

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

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**M.D., Appellant**

**and**

**TENNESSEE VALLEY AUTHORITY,  
Chattanooga, TN, Employer**

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**Docket No. 07-378  
Issued: April 10, 2007**

*Appearances:*  
*Appellant, 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  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On December 4, 2006 appellant filed a timely appeal from an Office of Workers' Compensation Programs' hearing loss decision dated November 6, 2006. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this schedule award decision.

**ISSUE**

The issue is whether the Office properly denied appellant's claim for an additional schedule award for his binaural hearing loss.

**FACTUAL HISTORY**

On October 10, 1996 appellant, a 58-year-old machinist, filed a claim for benefits, alleging that he sustained a bilateral hearing loss causally related to factors of his federal employment. In a November 25, 1996 memorandum, the employing establishment indicated that appellant had been exposed to hazardous noise from September 1977 through July 1996 from welding pump castings, compressor castings, gear trains, clinker grinders, air cylinders, air tools, guillotine cylinders, and potable sump pumps, boiler feeds, pumps, turbines, gas recirculating fans, gearboxes and damper drive systems.

In an audiologic and otologic evaluation dated June 18, 1997, Dr. John D. Loucks, a Board-certified otolaryngologist, noted findings on audiological evaluation based on a June 18, 1997 audiogram. At the frequencies of 500, 1,000, 2,000 and 3,000 hertz, the following thresholds were reported: right ear -- 40, 25, 30 and 60 decibels: left ear -- 45, 40, 50 and 75 decibels. Based on these findings, Dr. Loucks concluded that appellant had a hearing loss of 20.63 percent in his right ear and a 44.25 percent loss in his left ear, which amounted to a 20 percent binaural hearing loss.

In a memorandum dated March 6, 1998, an Office medical adviser, relying on Dr. Loucks' audiogram results and calculations, determined that appellant had a 24 percent permanent binaural hearing loss.

On March 19, 1998 the Office granted appellant a schedule award for a 24 percent binaural hearing loss for the period June 18, 1997 to May 19, 1998, for a total of 48 weeks of compensation.

On October 3, 2006 appellant filed a Form CA-2 claim for an additional hearing loss. Appellant submitted copies of a September 30, 2004 audiogram which showed high-frequency hearing loss.

In a report dated November 2, 2006, an Office medical adviser reviewed the September 30, 2004 report and stated that it showed significant worsening of appellant's hearing since his June 1997 audiogram. He stated, however, since appellant apparently retired in 1996, such worsening cannot be attributed to his federal employment, as a claimant's hearing loss "does not increase when [he is] removed from [the] hazardous source."

In a decision dated November 6, 2006, the Office found that appellant was not entitled to an additional schedule award for his hearing loss. The Office noted that appellant had retired from federal employment as of July 25, 1997, and found that there was no indication that he was entitled to additional impairment due to an employment-related noise-induced hearing loss after the expiration of the 1997 schedule award.

### **LEGAL PRECEDENT**

The schedule award provisions of the Federal Employees' Compensation Act<sup>1</sup> and its implementing federal regulation<sup>2</sup> set forth the number of weeks of compensation to be paid for permanent loss of use of specified members, functions and organs of the body listed in the schedule.<sup>3</sup> However, neither the Act nor the regulations specify the manner in which the percentage loss of a member, function or organ shall be determined. The method of determining this percentage rests in the sound discretion of the Office.<sup>4</sup> To ensure consistent results and

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<sup>1</sup> 5 U.S.C. § 8107 *et seq.*

<sup>2</sup> 20 C.F.R. § 10.304.

<sup>3</sup> See *Donald A. Larson*, 41 ECAB 947 (1990); *Danniel C. Goings*, 37 ECAB 781 (1986); *Richard Beggs*, 28 ECAB 387 (1977).

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

equal justice under the law to all claimants, good administrative practice requires the use of uniform standards applicable to all claimants.<sup>5</sup>

Under the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, hearing loss is evaluated by determining decibel loss at the frequency levels of 500, 1,000, 2,000 and 3,000 hertz. The losses at each frequency are added up and averaged and a “fence” of 25 decibels is deduced since, as the A.M.A., *Guides* point out, losses below 25 decibels result in no impairment in the ability to hear everyday speech in everyday conditions.<sup>6</sup> Then the remaining amount is multiplied by 1.5 to arrive at the percentage loss of monaural loss. 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 binaural hearing loss.<sup>7</sup>

### ANALYSIS

The Board finds that the case is not in posture for decision.

The Board has long recognized that, if a claimant’s employment-related hearing loss worsens in the future, he may apply for an additional schedule award for any increased permanent impairment.<sup>8</sup> The Board has also recognized that a claimant may be entitled to an award for an increased hearing loss, even after exposure to hazardous noise has ceased, if causal relationship is supported by the medical evidence of record.<sup>9</sup> The Office’s procedure manual addresses the different procedures to be followed in schedule award cases where an original award is modified, and in cases where a claimant sustains increased impairment at a later date as follows:<sup>10</sup>

“b(1) *If it is determined* after payment of a schedule award that the claimant is entitled to a greater percentage of loss, an *amended* award should be issued. The pay rate will remain the same, and the revised award will begin on the day following the end of the award issued previously.

“b(2) *If, on the other hand*, the claimant sustains increased impairment at a later date which is due to work-related factors, an *additional* award will be payable if supported by the medical evidence. In this case, the original award is undisturbed

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<sup>5</sup> *Henry King*, 25 ECAB 39, 44 (1973); *August M. Buffa*, 12 ECAB 324, 325 (1961).

<sup>6</sup> A.M.A., *Guides* 250 (5<sup>th</sup> ed. 2001).

<sup>7</sup> *Id.* See also *Danniel C. Goings*, *supra* note 3.

<sup>8</sup> *Paul R. Reedy*, 45 ECAB 488, 490 (1994).

<sup>9</sup> *Adelbert E. Buzzell*, 34 ECAB 96 (1982).

<sup>10</sup> The Board notes that the Office erred in finding that any worsening of appellant’s hearing loss cannot be causally related to his employment because he retired from federal employment in 1996 and did not experience any additional exposure to loud noise.

and the new award has its own date of maximum medical improvement, percent and period.”<sup>11</sup> (Emphasis in the original.)

In the instant case, appellant submitted his September 30, 2004 audiogram results, which, as the Office medical adviser indicated, showed a significant worsening of appellant’s hearing loss since his 1997 audiogram. While the 2004 audiogram was not certified by a physician as accurate, it is sufficient to warrant further development of the medical evidence.<sup>12</sup>

Accordingly, as the Office has not determined appellant’s entitlement to an additional schedule award for his claimed increased hearing loss, this case must be remanded to the Office for further development.

**CONCLUSION**

The Board finds that the case is not in posture for decision.

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 6, 2006 decision of the Office of Workers’ Compensation Programs be set aside and the case remanded for further action consistent with this decision of the Board.

Issued: April 10, 2007  
Washington, DC

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

David S. Gerson, Judge  
Employees’ Compensation Appeals Board

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

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<sup>11</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.7b(1)-(2) (March 1995).

<sup>12</sup> The Board has held that, if an audiogram is prepared by an audiologist it must be certified by a physician as being accurate before it can be used to determine the percentage of hearing loss. *Joshua A. Holmes*, 42 ECAB 231, 236 (1990).