

employment, including the cumulative effect of 18 years of firearms training and weekly Special Weapons and Tactics training, as well as the use of flashbangs. He noted that on February 18, 2020 he was exposed to four flashbangs without hearing protection. Appellant indicated that he first became aware of his conditions and realized their relation to his federal employment on February 18, 2020. He did not stop work.

On January 12, 2022² OWCP referred appellant, along with a statement of accepted facts (SOAF) and the medical record, to Dr. George Brown, a Board-certified otolaryngologist serving as second opinion physician, regarding the nature and extent of appellant's hearing loss, and whether there was any causal relationship between appellant's diagnosed hearing loss and his accepted employment exposure.

In a January 31, 2022 report, Dr. Brown reviewed the SOAF, history of injury, and the medical evidence of record. He indicated that there was no significant variation from the SOAF, and no other relevant medical history or condition related to appellant's hearing loss. Audiometric testing obtained on January 24, 2022 at the frequencies of 500, 1,000, 2,000, and 3,000 Hertz (Hz) revealed losses at 15, 20, 20, and 10 decibels (dBs) for the right ear, respectively, and 15, 20, 20, and 10 dBs for the left ear, respectively. Dr. Brown diagnosed minimal high-frequency sensorineural hearing loss and noted that the workplace exposures described by appellant were of sufficient intensity and duration to have caused his hearing loss. He explained that appellant exhibited a classic "notch" of hearing loss at 4,000 Hz, often seen with noise exposure, and opined that appellant's sensorineural hearing loss and tinnitus were due to noise exposure encountered in his federal employment, found a slight 1 percent tinnitus impairment, and noted a date of maximum medical improvement (MMI) of January 26, 2022. Dr. Brown recommended yearly audiograms, doubled noise protection in the firing range, and indicated that hearing aids were not necessary unless requested by appellant.

By decision dated February 8, 2022, OWCP accepted the claim for bilateral sensorineural hearing loss and bilateral tinnitus and forwarded appellant's case to a district medical adviser (DMA) to assess appellant's percentage of permanent employment-related hearing loss.

On February 28, 2022 appellant filed a claim for compensation (Form CA-7) for a schedule award.

On April 1, 2022 OWCP referred the medical record and SOAF to Dr. Jeffrey Israel, an OWCP DMA and Board-certified otolaryngologist, to determine the extent of appellant's hearing loss and permanent impairment due to his employment-related noise exposure.

In an April 4, 2022 report, Dr. Israel reviewed Dr. Brown's examination report and concurred that appellant's January 24, 2022 audiogram revealed normal hearing in both ears with the exception of mild level losses at 4,000 Hz. He explained that serial audiograms over the years demonstrated progressive sensorineural hearing loss in both ears at 4,000 Hz and opined that those patterns were suggestive of sensorineural hearing loss due, at least in part, to noise-induced work-related acoustic trauma. Dr. Israel applied the audiometric data to OWCP's standard for evaluating

² Appellant was initially referred to a second opinion physician on November 15, 2021 but the appointment was canceled, after which he was referred to Dr. Brown on January 12, 2022.

hearing loss under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*,³ (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 averaged appellant's right ear hearing levels of 15, 20, 20, and 10 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 16.25. After subtracting the 25 dB fence, Dr. Israel multiplied the remaining zero balance by 1.5 to calculate zero percent right ear monaural hearing loss. He then averaged appellant's left ear hearing levels of 15, 20, 20, and 10 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 16.25. After subtracting the 25 dB fence, Dr. Israel multiplied the remaining zero balance by 1.5 to calculate zero percent left ear 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 noted that there was no applicable award for tinnitus because there was zero percent binaural hearing impairment. He determined that appellant had reached MMI on January 24, 2022 the date of the most recent audiogram, and recommended yearly audiograms, use of "noise protection for the ears," and did not recommend hearing aids at this time, but noted that appellant may become a candidate for hearing aids in the future.

By decision dated June 24, 2022, OWCP denied appellant's schedule award claim, finding that the medical 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 FECA⁴ and its implementing federal regulations⁵ 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 of loss of a member shall be determined. 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.⁶ 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

³ A.M.A., *Guides* (6th ed. 2009).

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404.

⁶ *Id.* at § 10.404(a).

⁷ *Supra* note 3.

⁸ *V.M.*, Docket No. 18-1800 (issued April 23, 2019); *see 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*.⁹ Using the frequencies of 500, 1,000, 2,000, and 3,000 Hz, the losses at each frequency are averaged.¹⁰ 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.¹¹ The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.¹² 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.¹³ The Board has concurred in OWCP's adoption of this standard for evaluating hearing loss.¹⁴

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.¹⁵ If tinnitus interferes with activities of daily living, including sleep, reading, and other tasks requiring concentration, up to five percent may be added to a measurable binaural hearing impairment.¹⁶

ANALYSIS

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

OWCP properly referred appellant to Dr. Brown for a second opinion examination to evaluate his hearing loss. In his January 31, 2022 report, Dr. Brown reviewed audiometric testing at the frequencies of 500, 1,000, 2,000, and 3,000 Hz, revealing losses at 15, 20, 20, and 10 dBs for the right ear, respectively; and 15, 20, 20, and 10 dBs for the left ear, respectively. He diagnosed minimal high-frequency sensorineural hearing loss, opined that appellant's conditions were due to noise exposure encountered in his federal employment, and found a slight one percent tinnitus impairment and date of MMI of January 26, 2022. By decision dated February 8, 2022, OWCP accepted the claim for bilateral sensorineural hearing loss and bilateral tinnitus, and forwarded appellant's case to a DMA to assess his percentage of permanent employment-related hearing loss.

On April 4, 2022 Dr. Israel, serving as DMA, reviewed Dr. Brown's report and determined that appellant had zero percent monaural hearing loss in each ear. He noted that a tinnitus award

⁹ *Supra* note 3.

¹⁰ *Id.* at 250.

¹¹ *Id.*; *C.D.*, Docket No. 18-0251 (issued August 1, 2018).

¹² *Id.*

¹³ *Id.*

¹⁴ *H.M.*, Docket No. 21-0378 (issued August 23, 2021); *V.M.*, *supra* note 8.

¹⁵ *See* A.M.A., *Guides* 249.

¹⁶ *Id.*

could not be given because there was no ratable binaural hearing loss. Dr. Israel averaged appellant's right ear hearing levels of 15, 20, 20, and 10 dBs at 500, 1,000, 2,000, and 3,000 Hz, respectively, by adding the hearing loss at those levels then dividing the sum by four, which equaled 16.25. He then averaged appellant's left ear hearing levels of 15, 20, 20, and 10 dBs at 500, 1,000, 2,000, and 3,000 Hz, respectively, by adding the hearing loss at those levels then dividing the sum by four, which equaled 16.25. 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. 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.

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.¹⁷

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*.¹⁸ 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 for schedule award purposes.

¹⁷ *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).

¹⁸ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the June 24, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 17, 2023
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