United States Department of Labor
Employees' Compensation Appeals Board

C.W., Appellant	)	
and	)	**Docket No. 25-0139**
	)	**Issued: December 18, 2024**
DEPARTMENT OF JUSTICE, FEDERAL BUREAU OF INVESTIGATION, New York, NY, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

JURISDICTION

On November 26, 2024 appellant filed a timely appeal from an August 21, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (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 her burden of proof to establish ratable hearing loss, warranting a schedule award.

FACTUAL HISTORY

On February 2, 2024 appellant, then a 52-year-old firearms instructor, filed an occupational disease claim (Form CA-2) alleging that she developed hearing loss and tinnitus due to factors of

[1] 5 U.S.C. § 8101 *et seq.*

her federal employment. She noted that she had suffered from tinnitus for several years and it had worsened. Appellant related that she first sought treatment on January 10, 2024, where the audiologist advised that her hearing loss and tinnitus was consistent with noise exposure. She noted that she first became aware of her condition on January 1, 2020, and realized its relation to her federal employment on January 10, 2024. Appellant did not stop work.

Appellant provided a separate statement received on February 2, 2024. She recounted her complaints and explained that she had been a firearms instructor since 2010 and was routinely exposed to loud gunfire at the shooting range.

In a January 30, 2024 report, Diana Callesano, a clinical audiologist, noted that she saw appellant for an audiologic and tinnitus evaluation. She related that appellant's otologic history was significant for occupational noise exposure having worked as a firearms instructor for at least twelve years with the employing establishment. Ms. Callesano noted that in 2005 appellant underwent an audiologic evaluation through a hearing conservation program sponsored by the employing establishment and at that time her pure tone air conduction thresholds tested within the normal range bilaterally; however, subsequent audiograms in 2011, 2013, 2016, 2020, and 2023 showed a clinically significant threshold shift of greater than 15 decibels (dB) in both the right and left ear in the 4,000 to 8,000 hertz (Hz) range, respectively. She found that appellant's current audiologic testing yielded a notched sensorineural hearing loss centered around 6,000 Hz bilaterally and opined that a significant threshold shift of 15 dB or greater, paired with a notched sensorineural hearing loss, and subjective report of tinnitus, were suggestive of noise-induced ear trauma from excessive noise exposure.

In a development letter dated February 6, 2024, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence necessary to establish her claim and attached a questionnaire for her completion. OWCP afforded appellant 60 days to respond.

In March 1 and 11, 2024 responses, appellant described her history of noise exposure.

On March 25, 2024, OWCP referred appellant, along with the medical record, a statement of accepted facts (SOAF), and a series of questions, to Dr. Aaron Spingarn, a Board-certified otolaryngologist, for an audiogram and second opinion examination to determine the nature, extent, and causal relationship of appellant's hearing loss.

In an April 10, 2024 report, Dr. Spingarn reviewed the SOAF, history of injury, and the medical evidence of record. He indicated that there was no significant variation from the SOAF, and no other relevant history or condition related to appellant's hearing loss. Dr. Spingarn noted that appellant's ears, tympanic membranes, and canals were normal. He diagnosed binaural mild high frequency sensorineural hearing loss, which he opined was due to noise exposure encountered in appellant's federal employment. Dr. Spingarn reviewed an audiogram conducted by an audiologist on that date, which demonstrated losses of 15, 15, 10, and 20 dBs for the right ear, and 15, 10, 15, and 20 dBs for the left ear at the frequencies of 500, 1,000, 2,000, and 3,000 Hz, respectively. Utilizing the sixth edition of the American Medical Association, *Guides to the*

*Evaluation of Permanent Impairment (*A.M.A., *Guides*),[2] he calculated that appellant had a monaural loss of zero percent in each ear for a binaural loss of zero percent. Dr. Spingam completed a tinnitus handicap inventory and rated the tinnitus diagnosis at two percent for mild tinnitus easily masked by environmental sounds and easily forgotten with activities, which may occasionally interfere with sleep but not daily activities. He opined that appellant had a total binaural hearing impairment rating of two percent. Dr. Spingarn determined that appellant had reached maximum medical improvement (MMI) on April 10, 2024.

On April 16, 2024, OWCP accepted appellant's claim for binaural sensorineural hearing loss and tinnitus.

On April 25, 2024, appellant filed a claim for compensation (Form CA-7) for a schedule award.

In a May 8, 2024 report, Dr. Jeffrey M. Israel, a Board-certified otolaryngologist serving as an OWCP district medical adviser (DMA), reviewed the evidence of record, and applied OWCP's standard for evaluating hearing loss under the sixth edition of the A.M.A., *Guides* to Dr. Spingarn's April 10, 2024 report and audiology findings. He determined that appellant sustained right monaural loss of zero percent, left monaural loss of zero percent, and binaural hearing loss of zero percent, noting that a tinnitus award of two percent could not be given as there was no ratable binaural hearing loss. Dr. Israel averaged appellant's right ear hearing levels of 15, 15, 10, and 20 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 by 4, which equaled 15. 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, 10, 15, and 20 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 by 4, which equaled 15. 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 5, adding the zero percent left ear loss, and dividing this sum by 6, which equaled zero percent. He noted that he concurred with Dr. Spingarn's calculations, other than his rating for two percent binaural hearing loss for tinnitus. Dr. Israel explained that a tinnitus award cannot be made when there is zero percent binaural hearing impairment, as stipulated on page 249 of the A.M.A., *Guides*. He recommended yearly audiograms, use of noise protection, and hearing aids for hearing loss with integrated masking for tinnitus. Dr. Israel determined that appellant had reached MMI on April 10, 2024, the date of the most recent audiogram and Dr. Spingarn's examination.

By decision dated August 21, 2024, OWCP denied appellant's schedule award claim, finding that the evidence of record was insufficient to establish that her accepted hearing loss condition was severe enough to be considered ratable.

[2] A.M.A., *Guides* (6th ed. 2009).

LEGAL PRECEDENT

The schedule award provisions of FECA[3] and its implementing regulations[4] 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]

A claimant seeking compensation under FECA has the burden of proof to establish the essential elements of his or her claim.[7] 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.[8]

OWCP evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.[9] Using the frequencies of 500, 1,000, 2,000, and 3,000 Hz, the losses at each frequency are averaged.[10] 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.[11] The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.[12] 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

[3] *Supra* note 1.

[4] 20 C.F.R. § 10.404.

[5] *Supra* note 2.

[6] *See N.Y.*, Docket No. 25-0052 (issued November 12, 2024); *J.S.*, Docket No. 22-0274 (issued September 13, 2022); *V.M.*, Docket No. 18-1800 (issued April 23, 2019); *see J.W.*, Docket No. 17-1339 (issued August 21, 2018).

[7] *D.H.*, Docket No. 20-0198 (issued July 9, 2020); *John W. Montoya*, 54 ECAB 306 (2003).

[8] *R.R.*, Docket No. 19-0750 (issued November 15, 2019); *Edward Spohr*, 54 ECAB 806, 810 (2003); *Tammy L. Meehan*, 53 ECAB 229 (2001).

[9] *Supra* note 2.

[10] *Id*. at 250.

[11] *Id*.; *W.W.*, Docket No. 21-0545 (issued June 21, 2023); *C.D.*, Docket No. 18-0251 (issued August 1, 2018).

[12] *Id*.

binaural hearing loss.[13] The Board has concurred in OWCP's adoption of this standard for evaluating hearing loss.[14]

Regarding tinnitus, the A.M.A., *Guides* provide that tinnitus is not a disease, but rather a symptom that may be the result of disease or injury.[15] If tinnitus interferes with activities of daily living, including sleep, reading, and other tasks requiring concentration, up to five percent may be added to a measurable binaural hearing impairment.[16]

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed to OWCP's medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the medical adviser providing rationale for the percentage of impairment specified.[17] It may follow the advice of its medical adviser or consultant where he or she has properly utilized the A.M.A., *Guides*.[18]

ANALYSIS

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

OWCP initially referred appellant to Dr. Spingarn for a second opinion examination to evaluate her hearing loss. In an April 10, 2024 report, Dr. Spingarn diagnosed binaural mild high frequency sensorineural hearing loss. He opined that the hearing loss was due to noise exposure encountered in appellant's federal employment. Dr. Spingarn determined that appellant sustained a right monaural loss of zero percent, a left monaural loss of zero percent, and a binaural hearing loss of two percent for tinnitus. OWCP accepted the claim for bilateral sensorineural hearing loss and bilateral tinnitus and properly referred the second opinion physician report to the DMA, Dr. Israel, for review.

In a report dated May 8, 2024, the DMA reviewed Dr. Spingarn's report and opined that appellant had zero percent monaural hearing loss in each ear. Dr. Isreal explained that testing at the frequencies of 500, 1,000, 2,000, and 3,000 Hz revealed losses at 15, 15, 10, and 20 dBs for the right ear, respectively, and 15, 10, 15, and 20 dBs for the left ear, respectively. The DMA calculated that the losses for the right ear totaled 60 which he divided by 4 to obtain an average hearing loss of 15 and also found that the losses for the left ear totaled at 60 and divided by 4

[13] *Id*.

[14] *R.C.*, Docket No. 23-0334 (issued July 19, 2023); *H.M.*, Docket No. 21-0378 (issued August 23, 2021); *V.M.*, *supra* note 6; *E.S.*, 59 ECAB 249 (2007); *Donald Stockstad*, 53 ECAB 301 (2002), *petition for recon. granted (modifying prior decision)*, Docket No. 01-1570 (issued August 13, 2002).

[15] *Supra* note 2 at 249.

[16] *Id.*; *R.H.*, Docket No. 10-2139 (issued July 13, 2011); *see also Robert E. Cullison*, 55 ECAB 570 (2004).

[17] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5.a (March 2017); *D.J.*, Docket No. 19-0352 (issued July 24, 2020).

[18] *See Ronald J. Pavlik*, 33 ECAB 1596 (1982).

averaged a hearing loss of 15. Dr. Isreal noted that, after subtracting the 25-decibel fence, both the right and left ear losses were reduced to zero and when multiplied by 1.5, the resulting monaural hearing loss in each ear was zero percent.

The Board finds that the DMA, Dr. Israel, properly calculated appellant's hearing results according to the A.M.A., *Guides* and concluded that appellant did not have a ratable hearing loss warranting a schedule award.[19] Although appellant has an accepted claim for employment-related hearing loss, it is insufficiently severe to be ratable for schedule award purposes.[20]

The Board further finds that the DMA correctly explained that tinnitus may not be added to an impairment rating for hearing loss under the A.M.A., *Guides* unless such hearing loss is ratable.[21] Accordingly, as appellant does not have ratable hearing loss, the Board finds that she is not entitled to a schedule award for tinnitus.[22]

As the medical evidence of record is insufficient to establish ratable hearing loss, warranting a schedule award, the Board finds that appellant has not met her burden of proof.

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 her burden of proof to establish ratable hearing loss warranting a schedule award.

[19] *T.B.*, Docket No. 23-0303 (issued August 11, 2023).

[20] *J.R.*, Docket No. 21-0909 (issued January 14, 2022); *see W.T.*, Docket No. 17-1723 (issued March 20, 2018); *E.D.*, Docket No. 11-0174 (issued July 26, 2011).

[21] *R.C.*, *supra* note 14; *D.S.*, Docket No. 23-0048 (issued May 23, 2023); *J.S.*, *supra* note 6.

[22] *P.C.*, Docket No. 23-1152 (issued January 19, 2024).

ORDER

IT IS HEREBY ORDERED THAT the August 21, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 18, 2024
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board