United States Department of Labor
Employees' Compensation Appeals Board

J.D., Appellant	)	
and	)	**Docket No. 26-0108**
	)	**Issued: May 15, 2026**
DEPARTMENT OF THE NAVY COMMANDER, U.S. PACIFIC FLEET, PUGET SOUND NAVAL SHIPYARD, Bremerton, WA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 30, 2025 appellant filed a timely appeal from a June 23, 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.

ISSUE

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

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On November 16, 2023 appellant, then a 48-year-old safety and occupational health management specialist, filed an occupational disease claim (Form CA-2) alleging that he developed hearing loss due to factors of his federal employment, including prolonged exposure to hazardous noise while working on a pier. He noted that he first became aware of his condition and realized its relationship to his federal employment on October 5, 2023. Appellant did not stop work.

In support of his claim, appellant provided additional evidence detailing his federal employment history and exposure to loud noise at the employing establishment, including noise from submarine equipment and machinery, sandblasting, welding, grinding, chipping guns, pump motors, ventilation systems, and generators while working as an electrician from 2006 through 2017, and as a safety and occupational health management specialist from 2017 to the present. He noted that he wore ear protection when appropriate.

OWCP received a January 11, 2024 employing establishment investigation of occupational exposures pertaining to appellant's work history at its shipyard and intermediate maintenance facility to determine available exposure level readings for equipment and processes which could have been present in his work environment. Summary reports pertaining to industrial hygiene history were provided for the different positions he held.

OWCP also received audiograms and hearing conservation data, dated April 3, 2012 through December 22, 2023, as part of the employing establishment's hearing conservation program. Appellant's April 3, 2012 audiogram demonstrated the following losses at 500, 1,000, 2,000, and 3,000 Hertz (Hz): 5, -5, 5, and 0 decibels (dBs) for the right ear, and 5, 0, 5, and 10 dBs for the left ear, respectively. His December 22, 2023 audiogram demonstrated the following losses at 500, 1,000, 2,000, and 3,000 Hz: 15, 10, 20, and 25 dBs for the right ear, and 10, 15, 25, and 50 dBs for the left ear, respectively.

By decision dated February 13, 2024, OWCP accepted appellant's claim for sensorineural hearing loss, unilateral, left ear, with unrestricted hearing on the contralateral side.

On March 19, 2024 appellant filed a claim for compensation (Form CA-7) for a schedule award.

On May 22, 2024 OWCP referred appellant, along with the medical record, a statement of accepted facts (SOAF), and a series of questions, to Dr. Edward Treyve, a Board-certified otolaryngologist, for a second opinion evaluation to determine the nature and extent of appellant's hearing loss and loss and permanent impairment causally related to his employment-related noise exposure.

In a July 12, 2024 report, Dr. Treyve discussed his July 11, 2024 evaluation, noted his review of the SOAF, and completed OWCP's evaluation questionnaire. He evaluated the audiology testing obtained on July 11, 2024, which revealed the following losses at 500, 1,000, 2,000, and 3,000 Hz: 5, 15, 15, and 25 dBs for the right ear, and 10, 15, 25, and 45 dBs for the left ear, respectively. Dr. Treyve reported that appellant's first industrial audiogram was in 2013,

eight years after the start of his employment, which showed a high-frequency hearing loss at 6,000 Hz in both ears, and likely related to his occupational noise exposure. He further reported that appellant's hearing loss was not due to presbycusis as it was not a factor at his age, explaining that his occupational noise exposure was of sufficient intensity and duration to have caused the loss in question.

Dr. Treyve diagnosed bilateral high-frequency sensorineural hearing loss and tinnitus causally related to noise exposure at work. He referred to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),[2] applied OWCP's standard for evaluating hearing loss to the July 11, 2024 audiogram, and determined that appellant had zero percent right ear monaural hearing loss, zero percent left ear monaural hearing loss, and two percent binaural hearing loss due to tinnitus. Dr. Treyve reported appellant's right ear hearing loss of 5, 15, 15, and 25 dBs at 500, 1,000, 2,000, and 3,000 Hz, respectively, which totaled 60, and divided by 4, to find an average of 15. As the average fell below the 25 dBs fence, he found zero percent right ear monaural hearing loss. For the left ear, Dr. Treyve added appellant's hearing loss of 10, 15, 25, and 45 dBs at 500, 1,000, 2,000, and 3,000 Hz, respectively, which totaled 95, and divided by 4 to find an average of 23.75. As the average fell below the 25 dBs fence, he found zero percent left ear monaural hearing loss. As he calculated a monaural loss of zero percent in each ear, Dr. Treyve found a binaural hearing loss of zero percent. He completed a tinnitus handicap inventory (THI) and rated the tinnitus diagnosis at two percent. Dr. Treyve arrived at a total binaural hearing impairment rating of two percent due to mild tinnitus. He recommended a trial of hearing aids and concluded that appellant reached maximum medical improvement (MMI) on July 11, 2024.

On July 23, 2024 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 nature and extent of appellant's hearing loss and permanent impairment causally related to his employment-related noise exposure.

In a July 26, 2024 report, Dr. Israel reviewed the evidence of record and prior audiometric testing dating back to April 3, 2012, which generally showed normal hearing in both ears. He reported that serial audiograms over the years revealed progressive sensorineural hearing loss in the following ranges: 2,000 to 8,000 Hz on the left and 3,000 to 8,000 Hz on the right. Dr. Israel reported that appellant's latest July 11, 2024 audiogram revealed appellant's left ear with normal to low normal hearing up to 2,000 Hz followed by a rapid and continuous drop to an 85 dB plateau from 6,000 to 8,000 Hz indicating severe level loss while the right ear revealed normal to low normal hearing up through 3,000 Hz followed by a rapid and continuous drop to a 75 dB level at 8,000 Hz. He opined that these patterns were suggestive of sensorineural hearing loss due at least in part to noise-induced employment-related acoustic trauma.

Dr. Israel applied the audiometric data to OWCP's standard for evaluating hearing loss under the sixth edition of the A.M.A., *Guides*[3] to Dr. Treyve's report and July 11, 2024 audiology findings. He determined that appellant sustained a right monaural loss of zero percent, a left

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

[3] *Id.*

monaural loss of zero percent, and a 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 5, 15, 15, and 25 dBs at 500, 1,000, 2,000, and 3,000 Hz, respectively, by adding the hearing loss at those 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 right ear monaural hearing loss. Dr. Israel then averaged appellant's left ear hearing levels 10, 15, 25, and 45 dBs at 500, 1,000, 2,000, and 3,000 Hz, respectively, by adding the hearing loss at those levels then dividing the sum by four, which equaled 23.75. 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 five, adding the zero percent left ear loss, and dividing this sum by six. He opined that he concurred with Dr. Treyve's calculations, other than his rating for two percent binaural hearing loss for tinnitus. Dr. Israel noted that a tinnitus award cannot be rendered when there is zero percent binaural hearing impairment as stipulated on page 249 of the A.M.A., *Guides*.[4] He recommended yearly audiograms, use of noise protection, and hearing aids for hearing loss tinnitus. Dr. Israel determined that appellant had reached MMI on July 11, 2024, the date of the most recent audiogram and Dr. Treyve's examination.

By decision dated August 30, 2024, 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.

Following OWCP's decision, appellant submitted additional evidence in support of his claim including a February 24, 2025 audiological evaluation and audiology clinic visit summary from Catelyn Tweeten, AuD. The audiometric testing obtained on February 24, 2025, at the frequencies of 500, 1,000, 2,000, and 3,000 Hz, revealed losses at 15, 15, 25, and 50 dBs for the right ear, respectively; and 15, 20, 30, and 45 dBs for the left ear, respectively. Dr. Tweeten reported that appellant presented for evaluation due to drainage and pain in the right ear and noted a history of noise exposure and hearing loss. Appellant reported that in October 2023, he experienced a perforated eardrum accompanied by drainage and tinnitus which had resolved with treatment and noted current complaints of right ear drainage, worsened hearing, and constant tinnitus in the past 10 days. Dr. Tweeten diagnosed bilateral normal profound sensorineural sloping hearing loss and opined that appellant was an excellent candidate for hearing aids.

In a February 24, 2025 report, James Rutledge, a physician assistant, evaluated appellant for right side otalgia and otorrhea. He diagnosed right ear otalgia, bilateral sensorineural hearing loss, and bilateral tinnitus and recommended hearing aids.

In a May 15, 2025 report, Mr. Rutledge documented treatment for appellant's conditions and diagnosed right ear otalgia, bilateral sensorineural hearing loss, bilateral tinnitus, temporomandibular joint dysfunction, and other chronic sinusitis. He provided clearance for hearing aids and referred appellant to a physician for further evaluation. In a medical clearance note of even date, Mr. Rutledge reported that appellant had been medically evaluated and could be considered a candidate for hearing aid use.

[4] *Id.* at 249.

On June 10, 2025 appellant requested reconsideration.

By decision dated June 23, 2025, OWCP denied modification of the August 30, 2024 decision.

LEGAL PRECEDENT

The schedule award provisions of FECA,[5] and its implementing federal regulations,[6] 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 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. The sixth edition of the A.M.A., *Guides*[7] has been adopted by OWCP for evaluating schedule losses and the Board has concurred in such adoption.[8]

A claimant seeking compensation under FECA has the burden of proof to establish the essential elements of his or her claim.[9] 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.[10]

OWCP evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.[11] Using the frequencies of 500, 1,000, 2,000, and 3,000 Hz, the losses at each frequency are added up and averaged.[12] Then, the fence of 25 dBs is deducted because, as the A.M.A., *Guides* provides, losses below 25 dBs result in no impairment in the ability to hear everyday speech under everyday conditions.[13] The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.[14] The binaural loss is determined by

[5] 5 U.S.C. § 8107.

[6] 20 C.F.R. § 10.404.

[7] *Supra* note 1.

[8] *W.R.,* Docket No. 22-0051 (issued August 9, 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).

[9] *D.H.*, Docket No. 20-0198 (issued July 9, 2020); *John W. Montoya*, 54 ECAB 306 (2003).

[10] *R.R.*, Docket No. 19-0750 (issued November 15, 2019); *Edward Spohr*, 54 ECAB 806, 810 (2003); *Tammy L. Meehan*, 53 ECAB 229 (2001).

[11] *Supra* note 2.

[12] *Id.* at 250.

[13] *Id.*

[14] *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.[15] The Board has concurred in OWCP's adoption of this standard for evaluating hearing loss.[16]

Regarding tinnitus, the A.M.A., *Guides* provides that tinnitus is not a disease, but rather a symptom that may be the result of disease or injury.[17] 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 a measurable binaural hearing impairment.[18]

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.[19] It may follow the advice of its medical adviser or consultant where he or she has properly utilized the A.M.A., *Guides*.[20]

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. Treyve for a second opinion examination to evaluate his hearing loss. In his July 12, 2024 report, Dr. Treyve diagnosed bilateral sensorineural hearing loss and bilateral tinnitus. He opined that the conditions were due to noise exposure encountered in appellant's federal employment. Dr. Treyve determined that appellant sustained right monaural loss of zero percent, left monaural loss of zero percent, and binaural hearing loss of two percent for tinnitus.

On July 23, 2024 OWCP forwarded appellant's medical record to Dr. Israel, OWCP's DMA, to provide an opinion regarding any permanent employment-related hearing loss.

Dr. Israel, in a report dated July 26, 2024, reviewed Dr. Treyve'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, 15, and 25 dBs for the right ear, respectively, and 10, 15, 25, and 45 dBs for the left ear, respectively. The decibel losses

[15] *Id.*

[16] *See 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).

[17] *Supra* note 4.

[18] *Id.*; *R.H.*, Docket No. 10-2139 (issued July 13, 2011); *see also Robert E. Cullison*, 55 ECAB 570 (2004).

[19] *See D.J.*, Docket No. 19-0352 (issued July 24, 2020).

[20] *See B.B.,* Docket No. 25-0789 (issued September 19, 2025); *Ronald J. Pavlik*, 33 ECAB 1596 (1982).

for the right ear were totaled at 60 and divided by 4 to obtain an average hearing loss of 15. The decibel losses for the left ear were totaled at 95 and divided by 4 to obtain an average hearing loss of 23.75. 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, amounting to zero percent binaural hearing loss.

The DMA, Dr. Israel, properly concluded that appellant did not have ratable hearing loss warranting a schedule award.[21] He also correctly explained that tinnitus may not be added to an impairment rating for hearing loss under the sixth edition of the A.M.A., *Guides* unless such hearing loss is ratable.[22] The Board finds, therefore, that the opinion of Dr. Israel constitutes the weight of the medical evidence and establishes that appellant is not entitled to a schedule award.[23]

The Board notes that subsequently, with her June 10, 2025 request for reconsideration of the August 30, 2024 schedule award denial, appellant submitted reports from Dr. Tweeten. However, the February 24, 2025 audiogram does not comply with the requirements for audiograms set forth by OWCP[24] as the audiogram was not prepared or certified as accurate by a physician as defined by FECA.[25] If an audiogram is prepared by an audiologist, it must be certified by a physician as accurate before it can be used to determine the percentage of hearing loss.[26]

Appellant also submitted treatment notes and hearing aid authorizations from a physician assistant. However, certain healthcare providers such as physician assistants are not considered physicians as defined under FECA and their reports do not constitute competent medical evidence.[27] Consequently, these medical findings or opinions are insufficient to establish the schedule award claim.[28]

---

[21] *J.N.*, Docket No. 24-0508 (issued June 18, 2024); *T.B.,* Docket No. 23-0303 (issued August 11, 2023).

[22] *R.C.*, Docket No. 23-0334 (issued July 19, 2023); *D.S.*, Docket No. 23-0048 (issued May 23, 2023); *J.S.*, Docket No. 22-0274 (issued September 13, 2022).

[23] *P.C.*, Docket No. 23-1152 (issued January 19, 2024).

[24] Federal (FECA) Procedure Manual, Part 3, Medical, *Requirements for Medical Reports*, Chapter 3.600.8, Exhibit 4 (September 1995). *See also K.G.,* Docket No. 14-1827 (issued January 5, 2015).

[25] A doctor of audiology is not a physician as defined by FECA. 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). *See also L.C.*, Docket No. 14-1954 (issued January 5, 2015).

[26] *See A.L.*, Docket No. 21-1233 (issued January 31, 2022); *D.L.*, Docket No. 17-1440, n.10 (issued September 10, 2018); *Joshua A. Holmes,* 42 ECAB 231 (1990).

[27] Section 8102(2) of FECA provides as follows: physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8102(2); 20 C.F.R. § 10.5(t). *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (May 2023); *David P. Sawchuk,* 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); *see also S.S.,* Docket No. 21-1140 (issued June 29, 2022) (physician assistants are not considered physicians under FECA and are not competent to provide medical opinions).

[28] *T.H.*, Docket No. 23-1142 (issued March 28, 2024).

The evidence submitted by appellant in support of his schedule award claim is insufficient to overcome the weight of the medical opinion evidence accorded to Dr. Israel, the DMA, or to create a conflict in the medical opinion evidence.[29] 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.

ORDER

IT IS HEREBY ORDERED THAT the June 23, 2025 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 15, 2026
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

[29] *See K.A.,* Docket No. 26-0031 (issued February 26, 2026); *D.C.,* Docket No. 22-1177 (issued December 6, 2023).