

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

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**L.H., Appellant**

**and**

**DEPARTMENT OF THE ARMY, TANK-  
AUTOMOTIVE & ARMAMENTS COMMAND,  
Anniston, AL, Employer**

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**Docket No. 18-0696  
Issued: November 28, 2018**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On February 13, 2018 appellant filed a timely appeal from an August 28, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (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 met his burden of proof to establish ratable hearing loss, warranting a schedule award.

**FACTUAL HISTORY**

On October 18, 2016 appellant, then a 55-year-old retired heavy mobile equipment mechanic leader, filed an occupational disease claim (Form CA-2) alleging that he developed

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

hearing loss due to factors of his federal employment.<sup>2</sup> He indicated that he first realized that his hearing loss was caused or aggravated by his federal employment on March 9, 2016.

In an undated summary of appellant's eight-hour time-weighted average noise exposure at work, it was noted that from 2004 through 2010, he worked as a heavy mobile equipment mechanic and was exposed to an average of 92.2 decibels from impact tools and hydraulic engines. From 2010 through 2016, he worked as a heavy mobile equipment mechanic leader and was exposed to an average of 84.4 decibels from impact tools and hydraulic engines.

After further development of the record regarding appellant's occupational noise exposure, OWCP prepared a statement of accepted facts and referred him for a second opinion examination.

OWCP received copies of various audiograms administered between March 11, 2004 and March 9, 2016.

In a February 8, 2017 report, Dr. Dennis G. Pappas, Jr., a Board-certified otolaryngologist, noted appellant's history of noise exposure during his federal employment, which dated back to 2004 at the employing establishment. He further noted that appellant served in the military from 1979 through 1985 as an ammunition specialist. Dr. Pappas reviewed available medical records and examined appellant. He observed intact tympanic membranes without retraction, which moved well with insufflation. Dr. Pappas attached a copy of audiometric test results from the same date. Testing for the right ear at the frequency levels of 500, 1,000, 2,000, and 3,000 cycles per second revealed decibel losses of 5, 10, 0, and 5, respectively. Testing for the left ear at the frequency levels of 500, 1,000, 2,000, and 3,000 cycles per second revealed decibel losses of 5, 10, 10, and 5, respectively. Dr. Pappas diagnosed appellant with bilateral sensorineural hearing loss and stated that appellant demonstrated loss in excess of what would normally be predicated on the basis of presbycusis. He noted that workplace exposure was sufficient in intensity and duration to have caused the loss in question. Dr. Pappas stated that appellant's sensorineural hearing loss was due in part or all to noise exposure encountered in appellant's civilian employment, given his audiogram and progression of hearing loss. He recommended a magnetic resonance imaging scan test to rule out cochlear pathology and a trial of amplification.

By decision dated February 14, 2017, OWCP accepted appellant's claim for bilateral sensorineural hearing loss.

On February 19, 2017 an OWCP medical adviser reviewed the otologic and audiologic testing performed on behalf of Dr. Pappas and applied OWCP's standardized procedures to his evaluation, utilizing the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).<sup>3</sup> He determined that maximum medical improvement was achieved on February 8, 2017, the date of the most recent audiogram. The medical adviser determined that appellant had zero percent binaural hearing loss according to the A.M.A., *Guides* and recommended authorization for hearing aids.

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<sup>2</sup> Appellant retired on disability effective April 2, 2016.

<sup>3</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

On August 21, 2017 appellant filed a claim for compensation (Form CA-7), requesting a schedule award.

By decision dated August 28, 2017, OWCP explained that, while appellant's claim was accepted for hearing loss due to employment-related noise exposure, his hearing loss was not sufficiently severe to be considered ratable. Therefore, he was not entitled to schedule award compensation.

### **LEGAL PRECEDENT**

The schedule award provision of FECA<sup>4</sup> and its implementing regulations<sup>5</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. However, FECA does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants.<sup>6</sup> The A.M.A., *Guides* have been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.<sup>7</sup>

OWCP evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.<sup>8</sup> Using the frequencies of 500, 1,000, 2,000, and 3,000 Hertz, the losses at each frequency are added up and averaged. Then, the fence of 25 decibels is deducted because, as the A.M.A., *Guides* point out, losses below 25 decibels result in no impairment in the ability to hear everyday speech under everyday conditions. The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss. 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 binaural hearing loss. The Board has concurred in OWCP's adoption of this standard for evaluating hearing loss.<sup>9</sup>

### **ANALYSIS**

The Board finds that appellant has not met his burden of proof to establish ratable hearing loss, warranting a schedule award.

On February 19, 2017 OWCP's medical adviser reviewed the otologic and audiologic testing performed on behalf of Dr. Pappas, a Board-certified otolaryngologist, and properly applied

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<sup>4</sup> 5 U.S.C. § 8107.

<sup>5</sup> 20 C.F.R. § 10.404.

<sup>6</sup> See *D.K.*, Docket No. 10-0174 (issued July 2, 2010); *Michael S. Mina*, 57 ECAB 379, 385 (2006).

<sup>7</sup> 20 C.F.R. § 10.404; see *F.D.*, Docket No. 09-1346 (issued July 19, 2010).

<sup>8</sup> See A.M.A., *Guides* 250 (6<sup>th</sup> ed., 2009).

<sup>9</sup> *J.H.*, Docket No. 08-2432 (issued June 15, 2009); *J.B.*, Docket No. 08-1735 (issued January 27, 2009).

OWCP's standardized procedures to this evaluation. Testing for the right ear at the frequency levels of 500, 1,000, 2,000, and 3,000 cycles per second revealed decibel losses of 5, 10, 0, and 5, respectively. These decibel losses were totaled at 20 and were divided by 4 to obtain the average hearing loss of 5 decibels. This average loss was then reduced by 25 decibels (25 decibels being discounted as discussed above), which resulted in a figure less than zero. Testing for the left ear at the frequency levels of 500, 1,000, 2,000, and 3,000 cycles per second revealed decibel losses of 5, 10, 10, and 5, respectively. These decibel losses were totaled at 30 and were divided by 4 to obtain the average hearing loss of 7.5 decibels. This average loss, when reduced by 25 decibels, also resulted in a figure less than zero. Therefore, OWCP's medical adviser properly concluded that the calculations demonstrated that appellant did not have ratable hearing loss under the relevant standards contained in the sixth edition of the A.M.A., *Guides*.<sup>10</sup>

The Board finds that there is no current medical evidence of record supporting that appellant has ratable hearing loss under OWCP's standardized procedures for rating hearing impairment.<sup>11</sup> Although appellant has an employment-related hearing loss, it is not significant enough to be ratable for schedule award purposes.<sup>12</sup> As the February 8, 2017 audiogram did not demonstrate that appellant's hearing loss was ratable, he is not entitled to a schedule award for his accepted bilateral sensorineural hearing loss.<sup>13</sup>

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 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>10</sup> See *J.M.*, Docket No. 17-0786 (issued July 6, 2018).

<sup>11</sup> Although the record includes the results of audiograms administered during the period March 11, 2004 through March 9, 2016, these results do not satisfy OWCP's quality standards. See *J.H.*, 59 ECAB 377, 380 (2008). If an audiogram is prepared by an audiologist, it must be certified by a physician as being accurate before it can be used to determine the percentage of hearing loss. See *Joshua A. Holmes*, 42 ECAB 231, 236 (1990).

<sup>12</sup> See *G.G.*, Docket No. 18-0566 (issued October 2, 2018); *D.G.*, Docket No. 16-1486 (issued December 16, 2016).

<sup>13</sup> The Board notes that hearing aids were recommended by OWCP's medical adviser.

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 28, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 28, 2018  
Washington, DC

Christopher J. Godfrey, 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