United States Department of Labor
Employees' Compensation Appeals Board

L.C., Appellant	)	
and	)	**Docket No. 26-0674**
	)	**Issued: October 13, 2026**
DEPARTMENT OF JUSTICE, BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES, Atlanta, GA, 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 July 14, 2026 appellant filed a timely appeal from a June 4, 2025 merit decision and an April 20, 2026 nonmerit 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.

ISSUES

The issues are: (1) whether appellant has met his burden of proof to establish ratable hearing loss, warranting a schedule award; and (2) whether OWCP properly denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On August 1, 2024 appellant, then a 54-year-old criminal investigator, filed an occupational disease claim (Form CA-2) alleging that he developed high-frequency hearing loss due to factors of his federal employment, including prolonged exposure to high levels of noise from shooting rifles, pistols, and shotguns on a quarterly basis, and from flash bang devices. He indicated that he was also exposed to noise from explosive charges when he previously worked for five years for the employing establishment as a certified explosives specialist. Appellant noted that he first became aware of his condition on December 20, 2023, and realized its relation to his federal employment on April 30, 2024. He did not stop work.

In a July 31, 2024 accompanying statement, appellant further detailed his federal employment history, noting that he began working as a border patrol agent for the employing establishment in 1996 and later served in other positions, including as a certified explosives specialist starting in 2003. He further discussed his exposure to loud noise in these positions. Appellant noted that he sometimes used hearing protection.

Appellant submitted an April 30, 2024 report wherein Dr. Stephen Rashleigh, a Board-certified family practitioner, diagnosed him with bilateral sensorineural hearing loss. The case record contains an April 30, 2024 audiogram, which was not certified as accurate by a physician. Appellant also submitted employing establishment documents, including a gunfire noise level reference chart.

In a development letter dated August 2, 2024, OWCP informed appellant of the deficiencies of his claim, and provided a questionnaire for his completion. It advised him of the type of factual and medical evidence needed and afforded him 60 days to respond.

In a separate development letter dated August 2, 2024, OWCP requested that the employing establishment provide information regarding appellant's claim, including comments from a knowledgeable supervisor. It afforded the employing establishment 30 days to respond.

Appellant submitted OWCP's questionnaire completed on August 13, 2024, wherein he further detailed his work history and occupational noise exposure. He also submitted personnel documents. The employing establishment submitted an August 19, 2024 statement wherein it concurred with the accuracy of appellant's description of occupational noise exposure. Audiometric data, dated between January 2003 and October 2009, was submitted to the record. This data, which was obtained by the employing establishment, was not accompanied by any audiogram certified as accurate by a physician.

On October 28, 2024 OWCP referred appellant, along with the medical record, a statement of accepted facts (SOAF), and a series of questions, to Dr. Thomas C. Mullis, a Board-certified otolaryngologist, for a second opinion evaluation to determine the nature and extent of any hearing loss causally related to appellant's claimed employment-related noise exposure.

In a December 30, 2024 report, Dr. Mullis detailed appellant's exposure to hazardous noise in the workplace and discussed his evaluation. He diagnosed bilateral high-frequency hearing loss and bilateral tinnitus from appellant's chronic loud noise exposures at work, noting that this

opinion was supported by the duration of his exposure to loud workplace noise. Dr. Mullis indicated that the earliest audiogram in the case record was from January 2003, noting that it showed normal hearing in the left ear except for a drop to 30 decibels (dBs) at 6,000 Hertz (Hz), and that all of the thresholds for the right ear were in the normal range. Under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),[2] he evaluated the findings of the December 30, 2024 audiogram he obtained 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. Mullis reported right ear hearing losses of 15, 15, 20, and 25 dBs at 500, 1,000, 2,000, and 3,000 Hz, respectively, which were totaled at 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 right ear monaural hearing loss. For the left ear, Dr. Mullis added appellant's hearing losses of 20, 10, 15, and 25 dBs at 500, 1,000, 2,000, and 3,000 Hz, respectively, which were totaled at 70 and divided by 4 to find an average of 17.5. As the average fell below the 25 dBs fence, he found zero percent left ear monaural hearing loss. As Dr. Mullis calculated a monaural loss of zero percent in each ear, he found a binaural hearing loss of zero percent. He arrived at a total binaural hearing impairment rating of two percent due to mild tinnitus as derived from the tinnitus handicap inventory (THI) score. Dr. Mullis opined that appellant reached maximum medical improvement (MMI) on December 30, 2024, and he recommended hearing aids.

On January 27, 2025 OWCP accepted the claim for bilateral sensorineural hearing loss and bilateral tinnitus.

On January 28, 2025 appellant filed a claim for a schedule award.

On March 21, 2025 OWCP referred the medical record and SOAF to Dr. Herbert White, Jr., a Board-certified occupational medicine physician, 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 an April 7, 2025 report, Dr. White reviewed the evidence of record and prior audiometric testing, and noted that Dr. Rashleigh opined in an April 30, 2024 report that appellant had a high-frequency hearing loss. Dr. White applied the audiometric data to OWCP's standard for evaluating hearing loss under the sixth edition of the A.M.A., *Guides* to Dr. Mullis' report and the December 30, 2024 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 two percent could not be given as there was no ratable binaural hearing loss. Dr. White averaged appellant's right ear hearing levels of 15, 15, 20, 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, for an average of 18.75 percent. 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. White then averaged appellant's left ear hearing levels of 20, 10, 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 four, for an average of 17.5 percent. After subtracting the 25 dB fence, he multiplied the

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

remaining 0 balance by 1.5 to calculate zero percent left ear monaural hearing loss. Dr. White 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. Mullis' calculations regarding hearing loss, however, he disagreed with his rating for two percent binaural hearing loss for tinnitus. Dr. White 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*.[3] He opined that appellant had reached MMI on December 30, 2024, the date of the most recent audiogram and Dr. Mullis' examination. Dr. White indicated that hearing aids were authorized.

By decision dated June 4, 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. It accorded the weight of the evidence to the opinion of Dr. White, the DMA.

Appellant submitted a February 25, 2026 report wherein Dr. Mullis noted that appellant reported an increase in tinnitus symptoms. He documented examination findings, diagnosed bilateral sensorineural hearing loss and bilateral tinnitus, and recommended treatment for tinnitus. He also submitted a February 25, 2026 audiogram which was signed by an audiologist but was not countersigned by a physician as accurate.

On March 31, 2026 appellant requested reconsideration of his claim. He argued that his high-frequency hearing loss and tinnitus had increased.

By decision dated April 20, 2026, OWCP denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

LEGAL PRECEDENT -- ISSUE 1

The schedule award provisions of FECA,[4] and its implementing federal regulations,[5] 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.

[3] *Id.* at 249.

[4] 5 U.S.C. § 8107.

[5] 20 C.F.R. § 10.404.

The sixth edition of the A.M.A., *Guides*[6] has been adopted by OWCP for evaluating schedule losses and the Board has concurred in such adoption.[7]

A claimant seeking compensation under FECA has the burden of proof to establish the essential elements of his or her claim.[8] 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.[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* provides, 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 binaural hearing loss.[13] The Board has concurred in OWCP's adoption of this standard for evaluating hearing loss.[14]

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.[15] 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.[16]

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[6] *Supra* note 2.

[7] *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).

[8] *A.M.,* Docket No. 26-0274 (issued May 14, 2026); *D.H.*, Docket No. 20-0198 (issued July 9, 2020); *John W. Montoya,* 54 ECAB 306 (2003).

[9] *M.M.,* Docket No. 26-0247 (issued May 1, 2026); *R.R.*, Docket No. 19-0750 (issued November 15, 2019); *Edward Spohr*, 54 ECAB 806, 810 (2003); *Tammy L. Meehan*, 53 ECAB 229 (2001).

[10] *Supra* note 2 at 250.

[11] *Id*.

[12] *Id*.

[13] *Id*.

[14] *See R.A.,* Docket No. 26-0134 (issued March 30, 2026); *E.S.*, 59 ECAB 249 (2007).

[15] *Supra* note 2 at 249.

[16] *Id*.; *I.G.,* Docket No. 25-0910 (issued February 4, 2026); *R.H.*, Docket No. 10-2139 (issued July 13, 2011); *see also Robert E. Cullison*, 55 ECAB 570 (2004).

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed to OWCP's district medical adviser (DMA) for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the DMA providing rationale for the percentage of impairment specified.[17]

ANALYSIS -- ISSUE 1

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. Mullis for a second opinion examination to evaluate his hearing loss. In his December 30, 2024 report, he diagnosed bilateral hearing loss and tinnitus. Dr. Mullis opined that the conditions were due to noise exposure encountered in appellant's federal employment. He 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 March 21, 2025 OWCP forwarded appellant's medical record to Dr. White, OWCP's DMA, to provide an opinion regarding any permanent employment-related hearing loss. In a report dated April 7, 2025, Dr. White reviewed Dr. Mullis' December 30, 2024 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 of 15, 15, 20, and 25 dBs for the right ear, respectively, and 20, 10, 15, and 25 dBs for the left ear, respectively. The losses for the right ear were totaled at 75 and divided by 4 to obtain an average hearing loss of 18.75 percent. The losses for the left ear were totaled at 70 and divided by 4 to obtain an average hearing loss of 17.5 percent. After subtracting the 25 dBs 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.

Dr. White, the DMA, properly concluded that appellant did not have ratable hearing loss warranting a schedule award.[18] 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.[19] The Board finds, therefore, that the opinion of Dr. White constitutes the weight of the medical evidence and establishes that appellant is not entitled to a schedule award.[20]

The record contains audiometric data, dated from January 2003 through October 2009, and an April 30, 2024 audiogram which was not certified as accurate by a physician. Appellant did not submit an audiogram that was certified as accurate by a physician and satisfied the requirements for

[17] *See supra* note 2 at Chapter 2.808.6(f) (March 2017); *see also J.S.,* Docket No. 23-0456 (issued October 2, 2023); *R.M.*, Docket No. 18-1313 (issued April 11, 2019); *C.K.*, Docket No. 09-2371 (issued August 18, 2010).

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

[19] *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).

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

audiograms set forth by OWCP.[21] 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.

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation. The Secretary of Labor may review an award for or against compensation at any time on his or her own motion or on application.[22]

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument which: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.[23]

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.[24] If it chooses to grant reconsideration, it reopens and reviews the case on its merits.[25] If the request is timely, but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.[26] The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record,[27] and the

[21] Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.8, Exhibit 4 (February 2013). *See also K.G.*, Docket No. 14-1827 (issued January 5, 2015).

[22] 5 U.S.C. § 8128(a); *see J.K.*, Docket No. 26-0293 (issued May 27, 2026); *S.B.,* Docket No. 24-0703 (issued December 13, 2024); *M.S.,* Docket No. 19-1001 (issued December 9, 2019); *see also V.P.,* Docket No. 17-1287 (issued October 10, 2017); *W.C.,* 59 ECAB 372 (2008).

[23] 20 C.F.R. § 10.606(b)(3); *see B.G.,* Docket No. 26-0170 (issued March 30, 2026); *K.L.,* Docket No. 17-1479 (issued December 20, 2017); *C.N.,* Docket No. 08-1569 (issued December 9, 2008).

[24] 20 C.F.R. § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (version 1.0, issued March 16, 2026). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in the Integrated Federal Employees' Compensation System (iFECS). *Id.* at Chapter 2.1602.4b (version 1.0, issued March 16, 2026).

[25] *Id.* at § 10.608(a); *see C.P.,* Docket No. 26-0007 (issued May 27, 2026); *F.V.,* Docket No. 18-0239 (issued May 8, 2020); *M.S.*, 59 ECAB 231 (2007).

[26] *Id.* at § 10.608(b); *see G.B.,* Docket No. 26-0293 (issued May 19, 2026); *T.V.,* Docket No. 19-1504 (issued January 23, 2020); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

[27] *N.L.,* Docket No. 18-1575 (issued April 3, 2019); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.[28]

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

On March 31, 2026 appellant filed a timely request for reconsideration of a June 4, 2025 decision.[29] On reconsideration, he generally argued that his high-frequency hearing loss and tinnitus had increased. However, appellant has not established that OWCP erroneously applied or interpreted a specific point of law, or advanced a relevant legal argument not previously considered by OWCP. Thus, he is not entitled to a review of the merits based on either the first or second above-noted requirements under 20 C.F.R. § 10.606(b)(3).

With his request for reconsideration, appellant submitted a February 25, 2026 report wherein Dr. Mullis documented examination findings, diagnosed bilateral sensorineural hearing loss and bilateral tinnitus, and recommended treatment for tinnitus. Appellant also submitted a February 25, 2025 audiogram which was signed by an audiologist but was not countersigned by a physician as accurate. While this evidence is new, it is irrelevant as it does not directly address the underlying issue of the present case, *i.e.*, whether the medical evidence of record is sufficient to establish that appellant had a ratable hearing loss under the standards of the A.M.A., *Guides*. The Board has held that the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.[30]

Therefore, appellant is not entitled to further review of the merits of his claim based on the third above-noted requirement under 20 C.F.R. § 10.606(b)(3).

The Board accordingly finds that appellant has not met any of the requirements of 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish ratable hearing loss, warranting a schedule award. The Board further finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

[28] *C.C.,* Docket No. 25-0806 (issued June 5, 2026); *M.K.,* Docket No. 18-1623 (issued April 10, 2019); *Edward Matthew Diekemper*; 31 ECAB 224, 225 (1979).

[29] *See P.H.,* Docket No. 26-0240 (issued April 17, 2026); *J.F.,* Docket No. 16-1233 (issued November 23, 2016).

[30] *See supra* note 29.

ORDER

IT IS HEREBY ORDERED THAT the June 4, 2025 and April 20, 2026 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: October 13, 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