

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

T.P., Appellant	)	
	)	
and	)	<b>Docket No. 24-0830</b>
	)	<b>Issued: October 15, 2024</b>
DEPARTMENT OF THE AIR FORCE,	)	
LAUGHLIN AIR FORCE BASE, TX, 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 August 12, 2024 appellant filed a timely appeal from a July 24, 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 April 24, 2023 appellant, then a 60-year-old painter, filed an occupational disease claim (Form CA-2) alleging that he developed hearing loss due to factors of his federal employment including prolonged exposure to noise from aircraft engines, sanders and compressors.

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

On April 13, 2017 the employing establishment, as part of its hearing conservation program, noted that on his most recent audiometric testing appellant had demonstrated a permanent threshold shift with significant hearing loss. It provided audiologic records.

In a development letter dated March 11, 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 follow-up letter dated July 5, 2023, OWCP advised appellant that it had conducted an interim review, and the evidence remained insufficient to establish his claim. It noted that he had 60 days from the March 11, 2023 letter to submit the requested supporting evidence. OWCP further advised that if the evidence was not received during this time, it would issue a decision based on the evidence contained in the record. No additional evidence was received.

By decision dated August 7, 2023, OWCP denied that the employment exposure occurred as alleged, as appellant had not provided the requested details about his hearing history. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On August 14, 2023 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. He provided an August 14, 2023 narrative statement describing his history of noise exposure in the course of his federal employment.

Following a preliminary review, by decision dated October 5, 2023, OWCP's hearing representative set aside the August 7, 2023 decision, and remanded the case for further development. The hearing representative instructed OWCP to refer appellant's narrative history of noise exposure to the employing establishment for comment and then refer appellant together with a statement of accepted facts (SOAF), for a second opinion with a Board-certified otolaryngologist, including complete physical examination and a rationalized medical opinion as to whether appellant's hearing loss is related to his employment.

On April 29, 2024 OWCP referred appellant, along with the medical record, a SOAF, and a series of questions, to Dr. Robert D. Pearson, a Board-certified otolaryngologist, for a second opinion examination on May 13, 2024 to determine the nature, extent, and causal relationship of appellant's hearing loss.

On May 13, 2024 Dr. Pearson 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. Pearson diagnosed bilateral sensorineural hearing loss and tinnitus causally related to noise exposure at work. He reviewed an audiogram conducted by Eric Maxwell, an audiologist, on the same date, which revealed the following decibel (dB) losses at 500, 1,000, 2,000, and 3,000 Hertz (Hz): 10, 15, 20, and 30 dBs for the right ear and 10, 10, 20, and 30 dBs for the left ear, respectively.

On June 13, 2024 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 a June 19, 2024 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*)<sup>2</sup> to Dr. Pearson's report and May 13, 2024 audiometric 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 four 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, 20, and 30 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, 15, 20, 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 by four, which equaled 18.75. 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 noted that a tinnitus award could not be rendered when there is a zero percent binaural hearing impairment as stipulated on page 249 of the A.M.A., *Guides*.<sup>3</sup> Dr. Israel recommended yearly audiograms, use of noise protection, and hearing aids for hearing loss tinnitus. He determined that appellant had reached maximum medical improvement (MMI) on May 13, 2024, the date of the most recent audiogram and Dr. Pearson's examination.

By decision dated June 27, 2024, OWCP accepted appellant's claim for bilateral sensorineural hearing loss and bilateral tinnitus.

By decision dated July 24, 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>4</sup> and its implementing federal regulations,<sup>5</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 a determination is a matter, which rests in the

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

<sup>3</sup> *Id.* at 249.

<sup>4</sup> 5 U.S.C. § 8107.

<sup>5</sup> 20 C.F.R. § 10.404.

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>6</sup> has been adopted by OWCP for evaluating schedule losses and the Board has concurred in such adoption.<sup>7</sup>

A claimant seeking compensation under FECA has the burden of proof to establish the essential elements of his or her claim.<sup>8</sup> 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.<sup>9</sup>

OWCP evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.<sup>10</sup> Using the frequencies of 500, 1,000, 2,000, and 3,000 cycles per second, the losses at each frequency are added up and averaged.<sup>11</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>12</sup> The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.<sup>13</sup> 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.<sup>14</sup> The Board has concurred in OWCP's adoption of this standard for evaluating hearing loss.<sup>15</sup>

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.<sup>16</sup> If tinnitus interferes with activities of daily living, including sleep, reading (and other tasks requiring concentration), enjoyment of

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<sup>6</sup> *Supra* note 2.

<sup>7</sup> *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).

<sup>8</sup> *D.H.*, Docket No. 20-0198 (issued July 9, 2020); *John W. Montoya*, 54 ECAB 306 (2003).

<sup>9</sup> *R.R.*, Docket No. 19-0750 (issued November 15, 2019); *Edward Spohr*, 54 ECAB 806, 810 (2003); *Tammy L. Meehan*, 53 ECAB 229 (2001).

<sup>10</sup> *Supra* note 2.

<sup>11</sup> *Id.* at 250.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

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

<sup>15</sup> *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).

<sup>16</sup> *Supra* note 4.

quiet recreation and emotional well-being, up to five percent may be added to a measurable binaural hearing impairment.<sup>17</sup>

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.<sup>18</sup> It may follow the advice of its medical adviser or consultant where he or she has properly utilized the A.M.A., *Guides*.<sup>19</sup>

### 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. Pearson for a second opinion examination to evaluate his hearing loss. In his May 13, 2024 report, Dr. Pearson 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. Pearson reviewed the audiogram of even date.

On June 13, 2024 OWCP 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 June 19, 2024, reviewed Dr. Pearson'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, 20, and 30 dBs for the right ear, respectively, and 10, 15, 20, and 30 dBs for the left ear, respectively. The decibel losses for both ears were totaled at 75 and divided by 4 to obtain an average hearing loss of 18.75. 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.<sup>20</sup> Although appellant has accepted employment-related hearing loss, it is insufficiently severe to be ratable for schedule award purposes.<sup>21</sup>

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

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<sup>17</sup> *Id.*; *R.H.*, Docket No. 10-2139 (issued July 13, 2011); *see also Robert E. Cullison*, 55 ECAB 570 (2004).

<sup>18</sup> *See D.J.*, Docket No. 19-0352 (issued July 24, 2020).

<sup>19</sup> *See Ronald J. Pavlik*, 33 ECAB 1596 (1982).

<sup>20</sup> *T.B.*, Docket No. 23-0303 (issued August 11, 2023).

<sup>21</sup> *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).

such hearing loss is ratable.<sup>22</sup> Accordingly, as appellant does not have ratable hearing loss, the Board finds that he is not entitled to a schedule award for tinnitus.<sup>23</sup>

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.

### **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 July 24, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 15, 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>22</sup> *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).

<sup>23</sup> *P.C.*, Docket No. 23-1152 (issued January 19, 2024).