



1980's, which he attributed to his 22 years of continual weapons qualification and training. The Office accepted the claim for a binaural (both ears) hearing loss and authorized hearing aids.

In a January 14, 1997 decision, the Office issued appellant a schedule award for a 13 percent binaural hearing loss. The period of the award ran from February 27, 1997 to August 30, 2006.

On September 8, 2006 the Office received appellant's request for approval of hearing aids and a January 17, 2005 audiogram. The January 17, 2005 audiogram demonstrated testing at 250, 500, 1,000, 2,000 3,000, 6,000 and 8,000 cycles per second and the right ear exhibited hearing thresholds at 40, 35, 50, 75, 80, 145 and 140 decibels, respectively while the left ear exhibited hearing thresholds of 35, 40, 50, 105, 105, 115 and no response decibels, respectively.

On April 11, 2007 the Office received appellant's request for an additional schedule award and supporting medical documentation. On March 16, 2007 Dr. Edwin W. Aldous, a treating Board-certified otolaryngologist, diagnosed a profound bilateral hearing loss. He opined that appellant had a 35 percent hearing loss impairment using the fourth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.<sup>1</sup> A March 16, 2007 report was attached.

In a December 7, 2007 letter, appellant reiterated his request for an additional schedule award and resubmitted evidence previously of record.

In a January 17, 2008 letter, appellant indicated that he was requesting reconsideration of the January 14, 2007 Office schedule award decision which granted him a 13 percent impairment for his binaural hearing loss.

By decision dated January 25, 2008, the Office found that appellant's reconsideration request was dated January 17, 2008, more than one year after the January 14, 1997 decision and was untimely. It also found that he did not submit evidence to establish clear evidence of error in the prior decision denying his schedule award claim for hearing loss.

### **LEGAL PRECEDENT**

A claimant may seek an increased schedule award if the evidence establishes that he sustained an increased impairment at a later date causally related to the employment injury.<sup>2</sup> Even if the term reconsideration is used, when a claimant is not attempting to show error in the prior schedule award decision and submits medical evidence regarding a permanent impairment at a date subsequent to the prior schedule award decision, it should be considered a claim for an

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<sup>1</sup> Hereinafter A.M.A., *Guides*. The Board notes that the tables used for determining hearing loss are the same in both the fourth and fifth editions. A.M.A., *Guides* 224-25 (4<sup>th</sup> ed. 1983) and A.M.A., *Guides* at 226-51 (5<sup>th</sup> ed. 2001).

<sup>2</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.7b (August 2002). See also *B.K.*, 59 ECAB \_\_\_\_ (Docket No. 07-1545, issued December 3, 2007); *Candace A. Karkoff*, 56 ECAB 622 (2005).

increased schedule award which is not subject to time limitations.<sup>3</sup> A proper claim for increased hearing loss is not subject to time limitations and is not subject to the clear evidence of error standard.

### **ANALYSIS**

Appellant requested an additional schedule award on April 11 and December 7, 2007. He further requested reconsideration of the January 14, 1997 schedule award decision on January 17, 2008. On January 25, 2008 the Office declined to reopen appellant's claim for further consideration of the merits finding that he failed to submit relevant new evidence and that his request was not filed within a year of the last merit decision.

The Board has long recognized that, if a claimant's hearing loss worsens in the future due to the employment exposure, he may apply for an additional schedule award for any increased permanent impairment.<sup>4</sup> Although appellant submitted a request for reconsideration on January 17, 2008, he had previously requested an additional schedule award on April 11 and December 7, 2007. In his April 11 and December 7, 2007 requests, appellant provided new audiological evidence and clearly indicated that he wanted further review of the schedule award issue. He submitted audiograms dated January 17, 2005 and March 16, 2007 and a March 16, 2007 report from Dr. Aldous. As the Office has not determined appellant's entitlement to a schedule award for his claimed increased hearing loss, this case will be remanded for further development consistent with the Office's procedures.

### **CONCLUSION**

The Board finds that the Office improperly determined that appellant filed an untimely request for reconsideration, which did not show clear evidence of error. The case is remanded to the Office to adjudicate appellant's claim for an increased hearing loss.

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<sup>3</sup> *B.K.*, *supra* note 2; *Paul R. Reedy*, 45 ECAB 488 (1994); *see also Linda T. Brown*, 51 ECAB 115 (1999).

<sup>4</sup> *Paul R. Reedy*, *id.* at 490.

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 25, 2008 decision of the Office of Workers' Compensation Programs be set aside and the case remanded for further proceedings consistent with this decision of the Board.

Issued: November 18, 2009  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board