

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

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M.S., Appellant )

and )

DEPARTMENT OF THE AIR FORCE, HILL )  
AIR FORCE BASE, UT, Employer )  
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**Docket No. 22-0458  
Issued: May 3, 2023**

*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 4, 2022 appellant filed a timely appeal from a September 22, 2021 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 February 14, 2021 appellant, then a 65-year-old retired aircraft engine mechanic, filed an occupational disease claim (Form CA-2) alleging that he developed tinnitus and hearing loss due to factors of his federal employment, including working in a hazardous noise area to test jet engine components for over 10 years. He noted that he first became aware of his condition and

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

realized its relation to his federal employment on January 15, 2021. Appellant retired from the employing establishment on April 3, 2019.

In a January 15, 2021 report, Daniel J. Roberts, Au.D., an audiologist, related that appellant had constant tinnitus bilaterally starting approximately five or six years ago, which he attributed to noise exposure as an aircraft mechanic. Appellant reported that he had communication difficulties with background noise. Dr. Roberts conducted audiometric testing, which revealed moderately severe high-frequency sensorineural hearing loss bilaterally and excellent speech discrimination abilities bilaterally. He opined that it was more likely than not that appellant's tinnitus was a result of the hearing loss, and that the hearing loss was a result of his history of noise exposure. Dr. Roberts recommended binaural hearing amplification to improve communication abilities and decrease tinnitus perception.

In a development letter dated February 22, 2021, OWCP informed appellant of the deficiencies of his claim. It advised him of the evidence necessary to establish his claim and provided a questionnaire for his completion. In a separate development letter of even date, OWCP requested comments from a knowledgeable supervisor regarding appellant's occupational noise exposure. It afforded both parties 30 days to submit the requested evidence.

On May 25, 2021 OWCP referred appellant, along with a statement of accepted facts (SOAF) and the medical record to Dr. Peter C. Anderson, a Board-certified otolaryngologist serving as second opinion physician, regarding the nature and extent of his hearing loss, and whether there was any causal relationship between his diagnosed hearing loss and his accepted employment exposure.

In a June 11, 2021 report, Dr. Anderson reviewed appellant's history of injury, performed audiometric testing, and diagnosed bilateral sensorineural hearing loss and tinnitus.

By decision dated September 14, 2021, OWCP accepted appellant's claim for binaural sensorineural hearing loss and bilateral tinnitus.

On September 14, 2021 OWCP referred the medical record and SOAF to Dr. Jeffrey M. Israel, an OWCP district medical adviser (DMA) and Board-certified otolaryngologist, to determine the extent of appellant's hearing loss and permanent impairment due to appellant's employment-related noise exposure.

On September 15, 2021 Dr. Israel reviewed Dr. Anderson'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 right monaural loss of zero percent, a left monaural loss of zero percent, and a binaural hearing loss of zero percent. Referring to the June 11, 2021 audiogram, he averaged appellant's right ear hearing levels of 10, 15, 15, and 45 decibels (dBs) at 500, 1,000, 2,000, and 3,000 Hertz (Hz), respectively, by adding the hearing loss at those four levels then dividing the sum of 85 by 4, which equaled 21.25. After subtracting the 25 dB fence, Dr. Israel multiplied the remaining 0 balance by 1.5 for a result of zero percent right monaural loss. For the left ear, he averaged hearing levels of 10, 10, 15, and 60 dBs at 500, 1,000, 2,000, and 3,000 Hz, respectively, by adding the hearing loss at those four levels then dividing the

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

sum of 95 by 4 for a result of 23.75. After subtracting the 25 dB fence, Dr. Israel multiplied the remaining 0 balance by 1.5 for a result of zero percent left monaural hearing loss. He 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. Dr. Israel recommended yearly audiograms, use of hearing protection, and authorization for hearing aids. He determined that appellant had reached maximum medical improvement (MMI) on June 11, 2021 the date of audiometric examination with Dr. Anderson.

By decision dated September 22, 2021, 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 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

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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 3.

<sup>6</sup> *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.*

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's case to a DMA to assess his percentage of permanent employment-related hearing loss.

On September 15, 2021 Dr. Israel, serving as the DMA, reviewed Dr. Anderson's report and determined that appellant sustained right monaural loss of zero percent, a left monaural loss of zero percent, and a binaural hearing loss of zero percent. He averaged appellant's right ear hearing levels of 10, 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 85 by 4, which equaled 21.25. After subtracting the 25 dB fence, Dr. Israel multiplied the remaining 0 balance by 1.5 for a result of zero percent right monaural loss. For the left ear, he averaged hearing levels of 10, 10, 15, and 60 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 95 by 4 for a result of 23.75. After subtracting the 25 dB fence, Dr. Israel multiplied the remaining 0 balance by 1.5 for a result of zero percent left monaural hearing loss. He 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.

The Board finds that the DMA properly determined 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>12</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>13</sup> 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.

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

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

<sup>12</sup> *J.R.*, *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>13</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** The September 22, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 3, 2023  
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