United States Department of Labor
Employees' Compensation Appeals Board

J.L., Appellant	)	
and	)	**Docket No. 26-0350**
	)	**Issued: July 7, 2026**
DEPARTMENT OF HOMELAND SECURITY, TRANSPORTATION SECURITY ADMINISTRATION, FEDERAL AIR MARSHAL SERVICE, Coppell, TX, Employer	)	

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 March 3, 2026 appellant filed a timely appeal from a December 22, 2025 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

ISSUES

The issues are: (1) whether appellant has met his burden of proof to establish greater than seven percent binaural hearing loss, for which he previously received a schedule award; and

[1] 5 U.S.C. § 8101 *et seq*.

[2] The Board notes that following the December 22, 2025 decision, appellant submitted additional evidence to OWCP. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

(2) whether OWCP properly calculated appellant's payrate and compensation for schedule award purposes.

FACTUAL HISTORY

On December 16, 2024 appellant, then a 57-year-old federal air marshal, filed an occupational disease claim (Form CA-2) alleging that he developed binaural hearing loss and tinnitus due to factors of his federal employment. He noted that he first became aware of his condition on October 19, 2023, and realized its relationship to his federal employment on October 17, 2024 when he received treatment for an ear drum rupture which had occurred on July 20, 2024. Appellant did not stop work.

In a December 27, 2024 development letter, 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 provided a questionnaire for his completion. OWCP afforded appellant 60 days to respond. In a separate development letter of even date, it also requested additional information from the employing establishment. OWCP afforded the employing establishment 30 days to respond.

In a January 6, 2025 statement, appellant recounted that his federal service began in October 2000 as a corrections officer, and that he was subsequently employed as a federal air marshal in June 2002. He alleged that he was routinely exposed to loud noise when training and qualifying with his weapon, as well as while he was on flights. Appellant stated that from June 2002 to the present, he had to qualify four times a year with his duty handgun, train 12 to 15 times a year at the firing range, and fire approximately 300 to 500 rounds per training session. He also stated that he flew on commercial flights for 6 to 16 hours, approximately 20 days per month. Appellant stated that hearing protection was provided for weapons training and qualification requirements, but not while on flights.

In support of his claim, appellant submitted employing establishment audiograms performed as part of a hearing conservation program. OWCP also received a January 6, 2025 report from Dr. Jeffery Fritz, a Board-certified anesthesiologist, who opined that appellant's binaural sensorineural hearing loss and tinnitus were causally related to his employment as a federal air marshal.

In a report dated January 21, 2015, Dr. Maura Lappin, an osteopath Board-certified in occupational medicine, reviewed the record on behalf of the employing establishment. She concluded that appellant's audiogram records did not establish an occupational hearing loss.

On April 21, 2025, OWCP referred appellant, together with the case record, a statement of accepted facts (SOAF), and a series of questions to Lisa Vaughan, an audiologist, for an audiogram, and to Dr. Mark D. Gibbons, a Board-certified otolaryngologist, for a second opinion evaluation.

In a report dated May 29, 2025, Dr. Gibbons reviewed a May 17, 2025 audiogram from Ms. Vaughan, which revealed at 500, 1,000, 2,000, and 3,000 Hertz (Hz), losses of 25,20, 20, and 45 decibels (dBs) for the right ear, and 25, 15, 25, and 55 dBs for the left ear, respectively. He completed a tinnitus handicap inventory (THI) worksheet with a score of 40. Dr. Gibbons

diagnosed binaural sensorineural hearing loss. He opined that appellant's binaural sensorineural hearing loss and tinnitus were due to noise exposure in the course of his federal employment. In a May 28, 2025 worksheet, Dr. Gibbons applied OWCP's standard for evaluating hearing loss to the May 17, 2025 audiogram and determined that appellant had 4.5 percent monaural hearing impairment on the right, 7.5 percent monaural hearing impairment on the left, and 5.0 percent binaural hearing impairment.[3] He also determined that appellant had moderate tinnitus or three percent tinnitus impairment. Dr. Gibbons added the 5 percent binaural hearing impairment to the 3 percent tinnitus impairment for 8 percent binaural hearing impairment. Bilateral hearing aids were recommended.

On June 20, 2025 OWCP accepted the claim for binaural sensorineural hearing loss and tinnitus.

On June 30, 2025 appellant filed a claim for compensation (Form CA-7) for a schedule award. On the reverse side of the claim form, the employing establishment noted that appellant had not stopped work.

On July 10, 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 causally related to his employment-related noise exposure.

In a report dated July 21, 2025, Dr. Israel reviewed Dr. Gibbons' May 29, 2025 report and the May 17, 2025 audiogram. He noted that testing at the frequency levels of 500, 1,000, 2,000, and 3,000 Hz revealed dB losses of 25, 20, 20, and 45 for the right ear, and 25, 15, 25, and 55, for the left ear, respectively. Dr. Israel opined that the pattern of appellant's hearing loss was suggestive of sensorineural hearing loss "due at least in part to noise-induced work-related acoustic trauma." He applied OWCP's procedures to his evaluation. Referencing the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),[4] Dr. Israel totaled the losses for the right ear at 110 dBs and then divided by 4 to obtain the average hearing loss of 27.50 dBs. After subtracting the 25 dB fence, he multiplied the balance of 2.5 percent by 1.5 to equal 3.75 percent right ear monaural hearing loss. For the left ear, Dr. Israel totaled the losses at 120 dBs and then divided by 4 to obtain the average hearing loss of 30 dBs. After subtracting the 25 dB fence, he multiplied the balance of 5 percent by 1.5 to equal 7.5 percent left ear monaural hearing loss. Dr. Israel then multiplied the 3.75 right ear lessor loss by 5, added the 7.5 left ear greater loss, and divided by 6, to find 4.4 percent binaural loss. Next, he added 3 percent tinnitus award, to find 7.4 percent total binaural award. Dr. Israel stated that the difference between Dr. Gibbons' and his score was due to generous rounding. He opined that appellant had reached MMI on May 17, 2025, the date of the latest audiogram. Dr. Israel recommended authorization for hearing aids.

[3] In determining pure tone average (PTA) for 500, 1,000, 2,000 and 3,000 Hz for the right side, Dr. Gibbons rounded 27.5 up to 28.

[4] A.M.A., *Guides* (6th ed. 2009).

On August 27, 2025 OWCP requested that Dr. Gibbons provide a supplemental report explaining whether he concurred with Dr. Israel's binaural hearing rating of 7.4 percent.

In a September 1, 2025 report, Dr. Gibbons related that appellant's right pure tone average (PTA) was 27.5 percent, which he rounded up to 28 percent and resulted in a 4.5 percent monaural impairment. He stated that Dr. Isreal did not round the right PTA up from 27.5 to 28 percent and thus calculated a monoaural impairment of 4.4 percent.[5] Dr. Gibbons indicated that he would defer to Dr. Israel's expertise in determining the final schedule award calculation.

On November 20, 2025, OWCP requested that Dr. Israel clarify his opinion regarding the degree of appellant's hearing loss and discuss any points of disagreement.

In a November 24, 2025 report, Dr. Israel, the DMA, stated his 7.4, rounded down to 7 percent binaural hearing loss score included a 3 percent tinnitus award. He indicated that his impairment calculations were correct. Dr. Israel observed that Dr. Gibbons' rounding technique was much looser than his. He explained that it was necessary to round up or down at the end of the series of calculations, not in the middle or beginning of the calculations as such rounding expanded the end value.

In a letter dated December 10, 2025, OWCP requested the employing establishment provide payrate information effective May 17, 2025, including and specifying the type and amount of premium pay.

On December 12, 2025 the employing establishment advised that appellant worked an irregular schedule and was entitled to premium pay. Effective May 17, 2025, it stated appellant's base salary was $117,034.00 with locality pay of $31,903.00 and Law Enforcement Availability Pay (LEAP) of $37,234.00, for total adjusted salary of $186.171.00. The employing establishment also provided appellant's premium pay one year from date of injury for the period May 17, 2024 through May 16, 2025, noting holiday pay of $4,980.87, night differential of $2,715.55 and Sunday premium pay of $4,977.44.

In a schedule award payment memorandum dated December 17, 2025, OWCP found that payment of binaural hearing loss was more advantageous to appellant, as the 7.4 percent hearing loss resulted in 14.8 weeks of compensation, while the 7.5 percent left ear monaural hearing loss resulted in 3.90 weeks of compensation and the 3.75 percent right ear monaural hearing loss resulted in 1.95 weeks of compensation. It utilized appellant's weekly payrate based on an annual salary of $186,171.00, for a base weekly payrate of $3,580.21 plus weekly rates of premium pay for night differential of $52.22, for Sunday premium of $95.72 and holiday premium of $95.79, for a total weekly payrate of $3,823.94. OWCP found that the compensation rate was at the augmented rate of 75 percent or 3/4 as appellant had a dependent. It stated that as appellant had no disability and did have continuing exposure, the date of injury was the date of the diagnostic audiogram, May 17, 2025.

By decision dated December 22, 2025, OWCP granted appellant a schedule award for seven percent binaural hearing loss with tinnitus rating. It calculated the period of the award from May 17 to August 22, 2024 (14 weeks) and found an effective date of rate of pay of May 17, 2025.

[5] The Board notes that Dr. Israel, however, calculated a 3.75 right PTA.

OWCP determined that appellant was entitled to the augmented compensation rate of 75 percent (or 3/4) of his weekly payrate of $3,823.94 resulting in $2,867.96 in compensation per week for a total payment of $32,847.22.

LEGAL PRECEDENT -- ISSUE 1

The schedule award provisions of FECA[6] and its implementing federal regulation,[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 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.[8] 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.[9]

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.[10] 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.[11] The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.[12] 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

[6] *Supra* note 1.

[7] 20 C.F.R. § 10.404.

[8] 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).

[9] *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).

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

[11] *Id.* at 250.

[12] *Id.* at 250-51.

binaural hearing loss.[13] The Board has concurred in OWCP's adoption of this standard for evaluating hearing loss.[14]

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.[15]

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed to a DMA for an opinion concerning the nature and percentage of permanent impairment in accordance with the A.M.A., *Guides*, with the DMA providing rationale for the percentage of impairment specified.[16]

ANALYSIS -- ISSUE 1

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

OWCP properly referred appellant to Dr. Gibbons for a second opinion evaluation regarding the hearing loss claim for a schedule award. Dr. Gibbons' May 29, 2025 report related May 17, 2025 audiogram findings and concluded that appellant's binaural sensorineural hearing loss and bilateral tinnitus was due to his workplace noise exposure. In a May 28, 2025 worksheet, he determined that appellant had 4.5 percent monaural hearing impairment on the right, 7.5 percent monaural hearing impairment on the left, which converted to 5.0 percent binaural hearing impairment.[17] Dr. Gibbons also determined that appellant had moderate tinnitus for 3 percent tinnitus impairment, which he added the 5.0 percent binaural hearing impairment for 8.0 percent binaural hearing impairment.

On July 21, 2025 Dr. Israel, serving as the DMA, reviewed Dr. Gibbons' May 29, 2025 report and the May 17, 2025 audiogram. He noted that testing at the frequency levels of 500, 1,000, 2,000, and 3,000 Hz revealed dB losses of 25, 20, 20, and 45 for the right ear, and 25, 15, 25, and 55, for the left ear, respectively. Referencing the A.M.A., *Guides*, Dr. Israel totaled the losses for the right ear at 110 dBs and then divided by 4 to obtain the average hearing loss of 27.50 dBs. After subtracting the 25 dB fence, he multiplied the balance of 2.5 percent by 1.5 to equal 3.75 percent right ear monaural hearing loss. For the left ear, Dr. Israel totaled the losses at 120 dBs and then divided by 4 to obtain the average hearing loss of 30 dBs. After subtracting the 25 dB fence, he multiplied the balance of 5 percent by 1.5 to equal 7.5 percent left ear monaural hearing loss. Dr. Israel then multiplied the 3.75 right ear lessor loss by 5, added the 7.5 left ear greater loss, and divided by 6, to find 4.4 percent binaural loss. Next, he added 3 percent tinnitus

[13] *Id.* at 251.

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

[15] A.M.A., *Guides* 249.

[16] *Supra* note 8 at Chapter 2.808.6f.

[17] *See supra* note 4.

award, to find 7.4 percent total binaural award. In that report and in a November 24, 2025 report, Dr. Israel stated that the 7.4 percent binaural hearing loss calculation was correct, and he explained that Dr. Gibbons' calculation was incorrect as each value should only be rounded up or down at the end of the series of impairment calculations, not in the middle or beginning of the calculations. He also opined that appellant had reached MMI on May 17, 2025, the date of the latest audiogram.

The Board finds that Dr. Israel's July 21 and November 24, 2025 reports 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*.[18] Utilizing this report, Dr. Israel properly applied the standards for rating hearing loss under the A.M.A., *Guides* to the May 17, 2025 audiogram and found that appellant had a total 7.4 percent binaural hearing loss which, in accordance with OWCP policy, is rounded down to 7 percent.[19]

In a schedule award memorandum dated December 17, 2025, OWCP found that payment of binaural hearing loss was more advantageous to appellant as the 7.4 percent binaural hearing loss resulted in 14.8 weeks of compensation, while the 7.5 percent left ear monaural hearing loss resulted in 3.90 weeks of compensation and the 3.75 percent right ear monaural hearing loss resulted in 1.95 weeks of compensation. As noted above, in accordance with OWCP policy, the 7.4 percent binaural hearing loss is rounded down to 7 percent, which equates to 14 weeks of compensation.[20]

The Board finds that there is no current medical evidence of record supporting ratable hearing loss greater than the seven percent binaural hearing loss previously awarded. It is appellant's burden of proof to submit evidence of additional hearing loss under OWCP's standardized procedures for rating hearing impairment.[21] He has not submitted such evidence in support of his claim.

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.

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[18] *R.F.*, Docket No. 26-0151 (issued April 3, 2026); *see R.R.,* Docket No. 26-0142 (issued March 10, 2026); *R.L.,* Docket No. 25-0834 (issued November 26, 2025); *R.B.,* Docket No. 25-0532 (issued June 6, 2025); *J.M.,* Docket No. 18-1387 (issued February 1, 2019).

[19] *See R.B., supra* note18; *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 8 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).

[20] *Supra* note 8 at Chapter 2.808 (February 2013) and Exhibit 1 (Percentage Table for Schedule Awards).

[21] *R.F., supra* note 18; *A.L.,* Docket No. 21-0248 (issued April 19, 2023); *R.H.,* Docket No. 18-1721 (issued March 25, 2019); *J.W.,* Docket No. 17-1339 (issued August 21, 2018); *J.B.,* Docket No. 15-1474 (issued March 4, 2016).

LEGAL PRECEDENT -- ISSUE 2

Under FECA, monetary compensation for disability or impairment due to an employment injury is paid as a percentage of the payrate.[22] Section 8101(4) provides that monthly pay means the monthly pay at the time of injury, or the monthly pay at the time disability begins, or the monthly pay at the time compensable disability recurs, if the recurrence begins more than six months after the injured employee resumes regular full-time employment with the United States, whichever is greater.[23]

The Board has held that where an injury is sustained over a period of time, the date of injury is the date of last exposure to those work factors causing injury.[24] Applying this principle to schedule award claims, the Board has held that the date of injury is the date of the last exposure which adversely affects the impairment because every exposure which has an adverse effect (an aggravation) constitutes an injury.[25] For occupational disease claims where the claimant remains exposed to the work factors claimed, the payrate is the rate of pay effective the date of the last exposure to causal employment factors (which may be the date of a medical examination).[26]

In computing payrate, section 8114(e) provides for the inclusion of certain types of premium pay received and, where the evidence indicates additional amounts received in Sunday premium or night differential pay fluctuated or may have fluctuated, OWCP determines the amount of additional pay received during the one-year period prior to injury.[27]

When an injury does not result in disability, but compensation is payable for permanent impairment, a beneficiary is eligible for cost-of-living adjustments under section 8146(a) of FECA where the award for such impairment began more than one year prior to the date the cost-of-living adjustment took effect.[28]

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly determined appellant's payrate for schedule award purposes but improperly calculated the total schedule award.

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[22] *Supra* note 1 at §§ 8105-8107.

[23] *Id.* at § 8101(4). *M.H.,* Docket No. 25-0434 (issued May 8, 2026); *K.B.,* Docket No. 13-0569 (issued June 17, 2013.

[24] *D.A.,* Docket No. 18-1105 (issued January 10, 2019); *J.S.,* Docket No. 17-1277 (issued April 20, 2018); *Sherron A. Roberts,* 47 ECAB 617 (1996).

[25] *D.A., id.*; *Barbara A. Dunnavant*, 48 ECAB 517 (1997).

[26] *Supra* note 8 at *Determining Payrates*, Chapter 2.900.5a(1)(c); *see also M.P.,* Docket No. 17-1736 (issued February 14, 2018); *K.G.,* Docket No. 15-1476 (issued May 6, 2016); *G.L.,* Docket No. 12-1795 (issued September 24, 2013).

[27] *Supra* note 1 at § 8114(e); *G.H.,* Docket No. 19-0770 (issued March 5, 2020); *Lottie M. Williams,* 56 ECAB 302 (2005).

[28] 20 C.F.R. § 10.420(b). *See also D.G.,* Docket No. 16-1855 (issued August 28, 2017).

As there was no disability and appellant had continuing exposure, the date of injury is the date of last exposure, May 17, 2025.[29] Appellant's weekly payrate as of May 17, 2025 was $3,823.94, based on his base weekly payrate of $3580.21, plus his weekly night differential of $52.22, Sunday premium of $95.72, and holiday premium of $95.79. This total equaled $2,867.96 in weekly compensation at the augmented compensation rate of 75 percent (or 3/4). Accordingly, the Board finds that OWCP properly determined appellant's payrate for schedule award purposes.

However, in awarding appellant compensation for 14 weeks for the period May 17 through August 22, 2025 at the augmented compensation rate of $2,867.96, OWCP should have awarded appellant $40,151.44 as opposed to the $32,847.22 awarded. On remand, OWCP should issue appellant $7,304.22, the difference in compensation due.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish greater than seven percent binaural hearing loss, for which he previously received a schedule award. The Board further finds that OWCP properly determined his payrate for schedule award purposes but improperly calculated the total schedule award.

[29] *Supra* note 26; *supra* note 8 at Chapter 2.900.5c (September 2011).

ORDER

IT IS HEREBY ORDERED THAT the December 22, 2025 decision of the Office of Workers' Compensation Programs is affirmed in part and modified in part. The case is remanded to OWCP for further proceedings consistent with this decision of the Board.

Issued: July 7, 2026
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