United States Department of Labor
Employees' Compensation Appeals Board

L.R., Appellant	)	
and	)	**Docket No. 25-0365**
	)	**Issued: September 14, 2026**
DEPARTMENT OF JUSTICE, FEDERAL BUREAU OF INVESTIGATION, Louisville, KY, 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 March 6, 2025 appellant filed a timely appeal from a February 28, 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 her burden of proof to establish ratable hearing loss, warranting a schedule award.

FACTUAL HISTORY

On June 6, 2024 appellant, then a 40-year-old special investigator, filed an occupational disease claim (Form CA-2) alleging that she developed hearing loss and ringing in both ears due to factors of her federal employment, including exposure to occupational noise from gunfire during firearms training since 2019. She noted that she first became aware of her condition on May 4,

[1] 5 U.S.C. § 8101 *et seq*.

2019, as a result of a comprehensive hearing examination, and realized its relation to her federal employment on June 5, 2024. Appellant did not stop work.

In support of her claim, appellant submitted an employing establishment hearing conservation program audiogram summary and disposition dated January 21, 2024. Testing dated May 21, 2018, demonstrated losses of 0, 0, 0, and 0 decibels (dBs) for the right ear and 0, 0, 5, and 0 dBs for the left ear at the frequencies of 500, 1,000, 2,000, and 3,000 Hertz (Hz), respectively. Testing dated January 10, 2024, demonstrated losses of 5, 5, 35, and 45 dBs for the right ear and 5, 5, 35, and 35 dBs for the left ear at the frequencies of 500, 1,000, 2,000, and 3,000 Hz, respectively. The disposition noted a positive standard threshold shift since appellant's May 21, 2018 baseline testing.

In a May 30, 2024 medical report, Dr. Matthew Yantis, a Board-certified otolaryngologist and head and neck surgeon, noted appellant's employment exposures and family history of hearing loss. He reviewed an audiogram performed that day and diagnosed mid- and high-frequency bilateral sensorineural hearing loss. Dr. Yantis opined that the condition was due to a combination of factors, including genetic predisposition and loud noise exposure. He recommended that appellant undergo a hearing aid evaluation.

Appellant also submitted a June 4, 2024 statement, which indicated that prior to her special agent training, she had no hearing issues or ringing in her ears. After attending special agent training in the spring of 2019, she experienced ringing in her ears for the first time. Appellant related that she always wore the provided ear protection and described her ear sensitivity at the gun range as "rather intense." She indicated that she attended quarterly firearms trainings for the next five years and had no other injuries to her ears.

OWCP also received various documents from the employing establishment, including a job description for special agent, hearing protection noise attenuation data, and firearm noise level data.

In a development letter dated June 11, 2024, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence necessary to establish her claim and attached a questionnaire for her completion. OWCP afforded appellant 60 days to respond. In a separate development letter of even date, it requested that the employing establishment provide additional information regarding her exposure to noise due to factors of her federal employment, including comments from a knowledgeable supervisor regarding the accuracy of her statements. OWCP afforded the employing establishment 30 days to respond.

In a June 12, 2024 response to OWCP's questionnaire, appellant indicated that she did not have any occupational noise exposure prior to her special agent training in the spring of 2019.

OWCP also received a May 29, 2018 audiogram, an undated narrative by Dr. Yantis, and a June 25, 2024 letter by an employing establishment human resources specialist.

On July 26, 2024 OWCP referred appellant, along with a statement of accepted facts (SOAF) and the medical record, to Dr. Andrew S. Mickler, a Board-certified otolaryngologist, serving as a second opinion physician, and for an audiogram with an audiologist.

In an August 22, 2024 report, Dr. Mickler reviewed the SOAF, history of injury, and the medical evidence of record. He indicated that there was no significant variation from the SOAF, and no other relevant history or condition related to appellant's hearing loss. Dr. Mickler noted that the ears, tympanic membranes, and canals were normal. He diagnosed binaural sensorineural hearing loss and bilateral tinnitus, which he opined were due to noise exposure encountered in appellant's federal employment. Dr. Mickler reviewed the audiogram conducted on that date, which demonstrated losses of 5, 10, 35, and 30 dBs for the right ear, and 10, 5, 35, and 35 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*),[2] he calculated that appellant had a monaural loss of zero percent in each ear for a binaural loss of zero percent. Dr. Mickler completed a tinnitus handicap inventory and rated the tinnitus diagnosis at three percent. He arrived at a total binaural hearing impairment rating of three percent.

In a September 19, 2024 report, Dr. Amanda C. Trimpey, a Board-certified occupational medicine specialist serving as an OWCP district medical adviser (DMA), reviewed the evidence of record, and applied OWCP's standard for evaluating hearing loss under the sixth edition of the A.M.A., *Guides*[3] to Dr. Mickler's August 22, 2024 report and the audiology findings. She determined that appellant sustained right monaural loss of zero percent, left monaural loss of zero percent, and binaural hearing loss of zero percent. Dr. Trimpey averaged her right ear hearing levels of 5, 10, 35, and 30 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 4, which equaled 20. After subtracting the 25 dB fence, she multiplied the remaining -5 balance by 1.5 to calculate zero percent right ear monaural hearing loss. Dr. Trimpey then averaged appellant's left ear hearing levels of 10, 5, 35, and 35 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 4, which equaled 21.25. After subtracting the 25 dB fence, she multiplied the remaining -3.75 balance by 1.5 to calculate zero percent left ear monaural hearing loss. Dr. Trimpey then calculated zero percent binaural hearing loss by multiplying the right ear loss of zero percent by 5, adding the zero percent left ear loss, and dividing this sum by 6, which equaled zero percent. She also opined that she concurred with Dr. Mickler's calculations, including Dr. Mickler's recommendation for a three percent tinnitus, and found a total bilateral hearing loss award of three percent. Dr. Trimpey determined that appellant had reached maximum medical improvement (MMI) on August 22, 2024, the date of the most recent audiogram and Dr. Mickler's examination.

On October 3, 2024 OWCP accepted appellant's claim for bilateral tinnitus and bilateral sensorineural hearing loss.

By decision dated December 12, 2024, OWCP denied appellant's schedule award claim, finding that the evidence of record was insufficient to establish that her accepted hearing loss condition was severe enough to be considered ratable.

On February 14, 2025 appellant requested reconsideration of OWCP's December 12, 2024 decision. In support of her request, she submitted an employing establishment audiogram

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

[3] *Id*.

performed as part of its hearing conservation program dated January 23, 2025, which revealed the losses of 10, 15, 30, and 45 dBs for the right ear and 10, 10, 35, and 45 dBs for the left ear at 500, 1,000, 2,000, and 3,000 Hz, respectively.

In a medical report dated February 14, 2025, Dr. Bryan D. Murphy, Board-certified in otolaryngology and head and neck surgery, noted that appellant related complaints of significant handicaps with her hearing, particularly in areas of background noise. He performed a physical examination and reviewed audiological testing performed that day by Laureen Reimer, an audiologist, which revealed moderate-to-severe losses in the middle and higher frequencies. Dr. Murphy diagnosed bilateral sensorineural hearing loss. He opined that her condition was inadequately controlled and recommended that appellant be fitted for hearing aids.

By decision dated February 28, 2025, OWCP denied modification of its December 12, 2024 decision.

LEGAL PRECEDENT

The schedule award provisions of FECA[4] and its implementing 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 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*[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*.[10] Using the frequencies of 500, 1,000, 2,000, and 3,000 Hz, the losses at each

[4] 5 U.S.C. § 8107.

[5] 20 C.F.R. § 10.404

[6] *Supra* note 2.

[7] *J.S.*, Docket No. 22-0274 (issued September 13, 2022); *V.M.*, Docket No. 18-1800 (issued April 23, 2019); *see J.W.*, Docket No. 17-1339 (issued August 21, 2018).

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

[9] *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.

frequency are averaged.[11] 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.[12] The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.[13] The binaural loss of hearing 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.[14] The Board has concurred in OWCP's adoption of this standard for evaluating hearing loss.[15]

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.[16] 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.[17] 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.[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] If the file does not contain sufficient medical evidence to make a decision on the medical issue or provide a rating of impairment, the medical adviser may recommend referring the case to a second opinion specialist.[20] OWCP may follow the advice of its medical adviser or consultant where he or she has properly utilized the A.M.A., *Guides*.[21]

[11] *Id*. at 250.

[12] *Id*.; *W.W.*, Docket No. 21-0545 (issued June 21, 2023); *C.D.*, Docket No. 18-0251 (issued August 1, 2018).

[13] *Id*.

[14] *Id*.

[15] *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).

[16] *Supra* note 2 at 249.

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

[18] *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).

[19] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims,* Chapter 2.808.5.a (March 2017); *D.J.,* Docket No. 19-0352 (issued July 24, 2020).

[20] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical* Evidence, a Chapter 2.810.9(b)(6) (June 2015).

[21] *See Ronald J. Pavlik*, 33 ECAB 1596 (1982).

ANALYSIS

The Board finds that this case is not in posture for decision.

In its October 3, 2024 decision, OWCP accepted the claim for bilateral sensorineural hearing loss and bilateral tinnitus. It forwarded appellant's case to Dr. Trimpey, OWCP's DMA, to assess her percentage of permanent employment-related hearing loss. By decision dated December 12, 2024, OWCP denied appellant's claim for schedule award compensation.

In support of her February 14, 2025 request for reconsideration of the December 12, 2024 decision, appellant submitted a February 14, 2025 report by Dr. Murphy, and updated audiograms dated January 23 and February 14, 2025, which revealed increased losses at 500, 1,000, and 3,000 Hz, bilaterally, as compared with the August 22, 2024 audiogram. By decision dated February 28, 2025, OWCP denied modification of its December 12, 2024 decision. However, OWCP did not refer appellant's file, including Dr. Murphy's February 14, 2025 report, and the January 23 and February 14, 2025 audiograms, back to its DMA for review prior to issuing the February 28, 2025 decision.

As noted above, OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed to OWCP's 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.[22] OWCP has an obligation to ensure that the DMA properly considers all reported findings, gives rationale, and uses the A.M.A, *Guides* correctly in computing the percentage.[23]

The case shall, therefore, be remanded for OWCP to refer the case record, including the January 23 and February 14, 2025 audiograms and the February 14, 2025 report of Dr. Murphy, to Dr. Trimpey, the DMA for a supplemental opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*. Following this and other such further development as deemed necessary, it shall issue a *de novo* decision.

CONCLUSION

The Board finds this case is not in posture for decision.

[22] *Id*.

[23] *Supra* note 20 at Chapter 2.810.8(j) (September 2010).

ORDER

IT IS HEREBY ORDERED THAT the February 28, 2025 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: September 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