



became aware of the conditions on September 27, 2012 and their relationship to his federal employment on August 26, 2016. Appellant did not stop work.

In a development letter dated October 14, 2016, OWCP advised appellant that the evidence submitted was insufficient to establish his claim. It advised him of the type of evidence necessary to establish his claim and provided a questionnaire for completion. OWCP afforded appellant 30 days to submit the necessary evidence. In a letter of even date, it requested that the employing establishment provide comments regarding his exposure to hazardous noise during his federal employment.

OWCP received responses from both appellant and the employing establishment clarifying appellant's exposure to hazardous noise from heavy vehicle traffic during the period July 2001 to May 2005, as well as exposure to heavy commercial truck traffic, and quarterly weapons qualifications from May 2005 to the present.

Following initial development of the claim, on November 8, 2016 OWCP referred appellant for audiometric testing and a second opinion examination to Dr. Paul W. Loeffler, a Board-certified otolaryngologist, to evaluate the nature, extent, and relationship of his hearing loss.

In a November 22, 2016 report, Dr. Loeffler opined that appellant sustained work-related bilateral sensorineural hearing loss and tinnitus. He further related that hearing aids were not recommended. Audiometric testing was performed on November 17, 2016. Testing at the frequencies of 500, 1,000, 2,000, and 3,000 Hertz (Hz) revealed the following: right ear 25, 25, 20, and 20 decibels (dBs); left ear 25, 20, 25, and 20 dBs. Dr. Loeffler determined that appellant had no ratable hearing impairment and listed November 17, 2016 as the date of maximum medical improvement (MMI).

By decision dated December 9, 2016, OWCP accepted appellant's claim for bilateral sensorineural hearing loss and tinnitus due to his employment-related noise exposure. It further determined that hearing aids were not authorized.

On December 15, 2016 Dr. Jeffrey M. Israel, a Board-certified otolaryngologist, OWCP's district medical adviser (DMA), reviewed Dr. Loeffler's report and the November 17, 2016 audiometric testing. He concluded that, in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*<sup>2</sup> (A.M.A., *Guides*), appellant had zero percent monaural hearing loss in each ear and zero percent binaural hearing loss. The DMA determined that appellant's hearing loss was not sufficiently severe to be ratable for schedule award purposes after applying OWCP's standards for evaluating hearing loss to the results of the November 17, 2016 audiogram. He recommended yearly audiograms, noise protection for appellant's ears, and hearing aids for both hearing loss and tinnitus masking.

On December 21, 2016 appellant filed a claim for a schedule award (Form CA-7).

By decision dated January 12, 2017, OWCP denied appellant's claim for a schedule award. It explained that under the A.M.A., *Guides* his hearing loss was not sufficiently severe to be considered ratable for purposes of a schedule award.

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<sup>2</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

On February 3, 2017 appellant requested a telephonic hearing before an OWCP hearing representative. A hearing was held on July 12, 2017. In support of his claim, appellant submitted a July 20, 2017 audiogram.

By decision dated September 8, 2017, OWCP's hearing representative affirmed the January 12, 2017 decision denying appellant's claim for a schedule award. He noted that OWCP may consider further evaluation to determine whether hearing aids should be authorized to treat appellant's work-related hearing loss and tinnitus.

Audiograms dated October 12, 2017 and June 6, 2018 were received by OWCP. On October 2, 2018 appellant filed another Form CA-7 claim for a schedule award.

On October 17, 2018 OWCP referred appellant for audiometric testing and a second opinion examination with Dr. William C. Smith, a Board-certified otolaryngologist. In a November 5, 2018 medical report, Dr. Smith diagnosed bilateral high-frequency sensorineural hearing loss and tinnitus as a result of employment-related noise exposure. He recommended hearing aids. November 5, 2018 audiometric testing at the frequencies of 500, 1,000, 2,000, and 3,000 Hz revealed the following: right ear 10, 10, 15, and 35 dBs; left ear 10, 10, 15, and 25 dBs. Dr. Smith determined the monaural hearing loss of each ear was zero percent, but that appellant had one percent binaural hearing loss due to tinnitus. The date of MMI was noted as November 5, 2018.

On January 31, 2019 Dr. Israel, acting as OWCP's DMA, reviewed Dr. Smith's November 5, 2018 report and audiometric testing and determined that no additional impairment had been incurred. He explained that, in accordance with the A.M.A., *Guides*, appellant had zero percent monaural hearing loss in each ear. Dr. Israel noted that, while Dr. Smith provided one percent permanent impairment for binaural hearing loss for tinnitus, a tinnitus award could not be granted under the A.M.A., *Guides* "when there is a zero percent binaural hearing impairment such as in this case." Thus, appellant sustained zero percent binaural hearing loss. Dr. Israel recommended hearing aids and noted the date of MMI as November 5, 2018.

By decision dated February 26, 2019, OWCP found that, although appellant's hearing loss was employment related, it was insufficient to establish that appellant has ratable binaural hearing loss and therefore, a schedule award for tinnitus was not payable. It further determined that he was entitled to medical benefits and hearing aids for his condition if recommended by his physician.

### **LEGAL PRECEDENT**

The schedule award provisions of FECA,<sup>3</sup> and its implementing federal regulation,<sup>4</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. 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

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<sup>3</sup> 5 U.S.C. § 8107.

<sup>4</sup> 20 C.F.R. § 10.404.

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.<sup>5</sup> 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.<sup>6</sup>

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.<sup>7</sup> 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.<sup>8</sup> The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.<sup>9</sup> 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.<sup>10</sup> The Board has concurred in OWCP's adoption of this standard for evaluating hearing loss.<sup>11</sup>

### ANALYSIS

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

Appellant submitted audiograms dated October 12, 2017 and June 6, 2018 from an audiologist. However, these audiogram do not constitute probative medical evidence of hearing loss because they were not certified by a physician as being accurate. The Board has held that, 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.<sup>12</sup>

OWCP properly referred appellant to Dr. Smith for a second opinion examination relative to evaluate his hearing loss. In his November 5, 2018 report, Dr. Smith related appellant's audiogram findings and concluded that his binaural sensorineural hearing loss was due to his workplace noise exposure. He determined that appellant sustained zero percent monaural hearing loss in each ear and provided one percent binaural hearing impairment for tinnitus.

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<sup>5</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

<sup>6</sup> See *J.W.*, Docket No. 17-1339 (issued August 21, 2018); *R.D.*, 59 ECAB 127 (2007); *Bernard Babcock, Jr.*, 52 ECAB 143 (2000).

<sup>7</sup> A.M.A., *Guides* 250.

<sup>8</sup> *Id.*; *C.D.*, Docket No. 18-0251 (issued August 1, 2018).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *V.M.*, Docket No. 18-1800 (issued April 23, 2019).

<sup>12</sup> See *J.O.*, Docket No. 17-1618 (issued June 14, 2018).

On January 31, 2019 the DMA reviewed Dr. Smith's report and concurred that appellant had zero percent monaural hearing loss in each ear. Testing at the frequency levels of 500, 1,000, 2,000, and 3,000 Hz revealed decibel losses of 10, 10, 15, and 35 for the right ear and 10, 10, 15, and 25 for the left ear. The decibel losses for the right ear were totaled at 70 and then divided by 4 to obtain the average hearing loss of 17.5. The decibel losses for the left ear were totaled at 60 and then divided by 4 to obtain the average hearing loss of 15. After subtracting the 25 decibel fence, both the right ear and left ear losses were reduced to zero. When multiplied by 1.5, the resulting monaural loss in each ear was zero percent. The DMA therefore found a total of zero percent binaural hearing loss. The Board finds that the DMA properly concluded that appellant did not have permanent impairment of his hearing warranting a schedule award.<sup>13</sup> Although appellant has accepted employment-related hearing loss, it is not sufficiently severe to be ratable for schedule award purposes.<sup>14</sup>

The Board notes that, while Dr. Smith found one percent permanent impairment due to tinnitus, the DMA properly explained that because appellant's hearing loss was not ratable, he was not entitled to a schedule award for tinnitus. The A.M.A., *Guides* provide that, if tinnitus interferes with activities of daily living (ADL's), 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.<sup>15</sup> A schedule award for tinnitus however is not payable unless the medical evidence establishes that the condition caused or contributed to a ratable hearing loss.<sup>16</sup> As such, the Board has held that, in the absence of ratable hearing loss, a schedule award for tinnitus is not appropriate.<sup>17</sup> Accordingly, the Board finds that appellant is not entitled to a schedule award for tinnitus.<sup>18</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>19</sup> Although the evidence of record establishes that appellant has an employment-related hearing loss, it is not sufficiently severe to be ratable for schedule award purposes.<sup>20</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.

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<sup>13</sup> *B.E.*, Docket No. 18-1785 (issued April 1, 2019).

<sup>14</sup> *W.T.*, Docket No. 17-1723 (issued March 20, 2018); *E.D.*, Docket No. 11-0174 (issued July 26, 2011).

<sup>15</sup> *Id.* See also *Robert E. Cullison*, 55 ECAB 570 (2004).

<sup>16</sup> *A.W.*, Docket No. 16-0795 (issued August 29, 2016).

<sup>17</sup> *D.G.*, Docket No. 16-1486 (issued December 16, 2016).

<sup>18</sup> *G.G.*, Docket No. 18-0566 (issued October 2, 2018).

<sup>19</sup> *L.H.*, Docket No. 18-0696 (issued November 28, 2018).

<sup>20</sup> *R.S.*, Docket No. 18-1524 (issued February 5, 2019).

**CONCLUSION**

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

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 26, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 1, 2019  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

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