

The Office referred appellant to Dr. Richard Dawson, an otolaryngologist, for examination. In a report dated October 10, 2005, Dr. Dawson provided a history and results on examination. He diagnosed bilateral high tone sensorineural hearing loss, left worse than right. Dr. Dawson opined that the workplace noise exposure was sufficient to have contributed to the hearing loss. The audiogram dated October 10, 2005 performed for Dr. Dawson provided the following decibel levels at 500, 1,000, 2,000 and 3,000 cycles per second (cps); for the left ear, 20, 25, 30 and 45 and; for the right ear, 20, 20, 20 and 15. Dr. Dawson opined that appellant had a 7.5 percent left ear hearing loss.

An Office medical adviser reviewed the medical evidence and in a November 16, 2005 report, concurred that appellant had a 7.5 percent monaural hearing loss in the left ear. He opined that the date of maximum medical improvement was October 10, 2005.

By decision dated June 16, 2006, the Office issued a schedule award for left ear hearing loss. The period of the award was 4.16 weeks from October 10, 2005. The Office decision stated that the hearing loss was 7.5 percent.

Appellant requested an oral hearing on June 22, 2006 and checked a box that he was open to a telephone hearing. By letter dated September 8, 2006, an Office hearing representative notified him that a telephone hearing would be held on October 11, 2006 at 1:00 p.m. Eastern time. On October 16, 2006 the Office received a letter from appellant stating that he called at 1:50 p.m. "my time." Appellant's address is Earlsboro, Oklahoma. He requested a scheduled hearing face to face. By letter October 23, 2006, the hearing representative advised appellant that rescheduling was not possible and he would conduct a review of the written record in accordance with 20 C.F.R. § 10.622.

By decision dated December 6, 2006, the hearing representative affirmed the June 16, 2006 Office decision. He also stated that appellant's request for postponement and rescheduling of the October 11, 2006 telephone hearing was denied.

LEGAL PRECEDENT -- ISSUE 1

The Office evaluates industrial hearing loss in accordance with the standards contained in the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.¹ Using the frequencies of 500, 1,000, 2,000 and 3,000 cps, the hearing levels at each frequency are added up and averaged.² Then, the "fence" of 25 decibels is deducted because, as the A.M.A., *Guides* points out, levels below 25 decibels result in no impairment in the ability to hear everyday speech under everyday conditions.³ The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.⁴ The binaural loss is determined by calculating the loss in each ear using the formula for monaural loss; the lesser loss is multiplied

¹ A.M.A., *Guides* 250 (5th ed. 2001).

² *Id.*

³ *Id.*

⁴ *Id.*

by five, then added to the greater loss and the total is divided by six to arrive at the amount of the binaural hearing loss.⁵ The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.⁶

ANALYSIS -- ISSUE 1

The audiological evaluation by the second opinion otolaryngologist, Dr. Dawson, indicated that appellant sustained employment-related hearing loss. As noted above, the degree of permanent impairment is determined by the formula set forth in the A.M.A., *Guides*. For the right ear, no ratable impairment was found. The hearing levels of 20, 20, 20 and 15 result in an 18.75 average and after the fence of 25 is deducted, there is no ratable impairment. For the left ear hearing levels of 20, 25, 30 and 45 result in an average decibel level of 30. Deducting the fence of 25 and then multiplying the result by 1.5 results in a 7.5 percent left ear hearing loss.

The 7.5 percent is then rounded up to 8 percent in accord with Office procedures.⁷ The Board notes that the number of weeks of compensation for a schedule award is determined by the compensation schedule at 5 U.S.C. § 8107(c). For complete monaural hearing loss, the maximum number of weeks of compensation is 52 weeks. Since appellant's monaural hearing loss was 8 percent, he is entitled to 8 percent of 52 weeks or 4.16 weeks of compensation.⁸

It is well established that the period covered by a schedule award commences on the date that the employee reaches maximum medical improvement from residuals of the employment injury.⁹ In this case, the Office medical adviser properly concluded that the date of maximum medical improvement was the date of examination by Dr. Dawson. The award, therefore, properly runs for 4.16 weeks commencing on October 10, 2005.

LEGAL PRECEDENT -- ISSUE 2

A claimant who has received a final adverse decision by the Office may obtain a hearing by writing to the address specified in the decision within 30 days of the date of the decision for which a hearing is sought.¹⁰ Unless otherwise directed in writing by the claimant, the Office hearing representative will mail a notice of the time and place of the hearing to the claimant and

⁵ *Id.*

⁶ *Donald E. Stockstad*, 53 ECAB 301 (2002); *petition for recon., granted (modifying prior decision)* Docket No. 01-1570 (issued August 13 2002).

⁷ *See Laura Heyen*, 57 ECAB ____ (Docket No. 05-1766, issued February 15, 2006); *Johnnie B. Causey*, 57 ECAB ____ (Docket No. 06-49, issued February 7, 2006). As the Office's procedure manual explains with respect to hearing loss, the number is rounded up from .50 and down from .49. Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.4(b)(2) (September 1994).

⁸ Although the June 16, 2006 decision stated that the degree of permanent impairment was 7.5 percent, the award was for 4.16 weeks of compensation which represents an 8 percent monaural hearing loss.

⁹ *Albert Valverde*, 36 ECAB 233, 237 (1984).

¹⁰ 20 C.F.R. § 10.616(a).

any representative at least 30 days before the scheduled date.¹¹ Scheduling of the oral hearing is at the sole discretion of the hearing representative.¹² Once the oral hearing is scheduled and appropriate notice mailed to the claimant, the oral hearing cannot be postponed except for the reasons stated in 10.622(c),¹³ unless the hearing representative can reschedule the hearing on the same docket. When the request for postponement does not meet the test of 10.622(c) and cannot be accommodated on the docket, no further opportunity for an oral hearing will be provided. The hearing will take the form of a review of the written record and a decision issued accordingly.¹⁴

ANALYSIS -- ISSUE 2

A telephone hearing was scheduled for 1:00 p.m. Eastern time on October 11, 2006. Appellant apparently called at 1:50 p.m. Central time, which would be 2:50 p.m. Eastern time. He then requested that the hearing be rescheduled and he appeared to request an oral hearing before an Office hearing representative, rather than a telephone hearing. As the above regulations indicate, the hearing representative has sole discretion regarding scheduling. Unless the requirements of section 10.622(c) are met the hearing representative can reschedule on the same docket, no further opportunity for an oral hearing is provided. The hearing representative indicated that he was unable to reschedule the hearing. In addition, there is no evidence that any of the reasons provided in 10.622(c) were applicable in this case. Accordingly, the request for a hearing takes the form of a review of the written record and an appropriate decision is issued. There is no evidence of any error with respect to the December 6, 2006 decision in this case.

CONCLUSION

The evidence does not establish that appellant has more than an eight percent monaural hearing loss. The Office hearing representative properly issued a decision based on a review of the written record in this case.

¹¹ 20 C.F.R. § 10.617(b).

¹² 20 C.F.R. § 10.622(b).

¹³ This section provides that a postponement may be granted for nonlective hospitalization or death of the claimant's parent, spouse or child.

¹⁴ 20 C.F.R. § 10.622(b).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 6 and June 16, 2006 are affirmed.

Issued: May 31, 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