

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

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**VERNON L. RAWLES, Appellant**

**and**

**DEPARTMENT OF THE NAVY, NORFOLK  
NAVY SHIPYARD, Portsmouth, VA, Employer**

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**Docket No. 05-1886  
Issued: May 3, 2006**

*Appearances:*  
*Vernon L. Rawles, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On September 9, 2005 appellant filed a timely appeal of a May 25, 2005 schedule award decision and an August 5, 2005 nonmerit decision of the Office of Workers' Compensation Programs. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review both these decisions.

**ISSUES**

The issues are: (1) whether appellant has greater than an addition 28 percent monaural loss of hearing for the left ear for a total left ear hearing loss of 88 percent and for a 13 percent monaural loss of hearing for the right ear, for which he received a schedule award; and (2) whether the Office properly refused to reopen appellant's case for further review of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

## **FACTUAL HISTORY**

On March 13, 1992 appellant, a 64-year-old shipfitter, filed an occupational disease claim alleging that his hearing loss was employment related.<sup>1</sup> The Office accepted the claim for binaural hearing loss.<sup>2</sup> On November 8, 1993 the Office issued a schedule award for a 60 percent monaural loss of hearing in the left ear. The Office noted that the hearing loss in the right ear was not ratable.

On July 1, 2003 the Office received a June 13, 2003 report by Dr. John P. Lyle, a treating Board-certified otolaryngologist, who noted that “as of April 30, 2003, the left ear is essentially a dead ear with 0 percent speech discrimination and the right ear only has a 28 percent speech discrimination.”

In a letter dated September 22, 2004, appellant requested an additional schedule award for his hearing loss.

On November 20, 2004 an Office medical adviser applied the Office standards for evaluating the extent of hearing loss to Dr. Lyle’s October 15, 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 40, 15, 20 and 60 respectively. These decibels were totaled at 135 decibels and were divided by 4 to obtain the average loss at those cycles of decibels. The average of 33.75 decibels was then reduced by 25 decibels to equal 8.75 which was multiplied by the established factor of 1.5 to compute a 13.125 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 65, 85, 80 and 105 respectively. These decibels were totaled at 335 decibels and were divided by 4 to obtain the average hearing loss at those cycles of 83.75 decibels. The average of 83.75 decibels was then reduced by 25 decibels to equal 58.75 which was multiplied by the established factor of 1.5 to compute an 88.125 percent loss of hearing for the left ear. The Office medical adviser then computed the binaural hearing loss by multiplying the lesser loss, 13.125, by 5, added this to the greater loss, 88.125, and divided this figure by 6 to arrive at a 26.625 percent binaural hearing loss.

By decision dated May 25, 2005, the Office noted that appellant had previously received a schedule award for a 60 percent hearing loss to his left ear for the period March 9 through October 14, 1993, a total of 31.20 weeks of compensation. Since appellant had previously received a schedule award for his left ear, the Office found that appellant was entitled to an additional 28 percent monaural loss of hearing for his left ear and an award for a 13 percent monaural loss for his right ear for the period October 14, 1993 through March 12, 1994, a total of 21.32 weeks of compensation.<sup>3</sup>

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<sup>1</sup> Appellant retired effective September 1, 1993.

<sup>2</sup> The Office noted that this condition was “superimposed upon a preexisting deafness due to Meniere’s disease.”

<sup>3</sup> The total number of weeks of compensation for the monaural awards was 52.52.

On June 27, 2005 appellant requested reconsideration. Appellant stated that “no award was made due to the emotional impact the loss of hearing has caused” and he received “no compensation for a hearing aid, co-payment for medication, transportation and the list goes on.”

By decision dated August 5, 2005, the Office found appellant’s request for reconsideration insufficient to warrant review of its May 25, 2005 decision. The Office noted in a separate letter that the Office will pay for medical bills related to the accepted injury and advised appellant to submit the bills for reimbursement, including “unpaid medical bills for hearing aids,” and co-pays related to the accepted injury.

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

The schedule award provision of the Federal Employees’ Compensation Act<sup>4</sup> and its implementing regulation<sup>5</sup> sets for the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of schedule members or functions of the body. However, the Act does not specify the manner in which the percentage loss of a member shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5<sup>th</sup> edition) has been adopted by the Office as a standard for evaluating schedule losses.<sup>6</sup>

The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.<sup>7</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>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 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 the Office’s adoption of this standard for evaluating hearing loss.<sup>11</sup>

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<sup>4</sup> 5 U.S.C. § 8107.

<sup>5</sup> 20 C.F.R. § 10.404.

<sup>6</sup> 20 C.F.R. § 10.404; *see also David W. Ferrall*, 56 ECAB \_\_\_\_ (Docket No. 04-2142, issued February 23, 2005).

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

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

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

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

<sup>11</sup> *Donald E. Stockstaad*, 53 ECAB 301 (2002); *petition for recon. granted (modifying prior decision)*, Docket No. 01-1570 (issued August 13, 2002).

## **ANALYSIS -- ISSUE 1**

On November 20, 2004 an Office medical adviser applied the Office's standards for evaluating the extent of hearing loss to Dr. Lyle's October 15, 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 40, 15, 20 and 60 respectively. These decibels were totaled at 135 decibels and were divided by 4 to obtain the average hearing loss at those cycles of decibels. The average of 33.75 decibels was then reduced by 25 decibels to equal 8.75 which was multiplied by the established factor of 1.5 to compute a 13.125 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 65, 85, 80 and 105 respectively. These decibels were totaled at 335 decibels and were divided by 4 to obtain the average hearing loss at those cycles of 83.75 decibels. The average of 83.75 decibels was then reduced by 25 decibels to equal 58.75 which was multiplied by the established factor of 1.5 to compute an 88.125 percent loss of hearing for the left ear.

The Board finds that the Office medical adviser correctly applied the Office standards to Dr. Lyle's October 15, 2004 audiogram in determining that appellant was entitled to an additional 28 percent monaural loss of hearing for the left ear and a 13 percent monaural loss of hearing for the right ear.<sup>12</sup>

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

Section 8128(a) of the Act<sup>13</sup> vests the Office with discretionary authority to determine whether it will review an award for or against compensation. Thus, the Act does not entitle a claimant to a review of an Office decision as a matter of right.<sup>14</sup>

Section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provide that a claimant may obtain review of the merits of the claim by either: (1) showing that the Office erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent new evidence not previously considered by the Office.<sup>15</sup> Section 10.608(b) provides that, when an application for review of the merits of a claim does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.<sup>16</sup> When reviewing an Office decision denying a merit review, the function of the Board is to determine whether the

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<sup>12</sup> The Board notes that the percentages of hearing loss were properly rounded to the next whole point. See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.3b. (June 2003).

<sup>13</sup> 5 U.S.C. § 8128(a) (“[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application”).

<sup>14</sup> *Jeffrey M. Sagrecy*, 55 ECAB \_\_\_\_ (Docket No. 04-1189, issued September 28, 2004); *Veletta C. Coleman*, 48 ECAB 367 (1997).

<sup>15</sup> 20 C.F.R. § 10.606(b)(2).

<sup>16</sup> 20 C.F.R. § 10.608(b).

Office properly applied the standards set forth at section 10.606(b)(2) to the claimant's application for reconsideration and any evidence submitted in support thereof.<sup>17</sup>

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

Appellant's June 27, 2005 request for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. His contention that he was entitled to a hearing aid was correct, as such had been authorized. The Office provided appellant with instructions as to obtaining reimbursement and payment for related medicals. With regards to his contention that he suffered an emotion condition as a result of his hearing loss, the Board notes that this condition has not been accepted by the Office. Additionally, appellant did not advance a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under section 10.606(b)(2) as he did not submit any evidence with his request for reconsideration. As appellant failed to submit any relevant and pertinent new evidence not previously considered by the Office, he is not entitled to a review of the merits of his claim based on the third requirement under section 10.606(b)(2).<sup>18</sup> Appellant also failed to satisfy the third requirement under section 10.606(b)(2) as he did not submit any evidence with his request for reconsideration. As appellant failed to submit any relevant and pertinent new evidence not previously considered by the Office, he is not entitled to a review of the merits of his claim based on the third requirement under section 10.606(b)(2).<sup>19</sup> Because appellant was not entitled to a review of the merits of his claim pursuant to any of the three requirements under section 10.606(b)(2), the Office properly denied the June 27, 2005 request for reconsideration.

### **CONCLUSION**

The Board finds that appellant has no greater than an additional 28 percent monaural loss of hearing for his left ear for a total left ear hearing loss of 88 percent and for a 13 percent monaural loss of hearing for his right ear, 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.

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<sup>17</sup> *Annette Louise*, 54 ECAB 783 (2003).

<sup>18</sup> 20 C.F.R. § 10.606(b)(2)(i) and (ii).

<sup>19</sup> 20 C.F.R. § 10.606(b)(2)(iii).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated August 5 and May 25, 2005 be affirmed.

Issued: May 3, 2006  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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