caused a change in his hearing. Audiometric testing obtained on November 23, 2022 for Dr. Dettelbach at the frequencies of 500, 1,000, 2,000, and 3,000 Hz demonstrated losses for the right ear of 10, 20, 15, and 35 dBs and losses for the left ear of 5, 10, 20, and 40 dBs. Dr. Dettelbach concluded that appellant had zero percent loss of hearing on the right, and zero percent loss of hearing on the left, which resulted in a binaural hearing loss of zero percent. He also found that appellant had a one percent hearing impairment due to tinnitus. Dr. Dettelbach diagnosed hearing loss greater than that expected from presbycusis and thus concluded that there was “at least some noise contribution to his sensorineural hearing loss. Therefore, [appellant’s] hearing loss and tinnitus are in part due to noise exposure.”

On December 28, 2022, OWCP accepted appellant’s claim for binaural sensorineural hearing loss and binaural tinnitus.

On December 28, 2022, OWCP referred the medical record and SOAF to Dr. Jeffrey 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 appellant’s employment-related noise exposure.

On December 29, 2022, Dr. Israel reviewed Dr. Dettelbach’s report, and the November 23, 2022 audiogram. He applied the audiometric data to OWCP’s standard for evaluating hearing loss under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*,<sup>3</sup> (A.M.A., *Guides*) and 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. Dr. Israel recommended yearly audiograms, use of noise protection, and authorization for hearing aids for hearing loss. He determined that appellant had reached maximum medical improvement (MMI) on November 23, 2022, the date of audiometric examination with Dr. Dettelbach.

By decision dated February 1, 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 February 15, 2023, appellant requested a review of the written record by a representative of OWCP’s Branch of Hearings and Review. He submitted additional audiograms, including an audiometric report dated December 5, 2001 taken as part of an examination by his prior federal employment. Audiometric testing at the frequencies of 500, 1,000, 2,000, and 3,000 Hz demonstrated losses for the right ear of 0, 10, 5, and 0 dBs and losses for the left ear of 0, 0, 0, and 5 dBs. April 26, 2012 testing at 500, 1,000, 2,000, and 3,000 Hz demonstrated losses for the right ear of 5, 10, 10, and 5 dBs and losses for the left ear of 0, 5, 0, and 5 dBs. July 3, 2014 testing at 500, 1,000, 2,000, and 3,000 Hz demonstrated losses for the right ear of 0, 10, 10, and 5 dBs and losses for the left ear of 0, 0, 0, and 5 dBs. March 24, 2016 testing at 500, 1,000, 2,000, and 3,000 Hz demonstrated losses for the right ear of 0, 10, 10, and 5 dBs and losses for the left ear of

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

0, 10, 5, and 5 dBs. May 2, 2019 testing at 500, 1,000, 2,000, and 3,000 Hz demonstrated losses for the right ear of 0, 10, 10, and 10 dBs and losses for the left ear of 5, 10, 5, and 5 dBs.<sup>4</sup>

By decision dated May 23, 2023, OWCP's hearing representative set aside the February 1, 2023 decision and remanded the case for clarification from Dr. Dettelbach and an addendum report from Dr. Israel based on the newly-submitted audiograms. The hearing representative further found that OWCP should prepare a new SOAF after obtaining a written list of appellant's employment history and noise exposure.

On July 11, 2023, OWCP requested a supplemental report from Dr. Dettelbach based on the newly-submitted audiograms that were submitted by appellant.

In an August 25, 2023 supplemental report, Dr. Dettelbach noted that the updated SOAF provided additional information regarding appellant's noise exposure in both his current and prior employment. He noted that he had not examined any additional materials other than what he was originally provided. However, Dr. Dettelbach opined that there was "no way" to determine how much hearing loss came from his current employment or previous employment as "there were no hearing tests obtained before 2022."

On September 7, 2023, OWCP again requested a supplemental report from Dr. Dettelbach, serving as second opinion physician, based on the newly-submitted audiograms. It misidentified the dates of several of the audiograms by listing dates the otologic equipment was calibrated, rather than the dates of the otologic testing.

On November 6, 2023, OWCP received a letter dated September 11, 2023 from the employing establishment's medical program section. It noted that repeat audiogram testing had established a new baseline threshold shift. Documents regarding a baseline test on July 18, 2005 and current testing on May 11, 2023 were submitted. An August 30, 2023 employing establishment audiogram was also received.

In a November 17, 2023 supplemental report, Dr. Dettelbach indicated that appellant's December 5, 2001 audiogram, obtained prior to his current federal employment, showed normal hearing. Based on the subsequent hearing tests, through 2022, Dr. Dettelbach opined that his hearing loss occurred from noise exposure while working for the employing establishment. He indicated that appellant had sensorineural hearing loss greater than that predicted due to presbycusis. Dr. Dettelbach further opined that the workplace noise exposure would have been "sufficient" to cause the hearing loss in question. He did not relate that he had reviewed the additional documentation received from the employing establishment on November 6, 2023.

On November 28, 2023, OWCP referred the medical record and updated SOAF to Dr. Israel, serving as a DMA, to provide an addendum report based on Dr. Dettelbach's clarifications and the additional medical evidence.

In a December 4, 2023 report, Dr. Israel indicated that, based on an August 20, 2023 audiogram, appellant sustained a right monaural loss of zero percent, a left monaural loss of zero

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<sup>4</sup> Additional audiograms were also received, which did not properly document the testing dates.

percent, and a binaural hearing loss of zero percent. He noted that a tinnitus award of two percent could not be given as there was no binaural hearing loss. Dr. Israel averaged appellant's right ear hearing levels of 20, 20, 25, and 35 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 of 100 by 4, which equaled 25. After subtracting the 25 dB fence, he multiplied the remaining 0 balance by 1.5 for a result of zero percent right monaural loss. For the left ear, Dr. Israel averaged hearing levels of 15, 15, 25, and 40 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 of 95 by 4 for a result of 23.75. After subtracting the 25 dB fence, he multiplied the remaining zero balance by 1.5 for a result of zero percent left 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 indicated that appellant's hearing loss based on the additional audiograms suggested hearing loss due at least "in part" to noise-induced work-related acoustic trauma. Dr. Israel noted that the latest audiogram of record was dated August 30, 2023, but that it was unclear if the audiometric test results were valid as an incomplete audiologic study was provided. He determined that appellant had reached MMI on November 17, 2023, the date of most recent audiometric examination with Dr. Dettelbach.

By decision dated December 13, 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.

### **LEGAL PRECEDENT**

The schedule award provisions of FECA<sup>5</sup> and its implementing regulations<sup>6</sup> 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>

OWCP evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*. Using the frequencies of 500, 1,000, 2,000, and 3,000 Hz, the losses at each

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<sup>5</sup> 5 U.S.C. § 8107.

<sup>6</sup> 20 C.F.R. § 10.404.

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

<sup>8</sup> *J.S.*, Docket No. 22-0274 (issued September 13, 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).

frequency are averaged.<sup>9</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>10</sup> The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.<sup>11</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>12</sup> The Board has concurred in OWCP's adoption of this standard for evaluating hearing loss.<sup>13</sup>

### ANALYSIS

The Board finds that the case is not in posture for decision.

OWCP properly referred appellant to Dr. Dettelbach for a second opinion examination to evaluate appellant's hearing loss. In a November 23, 2022 report, Dr. Dettelbach related results from audiometric testing obtained on November 23, 2022. On February 15, 2023, appellant submitted additional employing establishment audiograms dating from December 5, 2001. On July 11, 2023, OWCP requested a supplemental report from Dr. Dettelbach based on the previously unreviewed audiograms that were submitted by appellant. In an August 25, 2023 supplemental report, Dr. Dettelbach related that appellant's employment-related hearing loss could not be determined as no hearing tests obtained before 2022 were of record. On November 6, 2023, OWCP received a letter dated September 11, 2023 from the employing establishment's medical program section. It noted that repeat audiogram testing had established a new baseline threshold shift. Documents regarding a baseline test on July 18, 2005, current testing on May 11, 2023, and an August 30, 2023 employing establishment audiogram were submitted. In a November 17, 2023 supplemental report, Dr. Dettelbach reviewed the additional audiograms received on February 15, 2023, but did not address the documents received by OWCP on November 6, 2023.

It is well established that proceedings under FECA are not adversarial in nature, and while appellant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence, particularly when such evidence is of the character normally

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<sup>9</sup> A.M.A., *Guides* 250.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

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

<sup>13</sup> *VM*, *supra* note 8.

obtained from the employing establishment or other government source.<sup>14</sup> It has an obligation to see that justice is done.<sup>15</sup>

The case shall therefore be remanded for further development. On remand, OWCP shall ensure that all of the relevant audiograms have been submitted to Dr. Dettelbach. After receipt of this evidence, OWCP shall again request that Dr. Dettelbach and the DMA review the medical record. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

### **CONCLUSION**

The Board finds that the case is not in posture for decision.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the December 13, 2023 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: July 1, 2025  
Washington, DC

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

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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<sup>14</sup> See *C.S.*, Docket No. 23-0870 (issued August 2, 2024); *A.J.*, Docket No. 23-0883 (issued May 23, 2024); *R.A.*, Docket No. 17-1030 (issued April 16, 2018); *K.W.*, Docket No. 15-1535 (issued September 23, 2013); *M.G.*, Docket No. 18-1310 (issued April 16, 2019); *Walter A. Fundinger, Jr.*, 37 ECAB 200, 204 (1985).

<sup>15</sup> See *A.J.*, Docket No. 18-0905 (issued December 10, 2018); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983); *Gertrude E. Evans*, 26 ECAB 195 (1974).