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

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| **G.L., Appellant** | ) | |
| **and** | ) | **Docket No. 07-2418** |
| | ) | **Issued: March 19, 2008** |
| **DEPARTMENT OF THE ARMY, ORGANIZATIONAL MAINTENANCE SHOP #6, New Ulm, MN, Employer** | ) | |

*Appearances:*
*Appellant, pro se*
*Office of Solicitor*, for the Director

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

### ***JURISDICTION***

On September 27, 2007 appellant filed a timely appeal from the May 18, 2006 nonmerit decision of the Office of Workers' Compensation Programs, which denied reconsideration of his case. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review this nonmerit denial. The Board has no jurisdiction to review the Office's May 4, 2005 merit decision denying a schedule award, as appellant filed his appeal with the Board more than one year after the date of that decision.

### ***ISSUE***

The issue is whether the Office properly denied appellant's May 3, 2006 request for reconsideration.

### ***FACTUAL HISTORY***

On January 14, 2004 appellant, then a 55-year-old heavy mobile equipment repairer, filed a claim alleging that he sustained a hearing loss as a result of his federal employment. The

Office obtained a second opinion from Dr. Rick L. Nissen, an otologist, who reported on July 26, 2004 that appellant had a high frequency sensorineural hearing loss causally related to his occupational exposure to noise. The Office accepted appellant's claim for bilateral sensorineural hearing loss.

Appellant filed a claim for a schedule award. An Office medical adviser reviewed the audiogram obtained by Dr. Nissen and calculated that appellant had no ratable impairment.[1] In a May 4, 2005 decision, the Office denied appellant's claim for a schedule award.

On May 3, 2006 appellant requested reconsideration. He submitted a copy of Dr. Nissen's July 26, 2004 report and argued that it showed he had a significant hearing loss due to his federal employment.

In a decision dated May 18, 2006, the Office denied appellant's request for reconsideration on the grounds that the request neither raised substantive legal questions nor included new and relevant evidence. On appeal, appellant contends that he is entitled to a schedule award and hearing aids for his employment-related hearing loss.

## ***LEGAL PRECEDENT***

The Office may review an award for or against compensation upon application by an employee (or his or her representative) who receives an adverse decision. The employee shall exercise this right through a request to the district Office. The request, along with the supporting statements and evidence, is called the "application for reconsideration."[2]

An employee (or representative) seeking reconsideration should send the application for reconsideration to the address as instructed by the Office in the final decision. The application for reconsideration, including all supporting documents, must be in writing and must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.[3]

A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence or argument that meets at least one of these standards. If reconsideration is granted, the case is reopened and the case is reviewed on its merits. Where the request is timely but fails to meet at least one of these standards, the Office will deny the application for reconsideration without reopening the case for a review on the merits.[4]

[1] Appellant's hearing levels at 500, 1,000, 2,000 and 3,000 cycles per second (cps) were 15, 15, 15 and 55 decibels, respectively, on the right and 10, 10, 25 and 45 decibels, respectively, on the left.

[2] 20 C.F.R. § 10.605 (1999); *see* 5 U.S.C. § 8128(a).

[3] *Id*. at § 10.606.

[4] *Id*. at § 10.608.

## ***ANALYSIS***

Appellant filed his May 3, 2006 request for reconsideration within one year of the Office's May 4, 2005 decision denying his claim for a schedule award. His request is therefore timely. The question before the Board is whether this request meets at least one of the standards for obtaining a merit review of his case.

The Board finds that appellant's request meets none of the applicable standards. 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 the evidence he submitted does not constitute relevant and pertinent new evidence not previously considered by the Office. He submitted a copy of Dr. Nissen's July 26, 2004 report, but this is not new evidence. The Office previously considered this report when it accepted appellant's claim and denied a schedule award.

Not every employment-related hearing loss entitles a claimant to a schedule award for permanent impairment. According to the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (A.M.A., *Guides*) (fifth edition), the ability to hear everyday sounds under everyday listening conditions is not impaired when the average of the hearing levels at 500, 1,000, 2,000 and 3,000 cps is 25 decibels or less.[5] A claimant may therefore have a hearing loss that is measurable but is not significant enough to constitute a practical impairment. Dr. Nissen's July 26, 2004 report noted that appellant sustained a hearing loss as was accepted by the Office. However, whether that hearing loss creates an impairment is another question. Dr. Nissen's July 26, 2004 report did not establish that the average of appellant's hearing levels at 500, 1,000, 2,000 and 3,000 cps was more than 25 decibels. This evidence was previously considered by the Office. Appellant's contentions, to the contrary, were not supported by any new and relevant medical evidence.

Because appellant's May 3, 2006 request for reconsideration does not meet at least one of the standards for obtaining a merit review of his case, the Board will affirm the Office's May 18, 2006 decision denying that request.

## ***CONCLUSION***

The Board finds that the Office properly denied appellant's May 3, 2006 request for reconsideration.

[5] A.M.A., *Guides* 250 (5th ed. 2001).

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the May 18, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 19, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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