

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board.² The facts and circumstances as set forth in the Board's prior decisions and orders are incorporated by reference. The relevant facts are as follows.

On November 9, 2009 appellant, then a 70-year-old former supply technician, filed an occupational disease claim (Form CA-2) alleging that he had experienced increased hearing loss causally related to factors of his federal employment.³

By decision dated February 4, 2010, OWCP denied appellant's increased hearing loss claim, finding that the medical evidence of record was insufficient to establish that he had sustained a diagnosed condition causally related to the accepted employment factors.

Appellant appealed to the Board. By decision dated February 4, 2011, the Board set aside the February 4, 2010 decision.⁴ The Board determined that the medical evidence established appellant's claim for binaural hearing loss. The case was remanded for OWCP to determine whether appellant had ratable permanent impairment due to his binaural hearing loss.

By decision dated May 3, 2011, OWCP formally accepted appellant's claim for binaural sensorineural hearing loss and binaural tinnitus.

By decision dated July 27, 2011, OWCP granted appellant a schedule award for an additional 21 percent binaural hearing loss, for a total of 39 percent binaural hearing loss. The period of the award ran for 68.64 weeks, from April 24, 2011 through August 17, 2012.

Appellant appealed to the Board. By decision dated May 7, 2012, the Board affirmed the July 27, 2011 decision.⁵

On October 25, 2013, appellant requested reconsideration.

By decision dated December 10, 2014, OWCP denied appellant's claim for an additional schedule award. It found that the medical evidence of record was insufficient to establish greater than the 39 percent binaural hearing loss previously awarded.

² Docket No. 10-1013 (issued February 4, 2011); Docket No. 12-15 (issued May 7, 2012), *petition for recon. denied*, Docket No. 12-15 (issued January 7, 2013); Docket No. 16-1863 (issued April 3, 2017); Docket No. 19-0257 (issued August 5, 2019); Docket No. 24-0600 (issued June 21, 2024).

³ OWCP assigned OWCP File No. xxxxxx423. OWCP previously accepted a January 25, 1983 occupational disease claim for left-sided monaural hearing loss, under OWCP File No. xxxxxx735. By decision dated May 21, 1984, OWCP granted appellant a schedule award for 18 percent left monaural hearing loss under OWCP File No. xxxxxx735. On July 10, 2012, OWCP administratively combined OWCP File Nos. xxxxxx423 and OWCP File No. xxxxxx735, with the latter designated as the master file number.

⁴ Docket No. 10-1013 (issued February 4, 2011).

⁵ Docket No. 12-15 (issued May 7, 2012), *petition for recon. denied*, Docket No. 12-15 (issued January 7, 2013).

On July 18, 2016, appellant requested reconsideration and submitted a May 18, 2016 audiogram.

By decision dated August 12, 2016, OWCP denied appellant's request for reconsideration, finding that it was untimely and failed to demonstrate clear evidence of error.

Appellant appealed to the Board. By decision dated April 3, 2017, the Board set aside the August 12, 2016 decision,⁶ finding that OWCP had improperly treated his claim for an increased schedule award as a request for reconsideration. The Board remanded the case for OWCP to consider the merits of appellant's increased schedule award claim.

On July 11, 2017 OWCP referred appellant to Dr. John F. Ansley, a Board-certified otolaryngologist, for a second opinion evaluation.

In a report dated July 27, 2017, Dr. Ansley diagnosed sensorineural hearing loss causally related to noise exposure in the course of appellant's federal employment. He recommended hearing aids. Dr. Ansley obtained an audiogram on July 27, 2017 and determined that appellant had 40 percent binaural hearing loss and an additional 3 percent impairment for tinnitus, for a total binaural hearing loss of 43 percent.

On September 27, 2017, Dr. Jeffrey M. Israel, a Board-certified otolaryngologist serving as a district medical adviser (DMA) reviewed the audiological testing performed for Dr. Ansley. Referencing the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),⁷ he determined that appellant had 39 percent right monaural hearing loss, an additional 18 percent left monaural loss, and a binaural hearing loss of 37 percent. Dr. Israel advised that, as the 37 percent binaural hearing loss was less than the previous award for binaural hearing loss of 39 percent, appellant was not entitled to an additional award.

By decision dated October 19, 2017, OWCP denied appellant's claim for an increased schedule award.

On January 19, 2018, appellant requested reconsideration. He maintained that his tinnitus had worsened. In support of his request, appellant submitted audiograms dated November 14, 15, 27, and December 9, 2017.

Appellant additionally submitted a January 12, 2018 report from a physician assistant. She discussed appellant's complaints of tinnitus and noise exposure during the course of his federal employment. The physician assistant diagnosed binaural sensorineural hearing loss.

On February 15, 2018, Dr. Israel reviewed the November 27, 2017 audiogram. He found that appellant had 63.75 percent right monaural hearing loss and 67.75 percent left monaural

⁶ Docket No. 16-186 (issued April 3, 2017).

⁷ A.M.A., *Guides* (6th ed 2009).

hearing loss. Dr. Israel further determined that appellant had 51.9 percent binaural loss minus the previously awarded 39 percent, for an additional 12.9 percent binaural hearing loss.

By decision dated April 23, 2018, OWCP vacated the October 19, 2017 decision, finding that appellant was entitled to an additional 13 percent schedule award for binaural sensorineural hearing loss.

By decision dated May 1, 2018, OWCP granted appellant a schedule award for an additional 13 percent binaural hearing loss, for a total binaural loss of 52 percent. The period of the award ran for 26 weeks from November 27, 2017 through May 27, 2018.

On July 16, 2018, appellant requested reconsideration, contending that he was entitled to a schedule award from August 2012 to the present. He resubmitted the November 15, and December 9, 2017 audiograms.

By decision dated October 10, 2018, OWCP denied modification of its May 1, 2018 decision.

Appellant appealed to the Board. By decision dated August 5, 2019, the Board affirmed the October 10, 2018 decision.⁸

On November 27, 2019, appellant requested reconsideration. By decision dated December 19, 2019, OWCP denied his request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

On January 15, 2021, appellant again requested reconsideration. He asserted that his hearing loss had worsened. By decision dated January 27, 2021, OWCP denied his request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error.

On April 14, 2023, appellant filed a claim for compensation (Form CA-7) for an increased schedule award. He submitted a March 30, 2022 audiogram from an audiologist, who found that he had profound hearing loss due to his employment.

On June 8, 2023, OWCP referred appellant to Ansley for a second opinion evaluation.

In a report dated August 8, 2023, Dr. Ansley diagnosed sensorineural hearing loss and tinnitus due to noise exposure encountered during appellant's federal employment. He explained that appellant's long history of exposure to noise had worsened his hearing loss and tinnitus. Dr. Ansley obtained an audiogram dated August 8, 2023 showing losses at the frequency levels of 500, 1,000, 2,000, and 3,000 Hertz (Hz) in the right ear of 35, 50, 75, and 80 dBs respectively, and in the left ear of 40, 50, 80, and 90 decibels (dBs), respectively. He determined that appellant had 53.75 percent binaural hearing loss and an additional 5 percent permanent impairment for tinnitus, for a total binaural hearing loss of 58.75 percent. Dr. Ansley recommended hearing aids.

⁸ Docket No. 19-0257 (issued August 5, 2019).

On September 15, 2023, Dr. Israel, the DMA, reviewed the audiological testing performed for Dr. Ansley. He applied OWCP's standardized procedures to his evaluation. Using the sixth edition of the A.M.A., *Guides*, Dr. Israel determined that appellant had 52.5 percent right monaural hearing loss, 60 percent left monaural loss, and binaural hearing loss of 53.8 percent. In reaching his impairment rating, he totaled the losses for the right ear at 240 dBs and then divided by 4 to obtain the average hearing loss of 60 dBs. Dr. Israel totaled the losses for the left ear at 260 dBs and then divided by 4 to obtain the average hearing loss of 65 dBs. After subtracting the 25 dB fence, he multiplied both the right ear and left ear by 1.5 respectively to find 52.5 percent right ear monaural hearing loss and 60 percent left ear monaural hearing loss. Dr. Israel multiplied the lesser right ear loss of 52.5 percent by 5, added the 60 percent left ear loss, and divided this sum by 6 to find 53.8 percent binaural hearing loss. He found an additional five percent impairment due to tinnitus, which he added to the binaural hearing loss, for a total award of 58.8 percent. Dr. Israel subtracted the 51.9 percent previously awarded and concluded that appellant had an additional 6.9 percent binaural hearing loss.

By decision dated February 5, 2024, OWCP granted appellant a schedule award for 7 percent binaural hearing loss, for a total binaural hearing loss of 59 percent. The period of the award ran for 14 weeks from August 8 through November 13, 2023.

Appellant appealed to the Board. By decision dated June 21, 2024, the Board affirmed the February 5, 2024 decision.⁹

On December 17, 2024 appellant filed a Form CA-7 for an additional schedule award. He submitted progress notes dated December 9, 2024 from Dr. Ted Albert Meyer, a Board-certified otolaryngologist, and an October 16, 2024 audiogram. Dr. Meyer noted appellant's work history, performed a physical examination, and diagnosed binaural high-frequency sensorineural hearing loss and vestibular neuritis. The October 16, 2024 audiogram showed losses at the frequency levels of 500, 1,000, 2,000, and 3,000 Hz in the right ear of 40, 60, 75, and 80 dBs respectively, and in the left ear of 40, 60, 80, and 85 dBs, respectively. Dr. Meyer determined that appellant had 58.80 percent binaural hearing loss.

On December 3, 2024, OWCP again referred appellant to Dr. Ansley, a Board-certified otolaryngologist, for a second opinion evaluation.

In a report dated December 17, 2024, Dr. Ansley diagnosed sensorineural binaural hearing loss and tinnitus due to noise exposure encountered during appellant's federal employment. He explained that appellant's long history of exposure to noise had worsened his hearing and tinnitus. Dr. Ansley obtained an audiogram dated December 17, 2024 showing losses at the frequency levels of 500, 1,000, 2,000, and 3,000 Hz in the right ear of 35, 50, 75, and 80 dBs respectively, and in the left ear of 40, 50, 80, and 90 dBs, respectively. He determined that appellant had 53.75 percent binaural hearing loss and an additional 5 percent impairment for tinnitus, for a total binaural hearing loss of 58.75 percent.

On March 4, 2025, Dr. Israel, the DMA, reviewed the audiological testing performed by Dr. Ansley. Using the sixth edition of the A.M.A., *Guides*, Dr. Israel determined that appellant

⁹ Docket No. 24-0600 (issued June 21, 2024).

had 52.5 percent right monaural hearing loss, 60 percent left monaural loss, and binaural hearing loss of 53.8 percent. In reaching his impairment rating, he totaled the losses for the right ear at 240 dBs and then divided by 4 to obtain the average hearing loss of 60 dBs. Dr. Israel totaled the losses for the left ear at 260 dBs and then divided by 4 to obtain the average hearing loss of 65 db. After subtracting the 25 dB fence, he multiplied both the right ear and left ear by 1.5 respectively to find 52.5 percent right ear monaural hearing loss and 60 percent left ear monaural hearing loss. Dr. Israel multiplied the lesser right ear loss of 52.5 percent by 5, added the 60 percent left ear loss, and divided this sum by 6 to find 53.8 percent binaural hearing loss. He found an additional five percent impairment due to tinnitus, which he added to the binaural hearing loss, for a total award of 58.8 percent. Dr. Israel concluded that no further award was warranted as appellant had previously received schedule award compensation for 59 percent binaural hearing loss.

By decision dated March 20, 2025, OWCP denied appellant's request for an additional schedule award.

LEGAL PRECEDENT

The schedule award provisions of FECA,¹⁰ and its implementing federal regulation,¹¹ 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 way 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. OWCP evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides*, published in 2009.¹² The Board has approved the use by OWCP of the A.M.A., *Guides* for the purpose of determining the percentage loss of use of a member of the body for schedule award purposes.¹³

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 frequency are added up and averaged.¹⁴ Then, the fence of 25 dBs is deducted because, as the A.M.A., *Guides* points out, losses below 25 decibels result in no impairment in the ability to hear

¹⁰ *Supra* note 1.

¹¹ 20 C.F.R. § 10.404.

¹² For decisions issued after May 1, 2009, the sixth edition of the A.M.A., *Guides* is used. A.M.A., *Guides*, (6th ed. 2009); 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, Exhibit 1 (January 2010).

¹³ *J.M.*, Docket No. 24-0833 (issued March 20, 2024); *P.R.*, Docket No. 19-0022 (issued April 9, 2018); *Isidoro Rivera*, 12 ECAB 348 (1961).

¹⁴ *See* Section 11.2, Hearing and Tinnitus, A.M.A., *Guides* 248-51 (6th ed. 2009).

everyday speech under everyday conditions.¹⁵ The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.¹⁶ 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.¹⁷ The Board has concurred in OWCP's adoption of this standard for evaluating hearing loss.¹⁸

The A.M.A., *Guides* provide that if tinnitus interferes with activities of daily living, including sleep, reading, and other tasks requiring concentration, enjoyment of quiet recreation and emotional well-being, up to five percent may be added to measurable binaural hearing impairment.¹⁹

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish greater than 59 percent binaural hearing loss, for which he previously received schedule award compensation.

On December 17, 2024 appellant filed a Form CA-7 for an additional schedule award. He submitted a report from Dr. Meyer dated December 9, 2024. Following review of an October 16, 2024 audiogram, Dr. Meyer and found that appellant had a 58.80 percent binaural hearing loss.

OWCP thereafter referred appellant to Dr. Ansley, for a second opinion evaluation. In a December 17, 2024 report, Dr. Ansley determined that appellant had 58.75 percent binaural permanent impairment due to hearing loss and tinnitus.

On March 4, 2025 Dr. Israel, serving as the DMA, reviewed Dr. Ansley's December 17, 2024 report and noted that testing at the frequency levels of 500, 1,000, 2,000, and 3,000 Hz revealed dB losses of 35, 50, 75, and 80 for the right ear and dB losses of 40, 50, 80, and 90 for the left ear, respectively. The losses for the right ear were totaled at 240 dBs and then divided by 4 to obtain the average hearing loss of 60 dBs. The losses for the left ear were totaled at 260 dBs and then divided by 4 to obtain the average hearing loss of 65 dBs. After subtracting the 25 dB fence, both the right ear and left ear were multiplied by 1.5 respectively to find 52.5 percent right ear monaural hearing loss and 60 percent left ear monaural hearing loss. Multiplying the lesser right ear loss of 52.5 percent by 5, adding the 60 percent left ear loss, and dividing this sum by 6 resulted in 53.8 percent binaural hearing loss.²⁰ Following the rating protocols, Dr. Israel reviewed

¹⁵ *Id.* at 250.

¹⁶ *Id.* at 250-51.

¹⁷ *Id.* at 251.

¹⁸ *See D.R.*, Docket No. 20-1570 (issued April 14, 2021); *B.E.*, Docket No. 18-1785 (issued April 1, 2019).

¹⁹ A.M.A., *Guides* 249.

²⁰ *C.G.*, Docket No. 23-0916 (issued March 11, 2024); *A.L.*, Docket No. 21-1233 (issued January 31, 2022).

Dr. Ansley's calculations and concurred with his finding of an additional 5 percent impairment for tinnitus, for a total binaural hearing loss of 58.8 percent.

The Board finds that Dr. Ansley's December 17, 2024 report and audiogram accurately summarized the relevant medical evidence, provided detailed findings on examination, and reached conclusions which comported with his findings and the appropriate provisions of the A.M.A., *Guides*.²¹ Utilizing this report, Dr. Israel properly applied the standards for rating hearing loss under the A.M.A., *Guides* to the December 17, 2024 audiogram and found that appellant had 58.8 percent binaural due to hearing loss. The medical reports establish that appellant has 58.8 percent binaural hearing loss which, in accordance with OWCP policy, is rounded up to 59 percent.²²

As the medical evidence of record is insufficient to establish greater than the 59 percent binaural hearing loss previously awarded, 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 greater than 59 percent binaural hearing loss, for which he has received schedule award compensation.

²¹ See *C.G., id.*; *J.M.*, Docket No. 18-1387 (issued February 1, 2019).

²² See *F.T.*, Docket No. 16-1236 (issued March 12, 2018). The policy of OWCP is to round the calculated percentage of impairment to the nearest whole number. Results should be rounded down for figures less than 0.5 and up for 0.5 and over. *Supra* note 14 at Chapter 3.700.4b (January 2010); see also *R.M.*, Docket No. 18-0752 (issued December 6, 2019); *V.M.*, Docket No. 18-1800 (issued April 23, 2019).

ORDER

IT IS HEREBY ORDERED THAT March 20, 2025 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 6, 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