

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

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<b>R.C., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 24-0389</b>
	)	<b>Issued: May 22, 2024</b>
<b>DEPARTMENT OF THE NAVY, NAVAL AIR</b>	)	
<b>STATION MERIDIAN, Meridian, MS, 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:  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On February 27, 2024 appellant filed a timely appeal from December 5, 2023 and February 8, 2024 merit decisions 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 September 5, 2023 appellant, then a 56-year-old fire chief, 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. He noted that he first became aware of his condition and realized its relation to his federal employment on August 15, 2023.

OWCP received narrative statements from appellant and the employing establishment indicating his job duties and level of noise exposure, specifically that firefighters are “exposed to noise hazards on a daily basis” and that hearing protection “is not always feasible” in various situations.

Appellant submitted multiple audiometric testing reports taken as part of the employing establishment’s hearing conservation program.

On September 15, 2023 OWCP referred appellant, along with a statement of accepted facts (SOAF) and the medical record to Dr. Laura H. Christopher, 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 an October 25, 2023 report, Dr. Christopher reviewed the SOAF, appellant’s history of injury, and the medical evidence of record. Audiometric testing obtained on October 25, 2023 at the frequencies of 500, 1,000, 2,000, and 3,000 Hertz (Hz) demonstrated losses for the right ear of 10, 10, 20, and 50 decibels (dBs) and losses for the left ear of 10, 10, 15, and 45dBs, respectively. Dr. Christopher diagnosed appellant with noise-induced sensorineural hearing loss and tinnitus, and opined that appellant’s sensorineural hearing loss and tinnitus were due to noise exposure encountered in his federal employment. She recommended a trial of hearing aids.

By decision dated October 31, 2023, OWCP accepted appellant’s claim for binaural sensorineural hearing loss and tinnitus.

On October 31, 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 appellant’s employment-related noise exposure. On November 3, 2023 Dr. Israel reviewed Dr. Christopher’s report, and applied 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*) to the audiometric data 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 10, 10, 20, and 50 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, 10, 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 80 by 4 for a result of 20. 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

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

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. Dr. Israel determined that appellant had reached maximum medical improvement (MMI) on October 25, 2023, the date of audiometric examination with Dr. Christopher.

By decision dated December 5, 2023, 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.

On January 9, 2024 appellant requested reconsideration. In support of his reconsideration request, he submitted a narrative statement recounting the history of his claim.

On January 22, 2024 OWCP referred the medical record and SOAF to Dr. Israel the DMA, for clarification of his November 3, 2023 report. On January 31, 2024 Dr. Israel related that he had reviewed all of the audiograms of record. He explained that the August 15, 2013 study showed a 0 percent left monaural loss, a 1.875 percent right monaural loss and a .3 percent binaural loss, which would be rounded down to 0 percent. Dr. Israel related that the latest audiogram was however considered to be the MMI study, which was relied upon for calculating hearing impairment. He reiterated his explanation that as appellant's ratable hearing impairment was zero percent, an award for tinnitus was not allowed.

By decision dated February 8, 2024, OWCP denied modification of its December 5, 2023 decision.

### **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>

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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).

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 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. Christopher for a second opinion examination to evaluate appellant's hearing loss. In an October 25, 2023 report, Dr. Christopher reviewed the SOAF, appellant's history of injury, and medical evidence of record. Audiometric testing obtained on October 25, 2023 at the frequencies of 500, 1,000, 2,000, and 3,000, Hz demonstrated losses for the right ear of 10, 10, 20, and 50 dBs and losses for the left ear of 10, 10, 15, and 45 dBs, respectively. Dr. Christopher diagnosed appellant with noise-induced sensorineural hearing loss and tinnitus, and opined that appellant's sensorineural hearing loss and tinnitus were due to noise exposure encountered in his federal employment.

On November 3, 2023 Dr. Israel reviewed Dr. Christopher'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 granted as there was no binaural hearing loss. Dr. Israel averaged appellant's right ear hearing levels of 10, 10, 20, and 50 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, 10, 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 80 by 4 for a result of 20. After

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

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

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

<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).

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. Dr. Israel determined that appellant had reached MMI on October 25, 2023, the date of audiometric examination with Dr. Christopher.

On January 31, 2024 Dr. Israel clarified that appellant's rating of zero percent monaural and binaural hearing loss in the latest audiogram, which was considered to be the MMI study, was relied upon for calculating hearing impairment. He explained that appellant was not entitled to an award for tinnitus as he had no ratable hearing loss.

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 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> Accordingly, as appellant does not have ratable hearing loss, the Board finds that he is precluded from 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.

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<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).

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

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 5, 2023 and February 8, 2024 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: May 22, 2024  
Washington, DC

Patricia H. Fitzgerald, Deputy 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