

FACTUAL HISTORY

On April 29, 2022 appellant, then a 42-year-old machinist, filed traumatic injury claim (Form CA-1) alleging that on April 25, 2022 he developed hearing loss while in the performance of duty. He recounted an incident where students in a survival training program blew whistles at full blast in an enclosed gym, and that both of his ears “suffered near immediate hearing loss.” On the reverse side of the claim form, appellant’s supervisor acknowledged that appellant was injured in the performance of duty.

OWCP received narrative statements from appellant and the employing establishment indicating his job duties as a machinist and level of noise exposure for 8 to 10 hours a day, since his employment began in December 2007.

On November 23, 2022, OWCP referred appellant, along with a statement of accepted facts (SOAF) and the medical record to Dr. Andrew Schubkegel, a Board-certified otolaryngologist, serving as second opinion physician, to determine the nature and extent of appellant’s hearing loss, and whether there was any causal relationship between his diagnosed hearing loss and his accepted employment exposure.

In a December 13, 2022 report, Dr. Schubkegel reviewed the SOAF, appellant’s history of injury, and the medical evidence of record. Audiometric testing obtained on December 13, 2023 at the frequencies of 500, 1,000, 2,000, and 3,000 Hertz (Hz) demonstrated losses for the right ear of 5, 10, 20, and 35 decibels (dBs) and losses for the left ear of 5, 10, 5, and 20 dBs. Dr. Schubkegel diagnosed appellant with noise-induced sensorineural hearing loss and tinnitus and opined that appellant’s sensorineural hearing loss and tinnitus were not due to noise exposure encountered in his federal employment, noting the incident on April 25, 2022 as an “isolated” incident. He further noted that the statement of accepted facts did not indicate workplace exposure “sufficient in intensity and duration” to have caused the hearing loss or tinnitus.

On February 1, 2023 OWCP requested that Dr. Schubkegel provide an addendum report to clarify his opinion regarding causal relationship. On February 23, 2023 Dr. Schubkegel reviewed an amended SOAF and recounted appellant’s report of participating in a presentation at a junior high school gym with concrete walls, where each student was given a survival whistle and simultaneously blew the whistles. Appellant related that this exposure caused “immediate” pain and bilateral ringing and muffled hearing. He further related the muffled hearing resolved but continued to have ear pain from everyday noises. Dr. Schubkegel opined that the history of the employment incident did not represent a “significant variation” from the SOAF.

By decision dated February 27, 2023, OWCP accepted appellant’s claim for bilateral sensorineural hearing loss and tinnitus.

On September 2, 2022 appellant was seen by Shelley A. Witt, an audiologist. She noted appellant’s history of injury and diagnosed sensorineural hearing loss, tinnitus, and bilateral hyperacusis. Ms. Witt opined that appellant was exhibiting behaviors consistent with loudness hyperacusis, which he indicated kept him from enjoying normal activities.

By decision dated December 27, 2023, OWCP expanded acceptance of the claim to include bilateral hyperacusis.

On December 27, 2023 OWCP referred the medical record and SOAF to Dr. Jeffrey Israel, a Board-certified otolaryngologist serving as an OWCP district medical adviser (DMA), to determine the extent of appellant's hearing loss and permanent impairment due to appellant's employment-related noise exposure. On January 8, 2024, Dr. Israel reviewed Dr. Schubkegel's report 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*) and determined that appellant sustained 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 of four percent could not be given as there was no binaural hearing loss. Dr. Israel averaged appellant's right ear hearing levels of 5, 10, 20, 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 70 by 4, which equaled 17.5. 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. Israel averaged hearing levels of 5, 10, 5, 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 of 40 by 4 for a result of 10. 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. 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. He recommended yearly audiograms, use of noise protection, and authorization for hearing aids for hearing loss and tinnitus masking. Dr. Israel determined that appellant had reached maximum medical improvement (MMI) on December 13, 2022, the date of audiometric examination with Dr. Schubkegel.

By decision dated February 20, 2024, 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.

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

² A.M.A., *Guides* (6th ed. 2009).

³ 5 U.S.C. § 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. Schubkegel for a second opinion examination to evaluate appellant's hearing loss. In a December 13, 2022 report, Dr. Schubkegel reviewed the SOAF, appellant's history of injury, and medical evidence of record. Audiometric testing obtained on December 13, 2023 at the frequencies of 500, 1,000, 2,000, and 3,000 Hz demonstrated losses for the right ear of 5, 10, 20, and 35 dBs and losses for the left ear of 5, 10, 5, and 20 dBs.

On January 8, 2024 Dr. Israel reviewed Dr. Schubkegel's report 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*,¹² (A.M.A., *Guides*) and determined that appellant sustained 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 of four percent could not be given as there was no binaural hearing loss. Dr. Israel

⁵ *Supra* note 2.

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.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *V.M.*, *supra* note 6.

¹² A.M.A., *Guides* (6th ed. 2009).

averaged appellant's right ear hearing levels of 5, 10, 20, 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 70 by 4, which equaled 17.5. 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. Israel averaged hearing levels of 5, 10, 5, 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 of 40 by 4 for a result of 10. 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. 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. He determined that appellant had reached maximum medical improvement (MMI) on December 13, 2022, the date of audiometric examination with Dr. Schubkegel.

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.¹³ 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*.¹⁴ 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.

¹³ *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).

¹⁴ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the February 20, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 13, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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