

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

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<b>H.H., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 24-0345</b>
	)	<b>Issued: May 7, 2024</b>
<b>DEPARTMENT OF THE ARMY, TRAINING &amp; DOCTRINE COMMAND, Fort Novosel, AL,</b>	)	
<b>Employer</b>	)	
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*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 February 13, 2024 appellant filed a timely appeal from a February 7, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (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 August 1, 2023 appellant, then a 49-year-old lead firefighter, filed an occupational disease claim (Form CA-2) alleging that he developed hearing loss due to factors of his federal

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

employment, including working in close proximity to helicopters. He noted that he first became aware of his condition and realized its relation to his federal employment on March 11, 2019.

In a development letter dated August 14, 2023, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed and provided 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 the claim.

Appellant submitted audiometric testing reports taken on an annual basis as part of the employing establishment's hearing conservation program. On March 6, 2023 testing at 500, 1,000, 2,000, and 3,000 Hertz (Hz) demonstrated losses for the right ear of 5, 0, 5, and 35 decibels (dBs) and losses for the left ear of 5, 0, 5, and 10 dBs.

On December 4, 2023 OWCP referred appellant, along with a statement of accepted facts (SOAF) and the medical record to Dr. Brian Szwarc, an otolaryngologist, serving as second opinion physician, regarding 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 21, 2023 report, Dr. Szwarc reviewed the SOAF, appellant's history of injury, and medical evidence of record. He obtained audiometric testing that day, at the frequencies of 500, 1,000, 2,000, and 3,000 Hz, demonstrated losses for the right ear of 15, 15, 15, and 45 dBs and losses for the left ear of 10, 15, 15, and 30 dBs. Dr. Szwarc diagnosed appellant with baseline sensorineural hearing loss and opined that appellant's sensorineural hearing loss and tinnitus were due to noise exposure encountered in his federal employment.

By decision dated December 27, 2023, OWCP accepted appellant's claim for binaural sensorineural hearing loss.

On December 27, 2023 appellant filed a claim for compensation (Form CA-7) for a schedule award.

On January 2, 2024 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 22, 2024 Dr. Israel reviewed Dr. Szwarc'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*,<sup>2</sup> (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 one percent could not be given as there was no binaural hearing loss. Dr. Israel averaged appellant's right ear hearing levels of 15, 15, 15, and 45 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 90 by 4, which equaled 22.5. After subtracting the 25 dB fence, he

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<sup>2</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

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 10, 15, 15, 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 70 by 4 for a result of 17.5. 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 if appellant was interested. Dr. Israel determined that appellant had reached maximum medical improvement (MMI) on December 21, 2023, the date of the audiometric examination with Dr. Szwarc.

By decision dated February 7, 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<sup>3</sup> and its implementing regulations<sup>4</sup> 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*<sup>5</sup> has been adopted by OWCP for evaluating schedule losses and the Board has concurred in such adoption.<sup>6</sup>

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.<sup>7</sup> 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.<sup>8</sup> The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.<sup>9</sup> The binaural loss of hearing is determined by

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<sup>3</sup> 5 U.S.C. § 8107.

<sup>4</sup> 20 C.F.R. § 10.404.

<sup>5</sup> *Supra* note 2.

<sup>6</sup> *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).

<sup>7</sup> A.M.A., *Guides* 250.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

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.<sup>10</sup> The Board has concurred in OWCP's adoption of this standard for evaluating hearing loss.<sup>11</sup>

### 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. Szwarc for a second opinion examination to evaluate the extent of appellant's hearing loss. In a December 21, 2023 report, Dr. Szwarc reviewed the SOAF, appellant's history of injury, and medical evidence of record. Audiometric testing obtained on December 21, 2023 at the frequencies of 500, 1,000, 2,000, and 3,000 Hz demonstrated losses for the right ear of 15, 15, 15, and 45 dBs and losses for the left ear of 10, 15, 15, and 30 dBs. Dr. Szwarc diagnosed appellant with baseline sensorineural hearing loss and opined that appellant's sensorineural hearing loss and tinnitus were due to noise exposure encountered in his federal employment.

On January 22, 2024 Dr. Israel, the DMA, reviewed Dr. Szwarc'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*<sup>12</sup> (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 one percent could not be given as there was no binaural hearing loss. Dr. Israel averaged appellant's right ear hearing levels of 15, 15, 15, and 45 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 90 by 4, which equaled 22.5. 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 10, 15, 15, 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 70 by 4 for a result of 17.5. 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 MMI on December 21, 2023, the date of audiometric examination with Dr. Szwarc.

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.<sup>13</sup> The Board

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<sup>10</sup> *Id.*

<sup>11</sup> *V.M.*, *supra* note 6.

<sup>12</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

<sup>13</sup> *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).

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*.<sup>14</sup>

As the medical evidence of record is insufficient to establish ratable hearing loss, 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.

**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 February 7, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 7, 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

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<sup>14</sup> *Id.*