



Appellant filed a claim for a schedule award and requested authorization to purchase “in ear” binaural hearing aids. The Office referred him to Dr. Robert Marwick, a Board-certified otolaryngologist, for a second opinion examination and an opinion as to the degree of his permanent hearing loss. In a report dated May 4, 2006, Dr. Marwick found that appellant had bilateral sensorineural loss, and a bilateral “mild-severe” degree of loss which does impose a communication handicap. A report of a May 4, 2006 audiogram performed by Stuart L. Cohen, an audiologist, accompanied Dr. Marwick’s report. Testing of the right ear at frequency levels of 500, 1,000, 2,000 and 3,000 hertz revealed decibel losses of 10, 10, 40 and 55, respectively and in the left ear decibel losses of 5, 5, 25 and 65, respectively. Dr. Marwick recommended binaural amplification and a binaural hearing aid evaluation.

The Office forwarded Dr. Marwick’s report to a district medical adviser for review and a determination as to the degree of appellant’s permanent hearing loss. In a May 17, 2006 memorandum, the district medical adviser agreed that appellant had a binaural hearing loss. For schedule award purposes, he concluded that appellant had a six percent permanent impairment of the right ear, and a zero percent impairment of the left ear. The district medical adviser recommended against authorizing hearing aids by placing a checkmark in the “no” box provided on the CA-51 form. By letter dated June 6, 2006, the Office informed appellant that the purchase of hearing aids was not authorized, because his hearing loss had been determined to be minimal. On July 12, 2006 the Office granted appellant a schedule award for a six percent permanent impairment of the right ear and a zero percent impairment of the left ear.<sup>1</sup>

In a letter dated July 20, 2006, Joseph E. Gillespie, an audiologist, concurred with Dr. Marwick’s recommendation for amplification devices. He noted that appellant was benefiting at that time from loaner hearing aids bilaterally.

By decision dated January 4, 2007, the Office denied authorization for the purchase of hearing aids, finding that the district medical adviser had opined that, because his hearing loss was minimal, hearing aids were not necessary.

### **LEGAL PRECEDENT**

Section 8103(a) of the Federal Employees’ Compensation Act provides that the United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances and supplies prescribed or recommended by a qualified physician, which the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of any disability or aid in lessening the amount of any monthly compensation.<sup>2</sup> The Office must therefore exercise discretion in determining whether the particular service, appliance or supply is likely to affect the purposes specified in the Act.<sup>3</sup>

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<sup>1</sup> Appellant’s representative did not request review of the July 12, 2006 schedule award decision. Therefore, the merits of that decision will not be addressed herein.

<sup>2</sup> 5 U.S.C. § 8103(a).

<sup>3</sup> *Marjorie S. Geer*, 39 ECAB 1099 (1988) (the Office has broad discretionary authority in the administration of the Act and must exercise that discretion to achieve the objectives of section 8103).

## ANALYSIS

Dr. Marwick recommended binaural hearing aid amplification for appellant's hearing loss. After reviewing Dr. Marwick's findings and accompanying audiogram, the Office medical adviser checked the block marked "no" in response to the question as to whether hearing aids were authorized. The Board finds that the case is not in posture for decision as to whether hearing aids should be authorized for appellant's employment-related hearing loss.

The Office's procedure manual provides that hearing aids will be authorized when hearing loss has resulted from an accepted injury or disease if the attending physician so recommends.<sup>4</sup> In this case, the Office's second opinion physician recommended the use of hearing aids. In its denial of authorization of hearing aids, the Office stated that the medical adviser had opined that, because his hearing loss was minimal, hearing aids were not necessary. However, the record does not reflect that the medical adviser gave any reason for his recommendation against the authorization of hearing aids.

It is well established that proceedings under the Act<sup>5</sup> are not adversarial in nature<sup>6</sup> and while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.<sup>7</sup> The Office has an obligation to see that justice is done.<sup>8</sup> While Dr. Marwick's medical report lacks sufficient medical rationale, it is sufficient to require further development of the medical evidence.<sup>9</sup> Accordingly, the Board will remand the case to the Office for further development of the evidence. The Office shall then properly exercise its discretion and issue an appropriate decision on the issue of whether hearing aids should be authorized.

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<sup>4</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Services and Supplies*, Chapter 3.400(d)(2) (October 1995).

<sup>5</sup> 5 U.S.C. §§ 8101-8193.

<sup>6</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>7</sup> *Dorothy L. Sidwell*, 36 ECAB 699 (1985).

<sup>8</sup> *William J. Cantrell*, 34 ECAB 1233 (1983).

<sup>9</sup> *Horace Langhorne*, 29 ECAB 820 (1978).

**CONCLUSION**

The Board finds that the case is not in posture for decision as to whether hearing aids should be authorized for appellant's employment-related hearing loss.

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 4, 2007 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to the Office for proceedings consistent with this decision.

Issued: June 19, 2007  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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

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