

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

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<b>A.M., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 26-0274</b>
	)	<b>Issued: May 14, 2026</b>
<b>DEPARTMENT OF HOMELAND SECURITY,</b>	)	
<b>U.S. CUSTOMS AND BORDER PROTECTION,</b>	)	
<b>Nogales, AZ, Employer</b>	)	
_____	)	

*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 January 25, 2026 appellant filed a timely appeal from a January 22, 2026 merit decision of the Office of Workers' Compensation Programs (OWCP).<sup>1</sup> Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>3</sup>

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<sup>1</sup> Appellant submitted a timely request for oral argument before the Board. 20 C.F.R. § 501.5(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). In support of appellant's oral argument request, he asserted that OWCP should have relied on the opinion of the physician who evaluated him and provided an impairment rating of four percent hearing loss when determining his schedule award. The Board, in exercising its discretion, denies appellant's request for oral argument because the argument on appeal can adequately be addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, the oral argument request is denied, and this decision is based on the case record as submitted to the Board.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> The Board notes that following the January 22, 2026 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.*

## **ISSUE**

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

## **FACTUAL HISTORY**

On May 1, 2025 appellant, then a 51-year-old customs and border protection agent, 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. He noted that he first became aware of his condition on May 3, 2025, and realized its relationship to his federal employment on May 4, 2025. Appellant did not stop work.

In support of his claim, appellant provided evidence detailing his federal employment history and exposure to occupational noise for the employing establishment from 2002 to present which included exposure to hazardous noise from firearms training, canine training, loud vehicles, trains, helicopters, airplanes, radio traffic, and canine barking. Appellant wore ear protection when appropriate. He reported that from June 2018 to present, he was employed as a canine enforcement instructor/handler for the employing establishment where he was exposed to constant noise from loud barking dogs on a daily basis from working between ports of entry and teaching at the canine schools.

In support of his claim, appellant submitted medical records as part of his pre-employment evaluation for the employing establishment. An August 28, 2001 audiogram demonstrated at 500, 1,000, 2,000, and 3,000 Hertz (Hz): losses of 5, 10, 0, and 0 decibels (dBs) in the right ear and 10, 10, 0, and 10 dBs in the left ear, respectively. In a medical review form dated September 2, 2001, appellant was deemed medically qualified with no medical conditions that were likely to hinder safety and efficient performance functions.

Appellant also submitted a March 3, 2025 audiological evaluation and report from Adriana Sanchez, AuD. Dr. Sanchez noted a history of noise exposure at work and reported that appellant presented for evaluation due to a gradual decrease in hearing sensitivity with increased difficulty understanding speech and intermittent bilateral tinnitus. The audiometric testing obtained on March 3, 2025 at the frequencies of 500, 1,000, 2,000, and 3,000 Hz revealed losses at 15, 15, 10, and 10 dBs for the right ear, respectively; and 20, 20, 15, and 20 dBs for the left ear, respectively. Dr. Sanchez reported that pure tone testing revealed a normal-moderately severe sensorineural sloping hearing loss in the right ear and a normal moderately severe sensorineural sloping hearing loss in the left ear, but that appellant was not currently a candidate for amplification.

On August 28, 2025 OWCP referred appellant, along with the medical record, a statement of accepted facts (SOAF), and a series of questions, to Dr. David Brodner, a Board-certified otolaryngologist, for a second opinion evaluation on September 26, 2025 to determine the nature and extent of appellant's hearing loss.

In a September 26, 2025 report, Dr. Brodner performed a physical evaluation, noted his review of the SOAF, and completed OWCP's evaluation questionnaire. He evaluated the March 3, 2025 audiology testing, which revealed the following losses at 500, 1,000, 2,000, and 3,000 Hz: 15, 15, 10, and 10 dBs for the right ear, and 20, 20, 15, and 20 dBs for the left ear, respectively. Dr. Brodner diagnosed bilateral 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*)<sup>4</sup> applied OWCP's standard for evaluating hearing loss to the March 3, 2025 audiogram, and determined that appellant had zero percent right ear monaural hearing loss, zero percent left ear monaural hearing loss, and one percent binaural hearing loss due to tinnitus. Dr. Brodner reported appellant's right ear hearing loss of 15, 15, 10, and 10 dBs at 500, 1,000, 2,000, and 3,000 Hz, respectively, which totaled 50, and divided by 4, to find an average of 12.5. As the average fell below the 25 dBs fence, he found zero percent right ear monaural hearing loss. For the left ear, Dr. Brodner added appellant's hearing loss of 20, 20, 15, and 20 dBs at 500, 1,000, 2,000, and 3,000 Hz, respectively, which totaled 75, and divided by 4 to find an average of 18.75. 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. Brodner found a binaural hearing loss of zero percent. He completed a tinnitus handicap inventory (THI) and rated the tinnitus diagnosis at one percent. Dr. Brodner arrived at a total binaural hearing impairment rating of one percent due to slight tinnitus. He recommended a trial of hearing aids and concluded that appellant reached maximum medical improvement (MMI) on March 3, 2025.

By decision dated October 27, 2025, OWCP accepted appellant's claim for bilateral sensorineural hearing loss and bilateral tinnitus.

On December 9, 2025 appellant filed a claim for compensation (Form CA-7) for a schedule award.

On December 17, 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 causally related to his employment-related noise exposure.

In a December 22, 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>5</sup> to Dr. Brodner's report and March 3, 2025 audiology findings. He determined that appellant sustained a right monaural loss of zero percent, a left monaural loss of zero percent, and a binaural hearing loss of zero percent, noting that a tinnitus award of one percent could not be given as there was no ratable binaural hearing loss. Dr. Israel averaged appellant's right ear hearing levels of 15, 15, 10, and 10 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 12.5. 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 20, 20, 15, and 20 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 18.75. 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. Brodner's calculations, other than his rating for one percent binaural hearing loss for tinnitus. Dr. Israel noted that the September 26, 2025 THI score corresponded to four percent tinnitus impairment rather than one percent as suggested by Dr. Brodner. However, he explained that a tinnitus award cannot be rendered when there is zero percent binaural hearing

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<sup>4</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

<sup>5</sup> *Id.*

impairment as stipulated on page 249 of the A.M.A., *Guides*.<sup>6</sup> Dr. Israel recommended yearly audiograms, use of noise protection, and hearing aids for hearing loss with integrated tinnitus masking. He determined that appellant had reached MMI on March 3, 2025, the date of the most recent audiogram used by Dr. Brodner for his examination.

By decision dated January 22, 2026, 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>7</sup> and its implementing federal regulations,<sup>8</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 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*<sup>9</sup> has been adopted by OWCP for evaluating schedule losses and the Board has concurred in such adoption.<sup>10</sup>

A claimant seeking compensation under FECA has the burden of proof to establish the essential elements of his or her claim.<sup>11</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>12</sup>

OWCP evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.<sup>13</sup> Using the frequencies of 500, 1,000, 2,000, and 3,000 Hz, the losses at each frequency are averaged.<sup>14</sup> 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.<sup>15</sup> The remaining amount is multiplied by a factor of 1.5 to arrive at the

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<sup>6</sup> *Id.* at 249.

<sup>7</sup> 5 U.S.C. § 8107.

<sup>8</sup> 20 C.F.R. § 10.404.

<sup>9</sup> *Supra* note 4.

<sup>10</sup> *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).

<sup>11</sup> *D.H.*, Docket No. 20-0198 (issued July 9, 2020); *John W. Montoya*, 54 ECAB 306 (2003).

<sup>12</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>13</sup> *Supra* note 4.

<sup>14</sup> *Id.* at 250.

<sup>15</sup> *Id.*

percentage of monaural hearing loss.<sup>16</sup> 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.<sup>17</sup> The Board has concurred in OWCP's adoption of this standard for evaluating hearing loss.<sup>18</sup>

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.<sup>19</sup> 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.<sup>20</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>21</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>22</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. Brodner for a second opinion examination to evaluate the nature and extent of any employment-related hearing loss. In his September 26, 2025 report, he diagnosed bilateral sensorineural hearing loss and bilateral tinnitus. Dr. Brodner opined that the conditions were due to noise exposure encountered in appellant's federal employment. He determined that appellant sustained a right monaural loss of zero percent, a left monaural loss of zero percent, and a binaural hearing loss of one percent for tinnitus.

On December 17, 2025 OWCP forwarded appellant's case record to Dr. Israel, OWCP's DMA, to assess his percentage of permanent employment-related hearing loss.

Dr. Israel, in a report dated December 22, 2025, reviewed Dr. Brodner'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 15, 15, 10, and 10 dBs for the right ear, respectively, and 20, 20, 15, and 20 dBs for the left ear, respectively. The decibel losses for the right ear were totaled at 50 and divided by 4 to obtain an average hearing loss of 12.5. The decibel losses for the left ear were totaled at 75 and divided by 4 to obtain an

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<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *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).

<sup>19</sup> *Supra* note 4.

<sup>20</sup> *Id.*; *R.H.*, Docket No. 10-2139 (issued July 13, 2011); *see also Robert E. Cullison*, 55 ECAB 570 (2004).

<sup>21</sup> *See D.J.*, Docket No. 19-0352 (issued July 24, 2020).

<sup>22</sup> *See B.B.*, Docket No. 25-0789 (issued September 19, 2025); *Ronald J. Pavlik*, 33 ECAB 1596 (1982).

average hearing loss of 18.75. 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.

Although appellant has accepted employment-related hearing loss, it is insufficiently severe to be ratable for schedule award purposes.<sup>23</sup> The DMA, Dr. Israel, properly concluded that appellant did not have ratable hearing loss warranting a schedule award.<sup>24</sup> 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.<sup>25</sup> 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.<sup>26</sup> Thus, 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>23</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>24</sup> *J.N.*, Docket No. 24-0508 (issued June 18, 2024); *T.B.*, Docket No. 23-0303 (issued August 11, 2023).

<sup>25</sup> *D.V.*, Docket No. 25-0690 (issued December 8, 2025); *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).

<sup>26</sup> *P.C.*, Docket No. 23-1152 (issued January 19, 2024).

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 22, 2026 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 14, 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