



exposed to hazardous noise from diesel engines, turbine engines, grinding tools, milling machines, rivet guns and portable air compressors.

In an audiologic and otologic evaluation dated June 9, 2006, Dr. Arnold Goodman, a Board-certified otolaryngologist, noted findings on audiological evaluation based on a June 9, 2006 audiogram. At the frequencies of 500, 1,000, 2,000 and 3,000 hertz (Hz), the following thresholds were reported: right ear -- 15, 20, 15 and 60 decibels; left ear -- 20, 15, 5 and 30 decibels. Dr. Goodman concluded that appellant had an employment-related hearing loss and recommended hearing aids.

In a memorandum dated August 11, 2006, an Office medical adviser, relying on Dr. Goodman's audiogram results and calculations, determined that appellant had a four percent permanent, right-sided monaural hearing loss.

On September 19, 2006 the Office granted appellant a schedule award for a four percent monaural hearing loss for the right ear for the period from June 9 to 23, 2006, for a total of 2.08 weeks of compensation.

On November 3, 2006 appellant requested reconsideration. He did not submit any additional medical evidence with his request.

By decision dated November 15, 2006, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require the Office to review its prior decision.

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

The schedule award provision of the Federal Employees' Compensation Act<sup>1</sup> and the 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 regulation 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 equal justice under the law to all claimants, good administrative practice requires the use of uniform standards applicable to all claimants.<sup>5</sup>

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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.*

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

Under the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*), hearing loss is evaluated by determining decibel loss at the frequency levels of 500, 1,000, 2,000 and 3,000 Hz. 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 -- ISSUE 1**

The Board finds that appellant is entitled to no greater than four monaural awards for hearing loss in his right ear, for which he has already received an award. With regard to the right ear, Dr. Goodman’s June 9, 2006 audiogram indicated that, at the frequencies of 500, 1,000, 2,000 and 3,000 Hz, the following thresholds were reported for the right ear -- 15, 20, 15 and 60 decibels. These decibels, totaled to 110 and divided by 4, obtained an average hearing loss at those cycles of 27.5 decibels. The average of 27.5 decibels, when reduced by 25 decibels (the first 25 decibels were discounted as discussed above), equals 2.5 decibels, which when multiplied by the established factor of 1.5 computes a 3.75 percent hearing loss in the right ear. This loss was rounded off for a total four percent loss in the right ear.

Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 Hz revealed decibel losses of 20, 15, 5 and 30 respectively. These decibels amounted to 70, which, when divided by 4, obtains an average hearing loss at those cycles of 17.5 decibels. The average of 17.5 decibels, reduced by 25 decibels (the first 25 decibels were discounted as discussed above), equals negative 5, which when multiplied by the established factor of 1.5 amounts to a 0 percent hearing loss in the left ear. The Office medical adviser, relying on these audiogram results and calculations, properly determined that appellant had a four percent monaural hearing loss in his right ear, for which the Office awarded him a schedule award on September 19, 2006.

The Board notes that the Office medical adviser properly applied the applicable standards of the A.M.A., *Guides*, to determine that appellant was entitled to a four percent monaural award for his right-sided hearing loss. The Board affirms this award, as there was no other probative evidence in the record establishing that appellant sustained any greater impairment.<sup>8</sup>

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

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

<sup>8</sup> The record contains several audiograms obtained by the employing establishment, but none of these were certified by a physician as accurate. 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).

## LEGAL PRECEDENT -- ISSUE 2

Under 20 C.F.R. § 10.606(b), 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 evidence not previously considered by the Office.<sup>9</sup> Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.<sup>10</sup>

## ANALYSIS -- ISSUE 2

In the present case, appellant has not shown that the Office erroneously applied or interpreted a specific point of law; he has not advanced a relevant legal argument not previously considered by the Office; and he has not constituted relevant and pertinent evidence not previously considered by the Office. The evidence he submitted is not pertinent to the issue on appeal. The Board has held that the submission of evidence which does not address the particular issue involved in the case does not constitute a basis for reopening the claim.<sup>11</sup> Appellant has not submitted any new medical evidence which addresses the relevant issue of whether he sustained any additional hearing loss.<sup>12</sup> His reconsideration request failed to show that the Office erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by the Office. The Office did not abuse its discretion in refusing to reopen appellant's claim for a review on the merits.

## CONCLUSION

The Board finds that appellant has no more than a four percent monaural hearing loss of his right ear. The Board finds that the Office properly refused to reopen appellant's case for reconsideration on the merits of his claim under 5 U.S.C. § 8128(a).

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<sup>9</sup> 20 C.F.R. § 10.606(b)(1); *see generally* 5 U.S.C. § 8128(a).

<sup>10</sup> *Howard A. Williams*, 45 ECAB 853 (1994).

<sup>11</sup> *See David J. McDonald*, 50 ECAB 185 (1998).

<sup>12</sup> Appellant contested the number of weeks he was to receive compensation pursuant to his award. However, an Office schedule award calculator contained in the record confirms that an award for a four percent monaural hearing loss confers compensation for a period of 14.56 days or 2.08 weeks.

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 15 and September 19, 2006 decisions of the Office of Workers' Compensation Programs be affirmed.

Issued: April 13, 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