

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

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B.B., Appellant )  
and ) Docket No. 25-0789  
DEPARTMENT OF JUSTICE, FEDERAL )  
BUREAU OF INVESTIGATION, Denver, CO, )  
Employer )  
Issued: September 19, 2025

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On August 20, 2025 appellant filed a timely appeal from a May 15, 2025 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (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 met his burden of proof to establish ratable hearing loss, warranting a schedule award.

**FACTUAL HISTORY**

On July 8, 2024 appellant, then a 49-year-old supervisory special agent, filed an occupational disease claim (Form CA-2) alleging that he developed hearing loss causally related

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

to factors of his federal employment. He indicated that at the time of his hiring at the employing establishment, he had not been provided adequate hearing protection during quarterly and sometimes more frequent firearms qualifications. Appellant further indicated that he was initially provided with headphones until he was provided with a second layer of hearing aid protection within the last year. He noted that he first became aware of his condition and its relationship to his federal employment on December 5, 2023. In an accompanying statement, appellant reiterated his history of injury. He also noted that he underwent hearing examinations annually, and that his 2023 and 2024 tests indicated significant hearing loss.

In support of his claim, appellant submitted employing establishment audiograms performed as part of a hearing conservation program dated May 18 through June 25, 2024.

In a development letter dated July 11, 2024, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 60 days to submit the necessary evidence.

On August 12, 2024 appellant responded to OWCP's development letter. He continued to attribute his hearing loss to noise exposure during firearms qualifications and contended that his last two hearing tests revealed hearing loss.

An August 20, 2024 audiogram was also received. The audiologist remarked that pure tone air and bone conduction testing of appellant's ears indicated hearing within normal limits with a slight loss noted at 4000 Hertz (Hz) in each ear.

On November 25, 2024 OWCP referred appellant, along with the medical record, a statement of accepted facts (SOAF), and a series of questions, to Dr. Catherine Considine, an osteopathic Board-certified otolaryngologist, for an audiogram and second opinion examination to determine the nature, extent, and causal relationship of his hearing loss.

In a January 28, 2025 medical report, Dr. Considine reviewed the SOAF, appellant's history of injury, and the medical evidence of record. She noted that a 2004 audiogram revealed no sensorineural hearing loss and excellent hearing in all frequencies. Dr. Considine further noted that appellant developed tinnitus years ago, which constantly bothered him in a quiet environment. Additionally, she noted that appellant began wearing hearing protection in 2018, which was helpful. On examination, Dr. Considine reported normal tympanic membranes and a tympanogram, no ear infections, or surgery. She reviewed an audiogram conducted by an audiologist on that date, which demonstrated losses of 5, 15, 5, and 10 decibels (dBs) for the right ear, and 5, 5, 10, and 5 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>2</sup> Dr. Considine calculated that appellant had a monaural loss of -24.375 percent in the right ear and -28.125 percent in the left ear, for a binaural loss of 0 percent. She also found that he had two percent hearing impairment due to tinnitus. Dr. Considine opined that appellant had a total binaural hearing impairment rating of two percent. She diagnosed mild bilateral sensorineural hearing loss and bilateral tinnitus based on the

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<sup>2</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

audiogram and opined that the diagnosed conditions were due to appellant's federal employment. Dr. Considine noted that his hearing was "still quite good despite 20 years of noise exposure." She recommended continued use of double ear protection, however, no hearing aids were indicated at that time. Dr. Considine determined that appellant had reached maximum medical improvement (MMI) on January 28, 2025, the date of her evaluation.

By decision dated March 12, 2025, OWCP accepted appellant's claim for binaural sensorineural hearing loss and binaural tinnitus.

On March 14, 2025 appellant filed a claim for compensation (Form CA-7) for a schedule award.

On March 27, 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 due to his employment-related noise exposure.

In an April 7, 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*<sup>3</sup> to Dr. Considine's report and January 28, 2025 audiology findings. He averaged appellant's right ear hearing levels of 5, 15, 5, and 10 dBs at 500, 1,000, 2,000, and 3,000 Hz, respectively, by adding the hearing loss at those 4 levels then dividing the sum by 4, which equaled 8.75. After subtracting the 25 dB fence, Dr. Israel multiplied the remaining 0 balance by 1.5 to calculate zero percent right ear monaural hearing loss. He then averaged appellant's left ear hearing levels 5, 5, 10, and 5 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 four, which equaled 6.25. After subtracting the 25 dB fence, Dr. Israel multiplied the remaining 0 balance by 1.5 to calculate zero percent left ear monaural hearing loss. He 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. Dr. Israel opined that he concurred with Dr. Considine's calculations. He, however, disagreed with her finding that appellant was entitled to a schedule award for two percent hearing impairment due to tinnitus. Dr. Israel explained that page 249 of the A.M.A., *Guides*<sup>4</sup> provided that a tinnitus award cannot be rendered when there is a zero percent binaural hearing impairment. Thus, he concluded that appellant had zero percent hearing impairment. Dr. Israel determined that appellant had reached MMI on January 28, 2025, the date of the most recent audiogram and Dr. Considine's examination. He recommended yearly audiograms and noise protection for the ears, but did not recommend authorization for hearing aids.

By decision dated March 12, 2025, OWCP accepted appellant's claim for bilateral sensorineural hearing loss and bilateral tinnitus.

By decision dated May 15, 2025, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish ratable hearing loss, warranting a schedule award.

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<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

It explained that his accepted hearing loss condition was not severe enough to be considered ratable.

### **LEGAL PRECEDENT**

The schedule award provisions of FECA<sup>5</sup> and its implementing regulations 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>5</sup> *Supra* note 1.

<sup>6</sup> *Supra* note 2.

<sup>7</sup> 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 3.700.2 and Exhibit 1 (January 2010). *See also* R.C., Docket No. 25-0348 (issued March 25, 2025); 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); J.W., Docket No. 17-1339 (issued August 21, 2018).

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

<sup>9</sup> R.C., *id.*; 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 2.

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

<sup>12</sup> *Id.*; R.C., *supra* note 7; 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 referred appellant to Dr. Considine for a second opinion examination to evaluate his hearing loss. In her January 28, 2025 report, Dr. Considine diagnosed bilateral sensorineural hearing loss and bilateral tinnitus. She opined that the conditions were due to noise exposure encountered in appellant's federal employment. Dr. Considine determined that appellant sustained a right monaural hearing loss of -24.375 percent, a left monaural hearing loss of -28.125 percent, for a binaural loss of 0 percent. She also found that he had two percent hearing impairment due to tinnitus.

The DMA, Dr. Israel, in a report dated April 7, 2025, reviewed the findings in Dr. Considine'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 5, 15, 5, and 10 dBs for the right ear, respectively, and 5, 5, 10, and 5 dBs for the left ear,

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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 2 at 249.

<sup>17</sup> *Id.*; *R.C.*, *supra* note 15; *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*, *supra* note 7; *D.J.*, Docket No. 19-0352 (issued July 24, 2020).

<sup>19</sup> *See R.C.*, *supra* note 15; *Ronald J. Pavlik*, 33 ECAB 1596 (1982).

respectively. The decibel losses for the right ear were totaled at 35 and divided by 4 to obtain an average hearing loss of 8.75. The decibel losses for the left ear were totaled at 25 and divided by 4 to obtain an average hearing loss of 6.25. 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 DMA then applied the formula for binaural hearing loss and found that as appellant had zero percent monaural loss of each ear, his binaural hearing loss was also zero percent. He explained that a tinnitus award cannot be rendered when there is no binaural ratable hearing impairment found.

The Board finds that the DMA, Dr. Israel, properly concluded that appellant did not have ratable hearing loss warranting a schedule award.<sup>20</sup> Although appellant has accepted 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 included with an impairment rating for hearing loss under the sixth edition of the A.M.A., *Guides* unless the binaural 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> *T.G.*, Docket No. 25-0452 (issued April 18, 2025); *J.G.*, Docket No. 24-0874 (issued September 25, 2024); *T.B.*, Docket No. 23-0303 (issued August 11, 2023).

<sup>21</sup> *T.G.*, *id.*; *J.G.*, *id.*; *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> *T.G.*, *id.*; *R.C.*, *supra* note 15; *D.S.*, Docket No. 23-0048 (issued May 23, 2023); *J.S.*, *supra* note 7.

<sup>23</sup> *T.G.*, *id.*; *C.W.*, Docket No. 25-0139 (issued December 18, 2024); *P.C.*, Docket No. 23-1152 (issued January 19, 2024).

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 15, 2025 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 19, 2025  
Washington, DC

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

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

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