

his federal employment resulting from prolonged exposure to hazardous noise. He noted that he first became aware of his condition and realized its relationship to his federal employment on March 10, 2023.

In support of his claim, appellant submitted an employing establishment audiometric employee hearing summary documenting appellant's hearing conservation data and audiograms from April 5, 1999 through December 7, 2022. The summary indicated that appellant began working for the employing establishment on November 24, 1996. OWCP also received documentation pertaining to firearms noise exposure at the employing establishment and occupational safety.

In a development letter dated March 15, 2023, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence necessary to establish his claim and attached a questionnaire for his completion. OWCP afforded appellant 60 days to respond. In a separate development letter of even date, it requested that the employing establishment provide additional information regarding his exposure to noise due to factors of his federal employment, including comments from a knowledgeable supervisor regarding the accuracy of his statements. OWCP afforded the employing establishment 30 days to respond.

In a March 16, 2023 letter, the employing establishment confirmed that appellant's employment duties included the use of firearms.

In a March 23, 2023 response to OWCP's development letter, appellant described his history of noise exposure as a police officer for the employing establishment since November 1996 to the present. He reported that the majority of his noise exposure was due to gunfire during quarterly qualifications from his handgun, shotgun, and M-4 rifle.

On April 26, 2023 OWCP referred appellant, along with the medical record, a statement of accepted facts (SOAF), and a series of questions, to Dr. Joedy Daristotle, a Board-certified otolaryngologist, for an audiogram and second opinion examination on June 7, 2023 to determine the nature, extent, and causal relationship of appellant's hearing loss.

On June 7, 2023 Dr. Daristotle reviewed the SOAF, history of injury and medical evidence of record. In his report, he noted that appellant's hearing was normal at the start of his federal employment, which resulted in bilateral sensorineural hearing loss from his federal employment-related noise exposure. Dr. Daristotle diagnosed bilateral sensorineural hearing loss and tinnitus causally related to noise exposure at work. He obtained audiology testing, which revealed the following decibel (dBs) losses at 500, 1000, 2000, and 3000 Hertz (Hz): 10, 15, 5, and 45 dBs for the right ear and 10, 10, 10, and 55 dBs for the left ear, respectively. Dr. Daristotle recommended noise protection and hearing aids.

Dr. Daristotle referred to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),² and applied OWCP's standard for evaluating hearing loss to the June 7, 2023 audiogram, and determined that appellant had zero percent right ear monaural hearing loss, zero percent left ear monaural hearing loss, and three

² A.M.A., *Guides* (6th ed. 2009).

percent binaural hearing loss due to tinnitus. He reported appellant's right ear hearing loss of 10, 15, 5, and 45 dBs at 500, 1,000, 2,000, and 3,000 Hz, respectively, which totaled 75, and divided by 4, to find an average of 18.75. As the average fell below the 25 dBs fence, Dr. Daristotle found zero percent right ear monaural hearing loss. For the left ear, he added appellant's hearing loss of 10, 10, 10, and 55 dBs at 500, 1,000, 2,000, and 3,000 Hz, respectively, which totaled 85, and divided by 4 to find an average of 21.25. As the average fell below the 25 dBs fence, Dr. Daristotle found zero percent left ear monaural hearing loss. As he calculated a monaural loss of zero percent in each ear, he found a binaural hearing loss of zero percent. Dr. Daristotle completed a tinnitus handicap inventory (THI) and rated the tinnitus diagnosis at three percent. He arrived at a total binaural hearing impairment rating of three percent due to moderate tinnitus. Dr. Daristotle concluded that appellant reached maximum medical improvement (MMI) on July 17, 2023.

By decision dated July 26, 2023, OWCP accepted appellant's claim for bilateral sensorineural hearing loss and bilateral tinnitus.

On July 26, 2023 OWCP referred the medical record and SOAF to Dr. Jeffrey M. 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 his employment-related noise exposure.

In an August 1, 2023 report, Dr. Israel reviewed the evidence of record and applied the audiometric data to OWCP's standard for evaluating hearing loss under the sixth edition of the A.M.A., *Guides*³ to Dr. Daristotle's report and June 7, 2023 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 three percent could not be given as there was no ratable binaural hearing loss. Dr. Israel averaged appellant's right ear hearing levels of 10, 15, 5, and 45 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 by 4, which equaled 18.75. 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 10, 10, 10, and 55 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 four, which equaled 21.25. 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. He opined that he concurred with Dr. Daristotle's calculations, other than his rating for three percent binaural hearing loss for tinnitus. Dr. Israel noted that a tinnitus award cannot be rendered when there is a zero percent binaural hearing impairment as stipulated on page 249 of the A.M.A., *Guides*.⁴ He recommended yearly audiograms, use of noise protection, and hearing aids for hearing loss tinnitus. Dr. Israel determined that appellant had reached MMI on June 7, 2023, the date of the most recent audiogram and Dr. Daristotle's examination.

³ *Id.*

⁴ *Id.* at 249.

On August 4, 2023 appellant filed a claim for compensation (Form CA-7) for a schedule award.

On November 7, 2023 OWCP requested Dr. Daristotle review Dr. Israel's August 1, 2023 report to determine if he agreed with his assessment.

In a January 5, 2024 report, Dr. Daristotle noted review of the Dr. Israel's August 1, 2023 report and agreed with his assessment for zero percent binaural hearing loss.

By decision dated January 16, 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 FECA,⁵ and its implementing federal regulations,⁶ 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 a determination is a matter, which rests in the 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*⁷ has been adopted by OWCP for evaluating schedule losses and the Board has concurred in such adoption.⁸

A claimant seeking compensation under FECA has the burden of proof to establish the essential elements of his or her claim.⁹ 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.¹⁰

OWCP evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.¹¹ Using the frequencies of 500, 1,000, 2,000, and 3,000 cycles per second, the

⁵ 5 U.S.C. § 8107.

⁶ 20 C.F.R. § 10.404.

⁷ *Supra* note 2.

⁸ *W.R.*, Docket No. 22-0051 (issued August 9, 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).

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

¹⁰ *R.R.*, Docket No. 19-0750 (issued November 15, 2019); *Edward Spohr*, 54 ECAB 806, 810 (2003); *Tammy L. Meehan*, 53 ECAB 229 (2001).

¹¹ *Supra* note 2.

losses at each frequency are added up and averaged.¹² 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

Regarding tinnitus, the A.M.A., *Guides* provides that tinnitus is not a disease, but rather a symptom that may be the result of disease or injury.¹⁷ If tinnitus interferes with activities of daily living, including sleep, reading (and other tasks requiring concentration), enjoyment of quiet recreation and emotional well-being, up to five percent may be added to a measurable binaural hearing impairment.¹⁸

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.¹⁹ It may follow the advice of its medical adviser or consultant where he or she has properly utilized the A.M.A., *Guides*.²⁰

ANALYSIS

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

OWCP referred appellant to Dr. Daristotle for a second opinion examination to evaluate his hearing loss. In his June 7, 2023 report, Dr. Daristotle diagnosed bilateral sensorineural hearing loss and bilateral tinnitus. He opined that the conditions were due to noise exposure encountered in appellant's federal employment. Dr. Daristotle determined that appellant sustained

¹² *Id.* at 250.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *See 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).

¹⁷ *Supra* note 4.

¹⁸ *Id.*; *R.H.*, Docket No. 10-2139 (issued July 13, 2011); *see also Robert E. Cullison*, 55 ECAB 570 (2004).

¹⁹ *See D.J.*, Docket No. 19-0352 (issued July 24, 2020).

²⁰ *See Ronald J. Pavlik*, 33 ECAB 1596 (1982).

a right monaural loss of zero percent, a left monaural loss of zero percent, and a binaural hearing loss of three percent for tinnitus.

In its July 26, 2023 decision, OWCP accepted the claim for bilateral sensorineural hearing loss and bilateral tinnitus. On July 26, 2023 it forwarded appellant's case to Dr. Israel, OWCP's DMA to assess his percentage of permanent employment-related hearing loss.

The DMA, Dr. Israel, in a report dated August 1, 2023, reviewed Dr. Daristotle's report, and determined that appellant had zero percent monaural hearing loss in each ear. He related that testing at the frequencies of 500, 1,000, 2,000, and 3,000 Hz revealed losses at 10, 15, 5, and 45 dBs for the right ear, respectively, and 10, 10, 10, and 55 dBs for the left ear, respectively. The decibel losses for the right ear were totaled at 75 and divided by 4 to obtain an average hearing loss of 18.75. The decibel losses for the left ear were totaled at 85 and divided by 4 to obtain an average hearing loss of 21.25. After subtracting the 25-decibel fence, both the right and left ear losses were reduced to zero. 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 concluded that appellant did not have ratable hearing loss warranting a schedule award.²¹ Although appellant has accepted employment-related hearing loss, it is insufficiently severe to be ratable for schedule award purposes.²²

The Board further finds that the DMA correctly explained that tinnitus may not be added to an impairment rating for hearing loss under the sixth edition of the A.M.A., *Guides* unless such hearing loss is ratable.²³ Furthermore, in a January 5, 2024 report, Dr. Daristotle noted review of the DMA's report, and agreed with his assessment for zero percent binaural hearing loss. Accordingly, as appellant does not have ratable hearing loss, the Board finds that he is not entitled to a schedule award for tinnitus.²⁴

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 his 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.

²¹ *T.B.*, Docket No. 23-0303 (issued August 11, 2023).

²² *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).

²³ *R.C.*, Docket No. 23-0334 (issued July 19, 2023); *D.S.*, Docket No. 23-0048 (issued May 23, 2023); *J.S.*, Docket No. 22-0274 (issued September 13, 2022).

²⁴ *P.C.*, Docket No. 23-1152 (issued January 19, 2024).

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the January 16, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 18, 2024
Washington, DC

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

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

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