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

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| **R.D., Appellant** | ) | |
| **and** | ) | **Docket No. 26-0612** |
| | ) | **Issued: September 18, 2026** |
| **DEPARTMENT OF HOMELAND SECURITY, U.S. CUSTOMS AND BORDER PROTECTION, U.S. BORDER PATROL, Tucson, AZ, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

## ***JURISDICTION***

On June 18, 2026 appellant filed a timely appeal from a June 4, 2026 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.

## ***FACTUAL HISTORY***

On April 1, 2025 appellant, then a 49-year-old special operations supervisor, filed an occupational disease claim (Form CA-2) alleging that he developed hearing loss due to factors of

[1] 5 U.S.C. § 8101 *et seq.*

his federal employment, including prolonged exposure to high levels of noise from gunfire, aircraft, all-terrain vehicles, and other types of vehicles. He noted that he first became aware of his condition and realized its relation to his federal employment on March 3, 2025. Appellant did not stop work.

In an accompanying statement, appellant further detailed his federal employment history, noting that he began working as a border patrol agent for the employing establishment in April 2003 and later served in other positions including supervisory border patrol agent, watch commander, and special operations supervisor. He further discussed his exposure to loud noise in these positions, including noise from motorcycles, jet engines, helicopters, sirens, air horns, vehicular traffic, radio earpieces, radio communications in vehicles, and firearms during quarterly training sessions and an officer-involved shooting in February 2007. Appellant noted that no hearing protection was provided.

Appellant submitted a June 28, 2001 audiogram, containing an illegible signature, which revealed the following losses at 500, 1,000, 2,000, and 3,000 Hertz (Hz): 5, 0, 0, and 10 decibels (dBs) for the right ear, and 5, 0, 0, and 10 dBs for the left ear, respectively. A December 4, 2002 audiogram, signed by an audiologist, revealed the following losses at 500, 1,000, 2,000, and 3,000 Hz: 5, 0, 5, and 20 dBs for the right ear, and 0, 0, 0, and 5 dBs for the left ear, respectively. A March 31, 2025 audiogram, containing an illegible signature, revealed the following losses at 500, 1,000, 2,000, and 3,000 Hz: 5, 5, 5, and 20 dBs for the right ear, and 10, 5, 10, and 25 dBs for the left ear, respectively.

In a development letter dated April 10, 2025, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed and afforded him 60 days to respond. No response was received.

On June 17, 2025 OWCP referred appellant, along with the medical record, a statement of accepted facts (SOAF), and a series of questions, to Dr. Ben E. Leff, a Board-certified otolaryngologist, for a second opinion evaluation to determine the nature and extent of appellant's hearing loss and permanent impairment causally related to his employment-related noise exposure.

In an August 19, 2025 report, Dr. Leff detailed appellant's exposure to hazardous noise in the workplace and discussed his otologic evaluation. In the narrative portion of his report, he noted that appellant reported experiencing tinnitus after he was involved in a February 2007 shooting at work and fired five rounds from a rifle held close to his left ear. Dr. Leff reported that appellant had a score of 38 on the tinnitus handicap inventory (THI), which constituted a grade 3 or moderate score. He diagnosed mild left high-frequency hearing loss and moderate tinnitus from appellant's chronic loud noise exposures at work and the "acute rifle fire noise injury at work." Dr. Leff stated, "Impairment rating is 3% based on his tinnitus." He opined that appellant had hearing loss which was not ratable and found that there was no need for hearing aids.

In his report, Dr. Leff noted that audiometric evidence demonstrated that appellant's hearing was normal at the time his significant noise exposure at the employing establishment began, that his current hearing loss exceeded what would be normally predicted on the basis of presbycusis, and that the reported workplace noise was sufficient to have caused his hearing loss. He checked "Yes" boxes indicating that the mild sensorineural hearing loss and the moderate

tinnitus were, in part or all, due to the workplace noise exposure. Dr. Leff indicated that this opinion was supported by appellant's exposure to loud workplace noise and acute auditory trauma from rifle fire near his left ear. 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 August 19, 2025 audiogram he obtained and determined that appellant had zero percent right ear monaural hearing loss, zero percent left ear monaural hearing loss, and three percent hearing loss due to tinnitus. Dr. Leff reported right ear hearing losses of 10, 5, 5, and 15 dBs at 500, 1,000, 2,000, and 3,000 Hz, respectively, which were totaled at 35 and divided by 4 to find an average of 8.75 (rounded up to 9). As the average fell below the 25 dB fence, he found zero percent right ear monaural hearing loss. For the left ear, Dr. Leff added appellant's hearing losses of 15, 10, 10, and 20 dBs at 500, 1,000, 2,000, and 3,000 Hz, respectively, which were totaled at 55 and divided by 4 to find an average of 13.75 (rounded up to 14). As the average fell below the 25 dB fence, he found zero percent left ear monaural hearing loss. As Dr. Leff 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 three percent due to moderate tinnitus. Dr. Leff concluded that appellant reached maximum medical improvement (MMI) on August 19, 2025.

On August 20, 2025 appellant filed a claim for compensation (Form CA-7) for a schedule award.

On September 29, 2025 OWCP accepted the claim for unilateral sensorineural hearing loss of the left ear with unrestricted hearing on the contralateral side; and tinnitus of the left ear.

On April 23, 2026 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 an April 27, 2026 report, Dr. Israel reviewed the evidence of record and prior audiometric testing, and discussed appellant's exposure to noise at work. He indicated that the earliest audiogram of record, dated June 29, 2001, demonstrated normal hearing in both ears. Dr. Israel reported that serial audiograms over the years revealed progressive sensorineural hearing loss in the left ear from 4,000 to 8,000 Hz. He noted that appellant's latest August 19, 2025 audiogram revealed normal to low normal hearing in his left ear up to 3,000 Hz followed by a continuous drop to the 55 dB level at 8,000 Hz. Dr. Israel opined that the patterns of the audiograms were suggestive of sensorineural hearing loss of the left ear due, at least in part, to noise-induced work-related acoustic trauma.

Utilizing OWCP's standards for evaluating hearing loss under the sixth edition of the A.M.A., *Guides*, Dr. Israel applied the audiometric data from Dr. Leff's report and the August 19, 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. Dr. Israel averaged appellant's right ear hearing levels of 10, 5, 5, and 15 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 8.75. After subtracting the 25 dB fence, he multiplied the remaining 0 balance by 1.5 to

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

calculate zero percent right ear monaural hearing loss. Dr. Israel then averaged appellant's left ear hearing levels of 15, 10, 10, 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 13.75. 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. Leff's calculations, other than his rating for three percent hearing loss for tinnitus. Dr. Israel noted that a tinnitus award cannot be granted when there is zero percent binaural hearing impairment as stipulated on page 249 of the A.M.A., *Guides*.[3] He recommended a hearing aid for the left ear, and determined that appellant had reached MMI on August 19, 2025, the date of the most recent audiogram and Dr. Leff's examination.

By decision dated June 4, 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. It noted that appellant was entitled to medical benefits, including hearing aids if recommended by his physician. OWCP accorded the weight of the medical evidence to Dr. Israel, the DMA.

## ***LEGAL PRECEDENT***

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. 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.[6] 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.[7]

[3] *Id.* at 249.

[4] 5 U.S.C. § 8107.

[5] 20 C.F.R. § 10.404.

[6] 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 (version 1.2, issued May 4, 2026); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (version 1.2, issued May 4, 2026).

[7] *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).

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 frequency are added up and averaged.[11] 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.[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 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* provides 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), enjoyment of quiet recreation and emotional well-being, up to five percent may be added to a measurable binaural hearing impairment.[17]

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

[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.

[11] *Id*. at 250.

[12] *Id*.

[13] *Id*.

[14] *Id*.

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

[16] *Supra* note 2 at 249.

[17] *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).

rationale for the percentage of impairment specified.[18] OWCP may follow the advice of its medical adviser or consultant where he or she has properly utilized the A.M.A., *Guides*.[19]

## ***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. Leff for a second opinion examination to evaluate his hearing loss. In his August 19, 2025 report, he diagnosed mild left high-frequency hearing loss and moderate tinnitus. Dr. Leff 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 hearing loss of three percent for tinnitus.

On April 23, 2026 OWCP properly forwarded appellant's medical record to Dr. Israel, OWCP's DMA, to provide an opinion regarding any permanent employment-related hearing loss. In a report dated April 27, 2026, Dr. Israel reviewed Dr. Leff's August 19, 2025 report, and determined that appellant had zero percent monaural hearing loss in each ear. Dr. Israel related that testing at the frequencies of 500, 1,000, 2,000, and 3,000 Hz revealed losses at 10, 5, 5, and 15 dBs for the right ear, respectively, and 15, 10, 10, and 20 dBs for the left ear, respectively. The decibel losses for the right ear were totaled at 35 and divided by 4 to obtain an average hearing loss of 8.75. The decibel losses for the left ear were totaled at 55 and divided by 4 to obtain an average hearing loss of 13.75. After subtracting the 25 dB 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. Israel, the DMA, properly concluded that appellant did not have ratable hearing loss warranting a schedule award.[20] 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 there is a ratable binaural hearing loss.[21] 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.[22]

The record contains several audiograms obtained prior to the August 19, 2025 audiogram. However, the audiograms do not comply with the requirements for audiograms set forth by

[18] *Supra* note 6 at Chapter 2.808.6f; *see also D.J.*, Docket No. 19-0352 (issued July 24, 2020).

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

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

[21] *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).

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

OWCP[23] as they were not prepared or certified as accurate by a physician as defined by FECA.[24] 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.[25]

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.[26] 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.

[23] 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).

[24] 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 J.D.,* Docket No. 26-0108 (issued May 15, 2026); *L.C.,* Docket No. 14-1954 (issued January 5, 2015). Additionally, medical evidence containing an illegible signature has no probative value, as it is not established that the author is a physician. *See D.D.*, 57 ECAB 734 (2006); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

[25] *J.D., id.*; *A.L.,* Docket No. 21-1233 (issued January 31, 2022); *Joshua A. Holmes*, 42 ECAB 231, 236 (1990).

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

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the June 4, 2026 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 18, 2026
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board