

On December 31, 1996 appellant, then a 43-year-old industrial hygienist, filed an occupational disease claim for a lupus condition which he attributed to the drug isoniazid (INH)

he was given as a result of a purified protein derivative conversion. He first became aware of his condition and its relation to his employment on June 7, 1993. The Office accepted that appellant developed drug-induced lupus erythematosus and paid appropriate benefits. By decision dated February 21, 2002, it granted him a schedule award for 44 percent permanent impairment of each arm and 8 percent permanent impairment of each leg.¹

Appellant subsequently developed a bilateral sensorineural hearing loss. On June 23, 2003 the Office referred the record and a statement of accepted facts to an Office medical adviser for review. In a July 25, 2003 report, the Office medical adviser opined that appellant developed sensorineural hearing loss secondary to the INH-induced lupus erythematosus. On July 30, 2003 the Office medical adviser reviewed the audiograms of record. Based on a March 11, 2003 audiogram from Dr. Bud A. West, a Board-certified otolaryngologist, the Office medical adviser found that appellant had a 0 percent hearing loss in the right ear and 83 percent hearing loss in the left ear. The March 11, 2003 audiogram reflected testing at the 500, 1,000, 2,000 and 3,000 cycles per second (cps) levels and showed the following decibel losses: 15, 0, 0 and 20 in the right ear and 90, 80, 80 and 80 in the left ear.

On August 8, 2003 the Office accepted appellant's claim for binaural sensorineural hearing loss secondary to the INH-induced lupus erythematosus. It also authorized a hearing aid for appellant's left ear. Based on the evidence of record, appellant had an 83 percent hearing loss in the left ear and a 0 percent hearing loss in the right ear. On July 12, 2007 he requested a schedule award.

By decision dated August 6, 2007, the Office granted appellant a schedule award for 83.3 percent hearing loss in the left ear. The date of maximum medical improvement was March 11, 2003. The schedule award ran for 43.16 weeks, covering the period March 3 through December 30, 2007.

In a December 17, 2007 letter, appellant contended that he had 100 percent hearing loss in his left ear. An August 23, 2007 audiogram was provided.

In a January 9, 2008 letter, the Office responded to appellant's December 17, 2007 request for an additional schedule award. Appellant was advised that, if he disagreed with the August 6, 2007 decision, he should exercise his appeal rights attached to such decision. On January 10, 2008 he requested an oral hearing.

By decision dated May 29, 2008, the Office's Branch of Hearings and Review denied appellant's request for an oral hearing, finding that it was not made within 30 days of the August 6, 2007 decision. The Branch of Hearings and Review further denied the request finding that the issue could equally well be addressed through the reconsideration process or by filing an appeal to the Board.

¹ The period of the award ran from January 8, 2001 to March 2, 2007.

LEGAL PRECEDENT -- ISSUE 1

The schedule award provision of the Federal Employees' Compensation Act² and its implementing regulations³ 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. However, the Act does not specify the manner in which the percentage of loss 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* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.⁴

The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.⁵ Using the frequencies of 500, 1,000, 2,000 and 3,000 cps, the losses at each frequency are added up and averaged.⁶ 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.⁷ The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.⁸ 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, than added to the greater loss, and the total is divided by six to arrive at the amount of the binaural hearing loss.⁹ The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.¹⁰

ANALYSIS -- ISSUE 1

The Office medical adviser applied the Office's standard procedures, detailed above, to the March 11, 2003 audiometric findings obtained on Dr. West's behalf. Appellant's March 11, 2003 audiogram tested decibel losses at the 500, 1,000, 2,000 and 3,000 cps levels and recorded decibel losses of 15, 0, 0 and 20 respectively for the right ear. The total decibel loss in the right ear is 35 decibels. When divided by four, the result is an average hearing loss of 8.75 decibels.

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404 (2002).

⁴ A.M.A. *Guides* 250 (5th ed. 2001); see *B.C.*, 58 ECAB ____ (Docket No. 06-925, issued October 13, 2006).

⁵ A.M.A. *Guides* 250 (5th ed. 2001).

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Donald E. Stockstad*, 53 ECAB 301 (2002), *petition for recon. granted (modifying prior decision)*, Docket No. 01-1570 (issued August 13, 2002).

The average loss of 8.75 decibels is reduced by the fence of 25 decibels to equal 0 decibels and, accordingly, no monaural hearing loss for the right ear.

Testing for the left ear at the frequencies of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 90, 80, 80 and 80 decibels respectively, for a total decibel loss of 330 decibels. When divided by 4, the result is an average hearing loss of 82.5 decibels. The average loss of 82.5 decibels is reduced by the fence of 25 decibels, to equal 57.5 decibels, which when multiplied by the established factor of 1.5, results in 86.25 percent monaural hearing loss, rounded to 86 percent, monaural hearing loss for the left ear.¹¹ The medical adviser issued two July 30, 2003 reports. One which noted the calculations listed 86.3 percent left ear impairment and the other, which summarized the medical adviser's findings, listed 83.3 percent left ear impairment. The medical adviser did not explain this discrepancy and it appears that it was a transcription error as the calculations, as noted, support an 86 percent left ear hearing impairment.

The Board finds that the evidence establishes that appellant has no ratable hearing loss in his right ear and that he has 86 percent impairment of his left ear. As appellant was granted a schedule award for 83 percent impairment of his left ear, he is entitled to an additional 3 percent impairment for a total 86 percent monaural hearing loss of his left ear.¹²

CONCLUSION

The Board finds that the evidence establishes that appellant has an 86 percent hearing loss in his left ear and no ratable loss of hearing to his right ear.

¹¹ The policy of the Office is to round to the nearest whole point. Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.3(b) (October 1990). The Office's August 6, 2007 decision expressed the degree of impairment as 83.3 percent. However, the decision indicates that appellant was awarded 83 percent of 52 weeks of compensation, the maximum number of weeks allowed for total loss of hearing in one ear, to yield 43.16 weeks of compensation. See 5 U.S.C. § 8107(c)(13)(a), (19).

¹² The Board notes that a claimant may seek an increased schedule award if the evidence establishes that he sustained increased impairment at a later date causally related to the accepted employment injury. A proper claim for an increase in permanent impairment is not subject to time limitations or to the clear evidence of error standard. See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.8087b (August 2002). See *Linda T. Brown*, 51 ECAB 115 (1999); *Paul R. Reedy*, 45 ECAB 488 (1994). In the instant case, appellant's December 17, 2007 letter and the August 23, 2007 audiogram constituted a request for an increased schedule award. Therefore, the Office should review this evidence on remand and issue an appropriate decision.

ORDER

IT IS HEREBY ORDERED THAT the August 6, 2007 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: January 29, 2009
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board