

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

_____)
D.S., Appellant)

and)

DEPARTMENT OF TRANSPORTATION,)
FEDERAL AVIATION ADMINISTRATION,)
Bridgeton, MO, Employer)

Docket No. 23-0048
Issued: May 23, 2023

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 October 14, 2022 appellant filed a timely appeal from an April 26, 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 27, 2020 appellant, then a 59-year-old maintenance mechanic, filed an occupational disease claim (Form CA-2) alleging that he sustained hearing loss due to factors of

¹ 5 U.S.C. § 8101 *et seq.*

his federal employment while working at an airfield. He first became aware of his condition on January 2, 1997, and realized its relation to his federal employment on December 10, 2019.

On June 29, 2020 OWCP referred appellant, along with a statement of accepted facts (SOAF) and the medical record to Dr. Richard L. Barnes, an osteopath Board-certified in otolaryngology serving as second opinion physician, regarding the nature and extent of his employment-related hearing loss.

In a July 22, 2020 report, Dr. Barnes reviewed the SOAF and the medical evidence of record. Audiometric testing obtained on July 22, 2020 at the frequencies of 500, 1,000, 2,000, and 3,000 Hertz (Hz) revealed losses at 15, 25, 30, and 30 decibel (dBs) for the right ear, respectively; and 15, 25, 30, and 30 dBs for the left ear, respectively. Dr. Barnes diagnosed bilateral mild-to-moderate high-frequency sensorineural hearing loss. He opined that appellant's sensorineural hearing loss was not due to noise exposure encountered in his federal employment as appellant's exposure to excessive noise was prior to his federal employment and his hearing remained stable with the exception of a slight decrease at 4,000 Hz for the left ear. Dr. Barnes recommended annual hearing assessment, hearing aid evaluation, and continued use of ear protection.

Following further development, on July 9, 2021, OWCP issued a new SOAF which corrected appellant's federal employment history. It requested clarification from Dr. Barnes, OWCP's second opinion examiner, with regard to the cause of appellant's hearing loss. In a March 23, 2022 response, Dr. Barnes opined, based on a review of appellant's entire file, that it was "highly likely" that his federal employment had contributed to his hearing loss. He explained that appellant worked "in an area where there was significant noise exposure."

By decision dated March 31, 2022, OWCP accepted the claim for bilateral sensorineural hearing loss.

On March 31, 2022 OWCP referred the medical record to its district medical adviser (DMA) to determine the extent of appellant's hearing loss and permanent impairment due to his employment-related noise exposure.

In a March 31, 2022 report, Dr. Jeffrey M. Israel, a Board-certified otolaryngologist serving as an OWCP DMA, reviewed the SOAF along with the audiometric data. He opined that the patterns seen on appellant's audiometric tests results were valid and were suggestive of a sensorineural hearing loss due, at least in part, to noise-induced work-related acoustic trauma. Dr. Israel reviewed Dr. Barnes' July 22, 2020 report as well as the July 22, 2020 audiogram and 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*). He determined that the hearing impairment rating revealed a right monaural hearing loss of 0 percent, left monaural loss of 0 percent, and binaural hearing loss of 0 percent. Dr. Israel noted that a tinnitus award could not be given as appellant did not have a ratable hearing loss. He averaged appellant's right ear hearing levels of 15, 25, 30, and 30 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 100 by 4, which equaled 25. After subtracting the 25 dB fence, Dr. Israel multiplied the

² A.M.A., *Guides* (6th ed. 2009).

remaining 0 balance by 1.5 for a result of 0 percent right monaural loss. For the left ear, he averaged hearing levels of 15, 25, 30, and 30 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 100 by 4 for a result of 25. After subtracting the 25 dB fence, Dr. Israel multiplied the remaining 0 balance by 1.5 for a result of 0 percent left monaural hearing loss. He 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. Dr. Israel recommended yearly audiograms, noise protection for the ears, and authorization for hearing aids for hearing loss and tinnitus masking, if tinnitus was an issue. He determined that appellant had reached maximum medical improvement on July 22, 2020, the date of audiometric examination with Dr. Barnes.

By decision dated April 26, 2022, OWCP denied appellant's schedule award claim, finding that after applying the standards of the A.M.A., *Guides* to the medical evidence, appellant's hearing loss was not severe enough to be considered ratable. It noted that he was entitled to medical benefits for the effects of his injury, including hearing aids, if recommended by his physician.

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 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

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404.

⁵ *Id.*

⁶ *J.S.*, Docket No. 22-0274 (issued September 13, 2022); *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.*

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. Barnes for a second opinion examination to evaluate appellant's hearing loss. In his July 22, 2020 report, Dr. Barnes reviewed audiometric testing at the frequencies of 500, 1,000, 2,000, and 3,000 Hz, revealing losses at 15, 25, 30, and 30 dBs for the right ear, respectively; and 15, 25, 30, and 30 dBs for the left ear, respectively. He diagnosed bilateral mild-to-moderate high-frequency sensorineural hearing loss. Following additional development, Dr. Barnes opined on March 23, 2022 that appellant's sensorineural hearing loss was due in part to noise exposure encountered in his federal employment. By decision dated March 31, 2022, OWCP accepted appellant's claim for binaural sensorineural hearing loss and forwarded appellant's case to Dr. Israel, the DMA to assess his percentage of permanent employment-related hearing loss.

On March 31, 2022 Dr. Israel reviewed Dr. Barnes examination report and found that appellant had a right monaural loss of zero percent, a left monaural loss of zero percent, and a binaural hearing loss of zero percent. He noted that a tinnitus award could not be given as there was no ratable binaural hearing loss.

The Board has reviewed Dr. Israel's rating and finds that he properly averaged appellant's right ear hearing levels of 15, 25, 30, and 30 dBs at 500, 1,000, 2,000, and 3,000 Hz, respectively, by adding the hearing loss at those 4 levels then dividing the sum of 100 by 4, which equaled 25. 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 15, 25, 30, and 30 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 100 by four, which equaled 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.

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

⁹ *Id.*

¹⁰ *Id.*

¹¹ *J.S., supra* note 6; *V.M., supra* note 6.

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 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.

ORDER

IT IS HEREBY ORDERED THAT the April 26, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 23, 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

¹² *J.S.*, *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.*