

<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 December 21, 2023, appellant, then a 49-year-old criminal investigator, filed an occupational disease claim (Form CA-2) alleging that he developed bilateral hearing loss and tinnitus due to factors of his federal employment. He noted that he first became aware of his condition and realized its relation to his federal employment on August 6, 2009. On that date the employing establishment notified appellant of a significant increase in hearing loss compared to his November 6, 1998 preemployment audiogram, and advised him to rotate his earpiece. Appellant explained that he remained exposed to noise from his earpiece and at the shooting range.

Appellant provided a separate statement received on December 21, 2023. He explained that he wore an earpiece and radio as part of his regular duties. Additionally, appellant had been a firearms instructor since 2002 and was routinely exposed to loud gunfire at the shooting range.

In a November 27, 2023 report, Dr. Kristen Yancey, a Board-certified otolaryngologist and neurotologist, related appellant's complaints of hearing loss. She noted his exposure to loud noise at work as a firearm instructor for more than 20 years. Dr. Yancey reviewed an August 16, 2023 audiogram, which demonstrated losses of 10, 15, 20, and 25 decibels (dBs) for the right ear, and 15, 20, 25 and 30 dBs for the left ear at the frequencies of 500, 1,000, 2,000, and 3,000 Hertz (Hz), respectively. She diagnosed bilateral sensorineural hearing loss and tinnitus.

In a December 5, 2023 report, Dr. Yancey opined that employing establishment audiograms dated 1998 through 2023 demonstrated a gradual, bilateral high frequency sensorineural hearing loss that had developed over the previous few years. She explained that the "most likely cause is from loud noise exposure, such as repetitive gun fire." Dr. Yancey noted that wearing noise protection helped limit damage to hair cells, but did not fully eliminate the risk.

In a development letter dated December 26, 2023, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence necessary to establish his claim and attached a questionnaire for his completion. OWCP afforded appellant 60 days to respond.

On January 4, 2024, OWCP referred appellant, along with the medical record, a statement of accepted facts (SOAF), and a series of questions, to Dr. Aaron Spingarn, a Board-certified otolaryngologist, for an audiogram and second opinion examination to determine the nature, extent, and causal relationship of appellant's hearing loss.

In a February 6, 2024 report, Dr. Spingarn reviewed the SOAF, history of injury, and the medical evidence of record. He indicated that there was no significant variation from the SOAF, and no other relevant history or condition related to appellant's hearing loss. Dr. Spingarn noted that appellant's ears, tympanic membranes, and canals were normal. He diagnosed right mild-to-moderate mixed hearing loss, left normal to mild hearing loss, and tinnitus, which he opined were

due to noise exposure encountered in appellant's federal employment. Dr. Spingarn reviewed an audiogram conducted by an audiologist on that date, which demonstrated losses of 15, 25, 25, and 30 dBs for the right ear, and 10, 15, 15, and 20 dBs for the left ear at the frequencies of 500, 1,000, 2,000, and 3,000 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 -1.875 percent in the right ear and -15 percent in the left ear, for a binaural loss of -12.8125 percent. Dr. Spingarn completed a tinnitus handicap inventory (THI) and rated the tinnitus diagnosis at two percent for mild tinnitus. He opined that appellant had a total binaural hearing impairment rating of -10.8125 percent. Dr. Spingarn determined that appellant had reached maximum medical improvement (MMI) on February 6, 2024.

On February 15, 2024, OWCP accepted appellant's claim for binaural sensorineural hearing loss and tinnitus.

In a February 28, 2024 report, Dr. Jeffrey M. Israel, a Board-certified otolaryngologist serving as an OWCP district medical adviser (DMA), reviewed the evidence of record, and applied OWCP's standard for evaluating hearing loss under the sixth edition of the A.M.A., *Guides* to Dr. Spingarn's February 6, 2024 report and audiology findings. He 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 a tinnitus award of two percent could not be given as there was no ratable binaural hearing loss. Dr. Israel averaged appellant's right ear hearing levels of 15, 25, 25, and 30 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 4, which equaled 23.75. 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 of 10, 15, 15, and 20 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 4, which equaled 15. 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 5, adding the zero percent left ear loss, and dividing this sum by 6, which equaled zero percent. He noted that he concurred with Dr. Spingarn's calculations, other than his rating for two percent binaural hearing loss for tinnitus. Dr. Israel explained that a tinnitus award cannot be made when there is zero percent binaural hearing impairment, as stipulated on page 249 of the A.M.A., *Guides*. He recommended yearly audiograms, use of noise protection, and hearing aids for hearing loss with integrated masking for tinnitus. Dr. Israel determined that appellant had reached maximum medical improvement (MMI) on February 6, 2024, the date of the most recent audiogram and Dr. Spingarn's examination.

Thereafter, OWCP received a February 20, 2024 report, wherein Dr. Yancey opined that appellant's hearing loss had attained MMI.

On February 20, 2024, appellant filed a claim for compensation (Form CA-7) for a schedule award.

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

In a development letter dated April 18, 2024, OWCP informed appellant of the deficiencies of his schedule award claim. It advised him of the type of factual and medical evidence necessary to establish his claim and attached a questionnaire for his completion. OWCP afforded appellant 60 days to respond. In a separate development letter of even date, it requested that the employing establishment provide additional information regarding his exposure to noise due to factors of his federal employment, including comments from a knowledgeable supervisor regarding the accuracy of his statements. OWCP afforded the employing establishment 30 days to respond.

Thereafter, OWCP received a November 6, 1998 audiogram, which demonstrated losses of 0, 5, 5, and 0 dBs for the right ear, and 0, 0, 0, and 0 dBs for the left ear at the frequencies of 500, 1,000, 2,000, and 3,000 Hz, respectively.

In a December 3, 2007 report, Dr. David S. Lerman, a Board-certified internist at the employing establishment, indicated that appellant had no hearing loss in either ear.

An August 6, 2009 audiogram obtained for Dr. Lerman demonstrated losses of 20, 10, 20, and 10 dBs for the right ear, and 10, 10, 10, and 10 dBs for the left ear at the frequencies of 500, 1,000, 2,000, and 3,000 Hz, respectively.

In a November 20, 2009 report, Dr. R. Miller, an employing establishment physician, indicated that appellant's current audiogram confirmed a significant increase in his hearing loss as compared to his November 6, 1998 baseline audiogram. Appellant was instructed to review his hearing protection procedures at work and at home, and to alternate his radio earpiece between ears to "minimize further hearing loss."

In a May 13, 2024 statement, P.M., appellant's first-line supervisor, asserted that appellant's statements regarding his occupational noise exposure were accurate.

In a May 28, 2024 statement, the employing establishment asserted that it had complied with applicable regulations regarding hearing protection and operation of a hearing conservation program. It asserted that appellant's hearing loss was not exclusively related to occupational noise exposure. The employing establishment provided information regarding its hearing conservation program, which included annual monitoring audiograms.

On August 26, 2024, OWCP referred appellant, along with the medical record, a SOAF, and a series of questions, to Dr. Spingarn, for an updated second opinion examination to determine the nature and extent of appellant's hearing loss.

In a September 11, 2024 report, Dr. Spingarn reviewed the SOAF, history of injury, and the medical evidence of record. He indicated that the additional medical evidence of record had not altered his prior opinion that appellant had a zero percent binaural hearing loss under the applicable grading schemes of the A.M.A., *Guides*. As appellant had zero percent binaural hearing loss, there was no additional award for tinnitus.

In a February 19, 2025 report, Dr. Israel reviewed Dr. Spingarn's September 11, 2024 report and the additional evidence of record. He affirmed his prior opinion that the February 6, 2024 audiogram did not indicate ratable hearing loss under the A.M.A., *Guides*, and that there was no applicable impairment rating for tinnitus.

By decision dated February 21, 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<sup>4</sup> and its implementing regulations<sup>5</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>6</sup> has been adopted by OWCP for evaluating schedule losses and the Board has concurred in such adoption.<sup>7</sup>

A claimant seeking compensation under FECA has the burden of proof to establish the essential elements of his or her claim.<sup>8</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>9</sup>

OWCP evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.<sup>10</sup> Using the frequencies of 500, 1,000, 2,000, and 3,000 Hz, the losses at each frequency are averaged.<sup>11</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>12</sup> The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.<sup>13</sup> The binaural loss of hearing is determined by

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<sup>4</sup> *Supra* note 2.

<sup>5</sup> 20 C.F.R. § 10.404.

<sup>6</sup> *Supra* note 3.

<sup>7</sup> See *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); see *J.W.*, Docket No. 17-1339 (issued August 21, 2018).

<sup>8</sup> *D.H.*, Docket No. 20-0198 (issued July 9, 2020); *John W. Montoya*, 54 ECAB 306 (2003).

<sup>9</sup> *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>10</sup> *Supra* note 3.

<sup>11</sup> *Id.* at 250.

<sup>12</sup> *Id.*; *W.W.*, Docket No. 21-0545 (issued June 21, 2023); *C.D.*, Docket No. 18-0251 (issued August 1, 2018).

<sup>13</sup> *Id.*

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>14</sup> The Board has concurred in OWCP's adoption of this standard for evaluating hearing loss.<sup>15</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>16</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>17</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 rationale for the percentage of impairment specified.<sup>18</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>19</sup>

### ANALYSIS

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

OWCP initially referred appellant to Dr. Spingarn for a second opinion examination to evaluate his hearing loss. In a February 6, 2024 report, Dr. Spingarn diagnosed binaural mild high frequency sensorineural hearing loss. He opined that the hearing loss was due to noise exposure encountered in appellant's federal employment. Dr. Spingarn determined that appellant sustained a right monaural loss of zero percent, a left monaural loss of zero percent, and a binaural hearing loss of two percent for tinnitus. OWCP accepted the claim for bilateral sensorineural hearing loss and bilateral tinnitus and properly referred the second opinion physician report to the DMA, Dr. Israel, for review.

In a report dated February 28, 2024, the Dr. Israel reviewed Dr. Spingarn's report and opined that appellant had zero percent monaural hearing loss in each ear. He explained that testing at the frequencies of 500, 1,000, 2,000, and 3,000 Hz revealed losses at 15, 25, 25, and 30 dBs for

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

<sup>15</sup> *R.C.*, Docket No. 23-0334 (issued July 19, 2023); *H.M.*, Docket No. 21-0378 (issued August 23, 2021); *V.M.*, *supra* note 7; *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>16</sup> *Supra* note 3 at 249.

<sup>17</sup> *Id.*; *R.H.*, Docket No. 10-2139 (issued July 13, 2011); *see also Robert E. Cullison*, 55 ECAB 570 (2004).

<sup>18</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5.a (March 2017); *C.W.*, Docket No. 25-0139 (issued December 18, 2024); *D.J.*, Docket No. 19-0352 (issued July 24, 2020).

<sup>19</sup> *See Ronald J. Pavlik*, 33 ECAB 1596 (1982).

the right ear, respectively, and 10, 15, 15, and 20 dBs for the left ear, respectively. Dr. Israel calculated that the losses for the right ear totaled 95, which he divided by 4 to obtain an average hearing loss of 23.75 and also found that the losses for the left ear totaled at 60 and divided by 4 averaged a hearing loss of 15. He noted that, after subtracting the 25-decibel fence, both the right and left ear losses were reduced to zero and when multiplied by 1.5, the resulting monaural hearing loss in each ear was zero percent.

Upon receipt of additional evidence from Dr. Miller, OWCP obtained a September 11, 2024 updated report wherein Dr. Spingarn affirmed his prior opinion that appellant did not have ratable hearing loss. On February 19, 2025, Dr. Israel reviewed Dr. Spingarn's September 11, 2024 report and the additional evidence of record and opined that appellant did not have a ratable hearing loss warranting a schedule award.

The Board finds that the DMA, Dr. Israel, properly calculated appellant's hearing results according to the A.M.A., *Guides* and concluded that appellant did not have ratable hearing loss warranting a schedule award.<sup>20</sup> Although appellant has an accepted claim for employment-related hearing loss, it is insufficiently severe to be ratable for schedule award purposes.<sup>21</sup>

The Board further finds that the DMA correctly explained that tinnitus may not be added to an impairment rating for hearing loss under the A.M.A., *Guides* unless such hearing loss is ratable.<sup>22</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>23</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.

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<sup>20</sup> C.W., *supra* note 18; T.B., Docket No. 23-0303 (issued August 11, 2023).

<sup>21</sup> 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).

<sup>22</sup> R.C., *supra* note 15; D.S., Docket No. 23-0048 (issued May 23, 2023); J.S., *supra* note 7.

<sup>23</sup> C.W., *supra* note 18; P.C., Docket No. 23-1152 (issued January 19, 2024).

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 21, 2025 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 25, 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