

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

_____)	
T.B., Appellant)	
)	
and)	Docket No. 23-0303
)	Issued: August 11, 2023
TENNESSEE VALLEY AUTHORITY,)	
GALLATIN FOSSIL PLANT, Gallatin, TN,)	
Employer)	
_____)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On December 5, 2022 appellant filed a timely appeal from an August 3, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 February 28, 2022 appellant, then a 64-year-old boiler plant operator, filed an occupational disease claim (Form CA-2) alleging that he developed binaural hearing loss due to

¹ 5 U.S.C. § 8101 *et seq.*

factors of his federal employment. He noted that he first became aware of his condition on October 22, 1994 and realized its relation to factors of his federal employment on March 18, 1995. Appellant did not stop work.

On May 4, 2022 OWCP referred appellant, along with a statement of accepted facts (SOAF) and the medical record to Dr. Mark Williams, a Board-certified otolaryngologist serving as a second opinion physician, regarding the nature and extent of appellant's hearing loss and whether that there was any causal relationship between appellant's diagnosed hearing loss and his accepted employment exposure.

In a May 23, 2022 report, Dr. Williams reviewed the SOAF, history of injury, and medical evidence of record. Audiometric testing obtained on May 23, 2022 at the frequencies of 500, 1,000, 2,000, and 3,000 Hertz (Hz) revealed losses at 20, 15, 25, and 35 decibels (dBs) for the right ear, respectively; and 20, 15, 25, and 35 dBs for the left ear, respectively. Dr. Williams also found that appellant had a mild tinnitus impairment of two percent. He diagnosed bilateral high-frequency sensorineural hearing loss and bilateral tinnitus. Dr. Williams opined that appellant's sensorineural hearing loss and tinnitus were due to noise exposure encountered in his federal employment. He applied the audiometric data to OWCP's standard for evaluating hearing loss under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*,² (A.M.A., *Guides*) and determined that appellant had zero percent monaural hearing impairment bilaterally and two percent binaural hearing impairment rating, due solely to a tinnitus impairment rating. Dr. Williams provided his impairment calculations for appellant's right ear hearing levels of 20, 15, 25, and 35 dBs at 500, 1,000, 2,000, and 3,000 Hz, respectively, and for appellant's left ear hearing levels of 20, 15, 25, and 35 dBs at 500, 1,000, 2,000, and 3,000 Hz, respectively. He indicated that appellant reached maximum medical improvement (MMI) on May 23, 2022. Dr. Williams also recommended hearing aids.

By decision dated June 13, 2022, OWCP accepted appellant's claim for binaural sensorineural hearing loss and bilateral tinnitus. It noted that the medical evidence of record established that he would benefit from hearing aids and advised him on how to request authorization of such. OWCP also found that the medical evidence of record established that appellant had a permanent impairment as a result of his employment-related hearing loss and requested that he file a claim for compensation (Form CA-7), so a schedule award could be processed.

On June 21, 2022 appellant filed a Form CA-7 requesting a schedule award.

On June 22, 2022 OWCP referred the medical record and SOAF to Dr. Stephen Maturo, an OWCP district medical adviser (DMA) and Board-certified otolaryngologist, to determine the extent of appellant's hearing loss and permanent impairment due to his employment-related noise exposure.

² A.M.A., *Guides* (6th ed. 2009).

On July 1, 2022 Dr. Maturo reviewed Dr. Williams' report and indicated that he agreed with the bilateral hearing impairment of zero percent and the bilateral tinnitus impairment of two percent. He opined that appellant had total impairment of two percent due to tinnitus impairment.

On July 25, 2022 OWCP requested that Dr. Maturo provide calculations to support that appellant's hearing impairment was zero percent and to provide the date of MMI.

In an August 2, 2022 report, Dr. Maturo reviewed Dr. Williams' report and opined that appellant reached MMI on May 23, 2022. He applied the audiometric data to OWCP's standard for evaluating hearing loss under the A.M.A., *Guides* and determined that appellant sustained right monaural loss of zero percent, a left monaural loss of zero percent, and a binaural hearing loss of zero percent. Dr. Maturo averaged appellant's right ear hearing levels of 20, 15, 25, 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 of 95 by 4, which equaled 23.75. After subtracting the 25 dB fence, he multiplied the remaining 0 balance by 1.5 for a result of zero percent right monaural loss. For the left ear, Dr. Williams averaged hearing levels of 20, 15, 25, 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 of 95 by 4 for a result of 23.75. After subtracting the 25 dB fence, he multiplied the remaining 0 balance by 1.5 for a result of zero percent left monaural hearing loss. Dr. Williams 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 indicated that appellant had two percent tinnitus impairment and opined that hearing aids should be authorized.

By decision dated August 3, 2022, 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 further denied the two percent impairment rating for tinnitus as he did not have a ratable hearing loss.

LEGAL PRECEDENT

The schedule award provisions of FECA³ and its implementing regulations⁴ 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

³ *Supra* note 1 at § 8107.

⁴ 20 C.F.R. § 10.404.

A.M.A., *Guides*⁵ has been adopted by OWCP for evaluating schedule losses and the Board has concurred in such adoption.⁶

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

ANALYSIS

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

OWCP properly referred appellant to Dr. Williams for a second opinion examination to evaluate appellant's hearing loss. In his May 23, 2022 report, Dr. Williams reviewed audiometric testing at the frequencies of 500, 1,000, 2,000, and 3,000 Hz, revealing losses at 20, 15, 25, and 35 dBs for the right ear, respectively; and 20, 15, 25, and 35 dBs for the left ear, respectively. He diagnosed high-frequency bilateral sensorineural hearing loss and mild bilateral tinnitus. Dr. Williams opined that appellant's sensorineural hearing loss and tinnitus were due to noise exposure encountered in his federal employment. By decision dated June 13, 2022, OWCP accepted appellant's claim for binaural sensorineural hearing loss and bilateral tinnitus and forwarded his case to a DMA to assess his percentage of permanent employment-related hearing loss.

On July 1 and August 2, 2022 Dr. Maturo, serving as the DMA, reviewed Dr. Williams' report and opined that appellant reached MMI on May 23, 2022. He applied the audiometric data to OWCP's standard for evaluating hearing loss under the A.M.A., *Guides* and determined that appellant sustained right monaural loss of zero percent, a left monaural loss of zero percent, and a

⁵ *Supra* note 2.

⁶ *J.R.*, Docket No. 21-0909 (issued January 14, 2022); *H.M.*, Docket No. 21-0378 (issued August 23, 2021); *V.M.*, Docket No. 18-1800 (issued April 23, 2019); *J.W.*, Docket No. 17-1339 (issued August 21, 2018).

⁷ A.M.A., *Guides* 250.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *J.S.*, Docket No. 22-0274 (issued September 13, 2022); *V.M.*, *supra* note 6.

binaural hearing loss of zero percent. Dr. Maturo averaged appellant's right ear hearing levels of 20, 15, 25, 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 of 95 by 4, which equaled 23.75. After subtracting the 25 dB fence, he multiplied the remaining 0 balance by 1.5 for a result of zero percent right monaural loss. For the left ear, Dr. Williams averaged hearing levels of 20, 15, 25, 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 of 95 by 4 for a result of 23.75. After subtracting the 25 dB fence, he multiplied the remaining 0 balance by 1.5 for a result of zero percent left monaural hearing loss. Dr. Williams 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 noted that appellant had two percent tinnitus impairment and opined that hearing aids should be authorized.

The Board finds that the DMA properly concluded that appellant did not have ratable hearing loss warranting a schedule award. Although appellant has accepted employment-related hearing loss, it is insufficiently severe to be ratable for schedule award purposes.¹² The Board has held that, in the absence of ratable hearing loss, a schedule award for tinnitus is not allowable pursuant to the A.M.A., *Guides*.¹³ Accordingly, as appellant does not have ratable hearing loss, the Board further finds that he is not entitled to a schedule award for tinnitus.

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.

¹² *J.S., id.; J.R., supra* note 6; *see W.T.*, Docket No. 17-1723 (issued March 20, 2018); *E.D.*, Docket No. 11-0174 (issued July 26, 2011).

¹³ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the August 3, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 11, 2023
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board