

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

O.E., Appellant)	
)	
and)	Docket No. 24-0653
)	Issued: August 7, 2024
DEPARTMENT OF THE NAVY, NORFOLK)	
NAVAL SHIPYARD, Portsmouth, VA, 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 June 3, 2024 appellant filed a timely appeal from a May 9, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

¹ Appellant submitted a timely oral argument request before the Board. 20 C.F.R. § 501.5(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). In support of appellant's oral argument request, he asserted that oral argument should be granted because his injury was permanent, that it affected his activities of daily living, and that he would never regain his hearing. The Board, in exercising its discretion, denies his request for oral argument because the arguments on appeal can adequately be addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, the oral argument request is denied, and this decision is based on the case record as submitted to the Board.

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met his burden of proof to establish greater than 2.5 percent binaural hearing loss, for which he previously received a schedule award.

FACTUAL HISTORY

On January 12, 2024 appellant, then a 70-year-old painter, filed an occupational disease claim (Form CA-2) alleging that he developed binaural hearing loss due to factors of his federal employment. He indicated that he first became aware of his condition and its relationship to his federal employment on April 1, 2014.

OWCP received appellant's employment history and hearing conservation data, which included the results of audiometric testing conducted by the employing establishment.

On March 6, 2024 OWCP referred appellant, a statement of accepted facts (SOAF), and an otologic evaluation questionnaire to Dr. Marci E. Lait, a Board-certified otolaryngologist, for a second opinion evaluation.

In a report dated March 14, 2024, Dr. Lait diagnosed bilateral sensorineural hearing loss which she attributed in part to noise exposure in appellant's federal civilian employment. She recommended hearing aids and double ear protection. Dr. Lait also reviewed appellant's March 14, 2024 audiogram which at 500, 1,000, 2,000, and 3,000 Hertz (Hz), demonstrated losses of 25, 25, 30, and 35 decibels (dBs) on the right and 30, 20, 20, and 35 dBs on the left, respectively. She calculated a 5.70 percent monaural impairment of the right ear, a 2.00 percent monaural impairment for the left ear, and a binaural hearing impairment of 2.61 percent.

By decision dated April 17, 2024, OWCP accepted appellant's claim for noise-induced binaural hearing loss.

OWCP referred the medical evidence to its district medical adviser (DMA), Dr. Jeffrey M. Israel, a Board-certified otolaryngologist. In a report dated April 23, 2024, the DMA referred to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),³ and reviewed appellant's March 14, 2024 audiogram. He found that appellant had a right monaural loss of 5.625 percent, a left monaural loss of 1.875 percent, and a binaural loss of 2.50 percent. In reaching his impairment rating, Dr. Israel totaled the dB losses of 25, 25, 30, and 35 for the right ear at 115 and then divided by 4 to obtain the average hearing loss of 28.75 dBs. He totaled the dB losses of 30, 20, 20, and 35 for the left ear at 105 and then divided by 4 to obtain the average hearing loss of 26.25 db. After subtracting the 25 dB fence, the DMA multiplied both the right ear and left ear by 1.5 respectively to find 5.63 percent right ear monaural hearing loss and 1.88 percent left ear monaural hearing loss. He multiplied the lesser left ear loss of 1.88 percent by 5, added the 5.63 percent right ear loss, and divided this sum by 6 to find 2.5 percent binaural hearing loss. Dr. Israel determined that appellant reached maximum medical improvement (MMI) on March 14, 2024, the date of the most recent audiogram

³ A.M.A., *Guides* (6th ed. 2009).

examination. He also suggested that appellant have yearly audiograms, noise protection for the ears, and authorization for hearing aids for hearing loss.

On April 23, 2024 appellant filed a claim for compensation (Form CA-7) for a schedule award.

By decision dated May 9, 2024, OWCP granted appellant a schedule award for 2.5 percent binaural loss of hearing. It calculated the period of the award from March 14 through April 24, 2024 (six weeks).

LEGAL PRECEDENT

The schedule award provisions of FECA⁴ and its implementing regulations⁵ 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 of loss of a member shall be determined. The method used in making such a 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 A.M.A., *Guides* has been adopted by OWCP as a standard for evaluation of schedule losses and the Board has concurred in such adoption.⁶ For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition of the A.M.A., *Guides*, published in 2009.⁷

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 A claimant may seek an increased schedule award if the evidence establishes that he or she sustained an increased impairment causally related to an employment injury.¹⁰ The medical evidence must include a detailed description of the permanent impairment.¹¹

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404.

⁶ *Id.* at § 10.404; *S.G.*, Docket No. 24-0225 (issued April 10, 2024); *R.R.*, Docket No. 19-0750 (issued November 15, 2019); *T.O.*, Docket No. 18-0659 (issued August 8, 2019); *Jacqueline S. Harris*, 54 ECAB 139 (2002).

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (March 2017); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

⁸ *S.G.*, *supra* note 6; *R.R.*, *supra* note 6; *John W. Montoya*, 54 ECAB 306 (2003).

⁹ *S.G.*, *id.*; *R.R.*, *id.*; *Edward Spohr*, 54 ECAB 806, 810 (2003); *Tammy L. Meehan*, 53 ECAB 229 (2001).

¹⁰ *S.G.*, *id.*; *R.R.*, *id.*; *Rose V. Ford*, 55 ECAB 449 (2004).

¹¹ *S.G.*, *id.*; *R.R.*, *id.*; *Vanessa Young*, 55 ECAB 575 (2004).

OWCP evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.¹² Using the frequencies of 500, 1,000, 2,000, and 3,000 Hz, the losses at each frequency are added up and averaged. 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.¹³ The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.¹⁴ 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.¹⁵ The Board has concurred in OWCP's adoption of this standard for evaluating hearing loss.¹⁶

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed to a DMA for an opinion concerning the nature and percentage of permanent impairment in accordance with the A.M.A., *Guides*, with the DMA providing rationale for the percentage of impairment specified.¹⁷

ANALYSIS

The Board finds that the evidence of record establishes that appellant has three percent binaural hearing loss.

OWCP properly referred appellant to Dr. Lait for a second opinion examination to determine his entitlement to a schedule award for his hearing loss.¹⁸ In his March 14, 2024 report, Dr. Lait reviewed appellant's audiogram findings and concluded that appellant's binaural hearing loss were due in part to his workplace noise exposure.

On April 23, 2024 Dr. Israel, serving as an OWCP DMA, reviewed Dr. Lait's March 14, 2024 audiometric report and indicated that testing at the frequency levels of 500, 1,000, 2,000, and 3,000 Hz revealed dBs losses of 25, 25, 30, and 35 the right ear and dB losses of 30, 20, 20, and 35 for the left ear, respectively. The dB losses for the right ear were totaled at 115 and then divided by 4 to obtain the average hearing loss of 28.75 dBs. The dB losses for the left ear were totaled at 105 and then divided by 4 to obtain the average hearing loss of 26.25 dBs. After subtracting the 25 dB fence, both the right ear and left ear were multiplied by 1.5 respectively to find 5.63 percent

¹² *S.G., id.; R.R., id.; R.D.*, 59 ECAB 127 (2007); *Bernard Babcock, Jr.*, 52 ECAB 143 (2000); *see also* 20 C.F.R. § 10.404.

¹³ A.M.A., *Guides* 250 (6th ed. 2009).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *S.G., supra* note 6; *R.R., supra* note 6; *E.S.*, 59 ECAB 249 (2007); *Reynaldo R. Lichtenberger*, 52 ECAB 462 (2001).

¹⁷ *Supra* note 7 at Chapter 2.808.6(f).

¹⁸ *See* A.M.A., *Guides* 249; *see also H.W.*, Docket No. 20-0924 (issued January 26, 2021).

right ear monaural hearing loss and 1.88 percent left ear monaural hearing loss. Multiplying the lesser left ear loss of 1.88 percent by 5, adding the 5.63 percent right ear loss, and then dividing this sum by 6 resulted in 2.5 percent binaural hearing loss.¹⁹

The Board finds that Dr. Israel properly reviewed Dr. Lait's report and applied the standardized procedures to the March 14, 2024 audiogram report to determine that appellant had 2.5 percent binaural hearing loss.

The Board notes, however, that it is OWCP's policy to round the calculated percentage of impairment to the nearest whole number.²⁰ Figures should be rounded down for figures less than .5 and up for figures .5 and over.²¹ Thus, the Board finds that appellant has sustained 3 percent binaural hearing loss (rounded up from 2.5 percent).

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.

CONCLUSION

The Board finds that appellant has established that he has three percent binaural hearing loss.

¹⁹ *C.G.*, Docket No. 23-0916 (issued March 11, 2024); *A.L.*, Docket No. 21-1233 (issued January 31, 2022).

²⁰ *See supra* note 7 at Chapter 3.700.3b (January 2010); *see also A.L., id.*; *R.R.*, Docket No. 20-0245 (issued June 22, 2020); *V.M.*, Docket No. 18-1800 (issued April 23, 2019); *M.F.*, Docket No. 16-0565 (issued March 15, 2017).

²¹ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the May 9, 2024 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: August 7, 2024
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