United States Department of Labor
Employees' Compensation Appeals Board

C.D., Appellant	)	
	)	
and	)	**Docket No. 26-0615**
	)	**Issued: September 18, 2026**
DEPARTMENT OF HOMELAND SECURITY, U.S. CUSTOMS AND BORDER PROTECTION, U.S. BORDER PATROL, Brownsville, TX, 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 June 22, 2026 appellant filed a timely appeal from a June 1, 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.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On August 13, 2024 appellant, then a 37-year-old border patrol agent, filed an occupational disease claim (Form CA-2) alleging that he developed hearing loss due to factors of his federal employment, including daily exposure to loud noise from firearms, boats, all-terrain vehicles, radio traffic, and checkpoint duties. He noted that he first became aware of his condition and realized its relation to his federal employment on July 26, 2024. Appellant did not stop work.

Appellant submitted an August 20, 2024 statement wherein he further detailed his federal employment history, noting that he worked as a border patrol agent for the employing establishment from August 2011 to the present. He further discussed his exposure to loud noise in this position for 8 to 10 hours per day, including noise from radio earpieces; various vehicles, including motorcycles, buses, and tractor trailers; low-flying helicopters; river patrol boats; sirens during roving patrol duty; and shotguns, rifles, and pistols during yearly firearms qualification tests. Appellant noted that no hearing protection was provided other than earmuffs and basic foam earplugs during firearms qualification tests.

Appellant submitted unsigned November 9, 2010 audiometric results which revealed the following losses at 500, 1,000, 2,000, and 3,000 Hertz (Hz): 10, 10, 10, and 10 decibels (dBs) for the right ear, and 15, 10, 10, and 15 dBs for the left ear, respectively. A July 26, 2024 audiogram, signed by an audiologist, revealed the following losses at 500, 1,000, 2,000, and 3,000 Hz: 15, 10, 5, and 10 dBs for the right ear, and 15, 10, 5, and 15 dBs for the left ear, respectively. Appellant also submitted a description of the position of border patrol agent; a job application for federal employment from 2008; and sound level surveys from employing establishment firearms ranges, obtained in 1981 and 1983.

In a development letter dated August 23, 2024, 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.

In a separate development letter dated August 23, 2024, OWCP requested that the employing establishment provide information regarding appellant's claim, including comments from a knowledgeable supervisor regarding his work history and workplace noise exposure. It afforded the employing establishment 30 days to respond.

In a response received by OWCP on August 23, 2024, appellant asserted that he had perfect hearing before starting work with the employing establishment. He indicated that he now had constant ringing in his ears and noted that the audiograms he submitted were obtained on his own initiative. In a statement of even date, the employing establishment advised that it was in the process of obtaining the information requested by OWCP.

On October 29, 2024 OWCP referred appellant, along with the medical record, a statement of accepted facts (SOAF), and a series of questions, to Dr. Paul W. Loeffler, 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 a December 19, 2024 report, Dr. Loeffler detailed appellant's reported symptoms, and discussed the otologic evaluation he conducted on that date. In the narrative portion of his report, he noted that appellant had a score of 34 on the tinnitus handicap inventory (THI). Dr. Loeffler diagnosed tinnitus (as the primary diagnosis) and sensorineural hearing loss. He indicated that appellant had normal hearing at the start of his federal employment, but that his hearing had dropped 15 dB to borderline pure tone levels. Dr. Loeffler opined that appellant's sensorineural hearing loss was due to noise exposure in his federal employment.

In his report, Dr. Loeffler noted that appellant's 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 tinnitus and sensorineural hearing loss were, in part or all, due to the workplace noise exposure. Utilizing the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),[2] Dr. Loeffler evaluated the findings of the December 19, 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 hearing loss due to tinnitus. He reported right ear hearing losses of 25, 20, 15, and 20 dBs at 500, 1,000, 2,000, and 3,000 Hz, respectively, which were totaled at 80 and divided by 4 to find an average of 20. As the average fell below the 25 dB fence, Dr. Loeffler found zero percent right ear monaural hearing loss. For the left ear, he added appellant's hearing losses of 25, 20, 15, and 25 dBs at 500, 1,000, 2,000, and 3,000 Hz, respectively, which were totaled at 85 and divided by 4 to find an average of 21.25. As the average fell below the 25 dB fence, Dr. Loeffler found zero percent left ear monaural hearing loss. As he calculated a monaural loss of zero percent in each ear, he found a binaural hearing loss of zero percent. Dr. Loeffler arrived at a total binaural hearing impairment rating of two percent due to mild tinnitus. He concluded that appellant reached maximum medical improvement (MMI) on December 19, 2024, and indicated that hearing aids were not recommended.

On January 23, 2025 OWCP accepted the claim for bilateral sensorineural hearing loss and bilateral tinnitus.

On January 23, 2025 appellant filed a claim for schedule award. On January 28, 2025 OWCP received an October 7, 2024 duty status report (Form CA-17) wherein Kristy E. Ochoa, a physician assistant, diagnosed bilateral sensorineural hearing loss and bilateral tinnitus.

On January 29, 2025 OWCP requested that Dr. Loeffler clarify whether appellant's tinnitus limited his activities of daily living (ADL). In a supplemental report dated February 10, 2025, Dr. Loeffler advised that appellant's tinnitus made it difficult for him to hear people and to fall asleep at night. He indicated that this condition caused anxiety and tiredness which placed stress on appellant's relationships with family members and friends.

On February 13, 2025 OWCP referred the medical record and a 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.

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

In a February 25, 2025 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 November 9, 2010, demonstrated normal hearing in both ears. Dr. Israel noted that appellant's latest audiogram, dated December 19, 2024, revealed bilateral hearing levels with normal to low-normal ranges. He opined that the patterns of the audiogram were suggestive of sensorineural hearing loss 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 the audiology findings in Dr. Loeffler's December 19, 2024 report. 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 25, 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 4, which equaled 20. 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 of 25, 20, 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, which equaled 21.25. 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. Loeffler's calculations, other than his rating for two 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 determined that appellant had reached MMI on December 19, 2024, the date of the most recent audiogram and Dr. Loeffler's examination. Dr. Israel indicated that hearing aids were not recommended.

By decision dated February 28, 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 medical evidence to the opinion of Dr. Israel, the DMA.

On November 18, 2025 appellant requested reconsideration of his claim. In support of his request, he submitted two audiograms, both dated November 13, 2025, which were illegibly initialed.

In a November 19, 2025 statement, appellant reported that his hearing had worsened and that he experienced constant ringing in his ears. He indicated that, if possible, he would like to undergo another hearing test.

Appellant subsequently submitted several documents signed by Ms. Ochoa, including a narrative report, a Form CA-17, and a medical billing document, which were dated November 13, 2025.

[3] *Id.* at 249.

By decision dated June 1, 2026, OWCP denied modification of its February 28, 2025 decision.

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]

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

[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).

[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*.

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 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. Loeffler for a second opinion examination to evaluate his hearing loss. In his December 19, 2024 report, Dr. Loeffler diagnosed sensorineural hearing loss and tinnitus. He opined that the conditions were due to noise exposure encountered in appellant's federal employment. Dr. Loeffler determined that appellant sustained right monaural loss of zero percent, left monaural loss of zero percent, and hearing loss of two percent for tinnitus. In a supplemental report dated February 10, 2025, he discussed the effects of tinnitus on appellant's daily life.

On February 13, 2025 OWCP 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 February 25, 2025, Dr. Israel reviewed Dr. Loeffler's reports and

[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).

[18] *Supra* note 7 at Chapter 2.808.6f (version 1.2, issued May 4, 2026); *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).

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 25, 20, 15, and 20 dBs for the right ear, respectively, and 25, 20, 15, and 25 dBs for the left ear, respectively. The decibel losses for the right ear were totaled at 80 and divided by 4 to obtain an average hearing loss of 20. The decibel losses for the left ear were totaled at 85 and divided by 4 to obtain an average hearing loss of 21.25. 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]

Appellant submitted unsigned November 9, 2010 audiometric data; a July 26, 2024 audiogram, signed by an audiologist; and two audiograms, both dated November 13, 2025, which contained illegible initials. However, the audiograms did not comply with the requirements for audiograms set forth by OWCP[23] as there is no indication that they were 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] Appellant also submitted an October 7, 2024 Form CA-17 by Ms. Ochoa, a physician assistant, as well as several November 13, 2025 documents signed by her, including a narrative report, a Form CA-17, and a medical billing document. However, certain healthcare providers such as physician assistants, nurses, and physical and occupational therapists are not considered physicians as defined under FECA.[26]

[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).

[23] *See supra* note 7 at Chapter 3.600.8 (version 1.2, issued May 4, 2026), and Exhibit 4 (September 1996). *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).

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

[26] Section 8101(2) provides that 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. § 8101(2); 20 C.F.R. § 10.5(t). *See supra* note 7 at Chapter 2.805.3a(1) (version 1.2 issued May 4, 2026); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical and occupational therapists are not competent to render a medical opinion under FECA); *see also T.S.,* Docket No. 19-0056 (issued July 1, 2019) (physician assistants are not considered physicians under FECA).

Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[27]

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.[28] 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.

[27] *See id.*

[28] *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 1, 2026 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 18, 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