

On September 15, 2004 appellant, then a 57-year-old machinist, filed a claim for compensation for an occupational disease of hearing loss. He submitted results of audiograms made annually at the employing establishment and information on his exposure to noise.

On October 25, 2004 the Office referred appellant and a statement of accepted facts to Dr. Joseph Motto, a Board-certified otolaryngologist, for an evaluation of his hearing loss and its relationship to his employment. In a November 9, 2004 report, accompanied by an audiogram of the same date, he concluded that appellant had a bilateral severe high frequency sensorineural hearing loss due, in part or all, to his noise exposure in his federal employment and recommended a hearing aid for the left ear.

On November 17, 2004 an Office medical adviser applied the Office's standards for evaluating the extent of hearing loss to Dr. Motto's November 9, 2004 audiogram. Testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second (cps) revealed decibel losses of 10, 15, 15 and 65 respectively. These decibels were totaled at 105 decibels and were divided by four to obtain the average hearing loss at those cycles of decibels. The average of 26.25 decibels was then reduced by 25 decibels to equal 1.25 which was multiplied by the established factor of 1.5 to compute a 1.88 percent loss of hearing for the right ear. Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 10, 15, 35 and 65 respectively. These decibels were totaled at 125 decibels and were divided by four to obtain the average hearing loss at those cycles of 31.25 decibels. The average of 31.25 decibels was then reduced by 25 decibels to equal 6.25 which was multiplied by the established factor of 1.5 to compute a 9.38 percent loss of hearing for the left ear. The Office medical adviser then computed the binaural hearing loss by multiplying the lesser loss, 1.88, by 5, added this to the greater loss, 9.38, and divided this figure by 6 to arrive at a 3.13 percent binaural hearing loss, which was rounded to 3 percent.

On December 10, 2004 the Office advised appellant that it had accepted his claim for a bilateral hearing loss. On January 7, 2005 he filed a claim for a schedule award. On January 19, 2005 the Office issued a schedule award for a three percent binaural loss of hearing.

On February 10, 2005 appellant requested reconsideration, stating that hearing aids should be authorized and that he believed that he had more than a three percent loss of hearing. By decision dated March 4, 2005, the Office found his request for reconsideration insufficient to warrant review of its January 19, 2005 decision. The Office noted that a hearing aid had been authorized for appellant's left ear.

### **LEGAL PRECEDENT -- ISSUE 1**

The Office evaluates industrial hearing loss in accordance with the standards contained in the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.<sup>1</sup> Using the frequencies of 500, 1,000, 2,000 and 3,000 cps, the losses at each frequency are added up and averaged.<sup>2</sup> Then, the "fence" of 25 decibels is deducted because, as the A.M.A., *Guides* points out, losses below 25 decibels result in no impairment in the ability to hear everyday speech under everyday conditions.<sup>3</sup> The remaining amount is multiplied by a factor of 1.5 to arrive at the

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<sup>1</sup> A.M.A., *Guides* at 250 (5<sup>th</sup> ed. 2001).

<sup>2</sup> *Id.*

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

percentage of monaural hearing loss.<sup>4</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>5</sup> The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.<sup>6</sup>

### **ANALYSIS -- ISSUE 1**

On November 17, 2004 an Office medical adviser applied the Office's standards for evaluating the extent of hearing loss to Dr. Motto's November 9, 2004 audiogram. Testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 10, 15, 15 and 65 respectively. These decibels were totaled at 105 decibels and were divided by four to obtain the average hearing loss at those cycles of decibels. The average of 26.25 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal 1.25 which was multiplied by the established factor of 1.5 to compute a 1.88 percent loss of hearing for the right ear. Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 10, 15, 35 and 65 respectively. These decibels were totaled at 125 decibels and were divided by 4 to obtain the average hearing loss at those cycles of 31.25 decibels. The average of 31.25 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal 6.25 which was multiplied by the established factor of 1.5 to compute a 9.38 percent loss of hearing for the left ear. The Office medical adviser then computed the binaural hearing loss by multiplying the lesser loss, 1.88, by 5, added this to the greater loss, 9.38, and divided this figure by 6 to arrive at a 3.13 percent binaural hearing loss, which was rounded to 3 percent.

The Board finds that the Office medical adviser correctly applied the Office's standards to Dr. Motto's November 9, 2004 audiogram in determining that appellant had a three percent binaural loss of hearing.

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8128(a) of the Federal Employees' Compensation Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation:

"The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. The Secretary, in accordance with the facts found on review may --

'(1) end, decrease, or increase the compensation awarded; or

'(2) award compensation previously refused or discontinued.'"

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<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Donald E. Stockstad*, 53 ECAB 301 (2002); *petition for recon. granted modifying prior decision*, Docket No. 01-1570 (issued August 13, 2002).

Under 20 C.F.R. § 10.606(b)(2), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law, by advancing a relevant legal argument not previously considered by the Office or by constituting relevant and pertinent new evidence not previously considered by the Office. Section 10.608(b) provides that, when an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without reviewing the merits of the claim.

### **ANALYSIS -- ISSUE 2**

Appellant's February 10, 2005 request for reconsideration was not accompanied by any new evidence. His contention that he was entitled to a hearing aid was correct, as such had been authorized. As the Board found above that the extent of appellant's hearing loss was properly calculated, his contention that he has greater than a three percent binaural loss of hearing does not show that the Office erroneously applied or interpreted a specific point of law. As he also has not advanced a relevant legal argument not previously considered by the Office, the Office properly refused to reopen his case for further review of the merits of his claim.

### **CONCLUSION**

The Board finds that appellant has no greater than a three percent binaural loss of hearing, for which he received a schedule award. The Board also finds that the Office properly refused to reopen his case for further review of the merits of his claim.

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 4 and January 19, 2005 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: October 12, 2005  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board