Hearing Loss

Workers' Compensation Seminar
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OCCUPATIONAL HEARING LOSS

APPORTIONMENT OF PERCENT HEARING LOSS FOR AGE - Rule 876-8.10(5)

	Left Ear Hearing Level	Frequency in Hertz	Right Ear Hearing Level
1.	_____	500	_____
2.	_____	1000	_____
3.	_____	2000	_____
4.	_____	3000	_____
16474.	_____	Total of Lines 1 thru 4	_____
	Divide by 4	(Divide the "Total" by 4)	Divide by 4
6.	_____ equals	Average equals	_____
	Minus 25	Subtract "Low Fence"	Minus 25
7.	_____	equals "Excess"	_____
	Multiply by 1.5	Multiply % Factor	Multiply by 1.5
8.	(Left) _____	Equals % Loss Each Ear	(Right) _____

9. Age on Date of Injury _____

10. Age at Beginning of Employment _____

11. _____ Correction for Age on Date of Injury in dB From Table
    Minus
12. _____ Correction for Age at Beginning of Employment in dB From Table
    Equals
13. _____ Age-Related Change in Hearing Level During Employment in dB

	LEFT EAR		RIGHT EAR
		Divide age-related change in hearing level from Line 13 by average hearing level from Line 6 - To obtain	
14.	_____	Age Correction Factor	_____
		Multiple % loss from Line 8 by age-correction factor from Line 14 - To obtain	
15.	_____	Deduction for age-correction	_____
		Subtract Line 15 from Line 8 - To obtain	
16.	_____	Age-Corrected Percent Hearing Loss	_____

BINAURAL PERCENTAGE LOSS

17. _____ % Loss Better Ear (Smaller amount) From Line 16
    Multiplied by 5, Plus
18. _____ % Loss Worse Ear (Larger amount) From Line 16
19. _____ Equals
    Divided by 6 Equals
20. _____ % Age-Corrected Binaural Hearing Loss

APPORTIONMENT OF PERCENT HEARING LOSS FOR AGE - Rule 876-8.10(5)

	Left Ear Hearing Level	Frequency in Hertz	Right Ear Hearing Level
1.	20	500	20
2.	15	1000	20
3.	65	2000	50
4.	65	3000	70
5.	165	Total of Lines 1 thru 4	160
	Divide by 4	(Divide the "Total" by 4)	Divide by 4
6.	41.25	equals Average equals	40
	Minus 25	Subtract "Low Fence"	Minus 25
7.	16.25	equals "Excess"	15
	Multiply by 1.5	Multiply % Factor	Multiply by 1.5
8.	(Left) 24.375	Equals % Loss Each Ear	(Right) 22.5

9. Age on Date of Injury ___56_____

10. Age at Beginning of Employment ___26_____

11. _14.25_ Correction for Age on Date of Injury in dB From Table

Minus

12. __6.25_ Correction for Age at Beginning of Employment in dB From Table

Equals

13. __8____ Age-Related Change in Hearing Level During Employment in dB

	LEFT EAR		RIGHT EAR
	Divide age-related change in hearing level from Line 13 by average hearing level from Line 6 - To obtain		
14.	_.194__	Age Correction Factor	__.2___
	Multiple % loss from Line 8 by age-correction factor from Line 14 - To obtain		
15.	_4.729_	Deduction for age-correction	__4.5__
	Subtract Line 15 from Line 8 - To obtain		
16.	_19.646_	Age-Corrected Percent Hearing Loss	__18___

BINAURAL PERCENTAGE LOSS

17.	__90___	% Loss Better Ear (Smaller amount) From Line 16
		Multiplied by 5, Plus
18.	_19.646_	% Loss Worse Ear (Larger amount) From Line 16
19.	_109.646_	Equals
		Divided by 6 Equals
20.	_18.674__	% Age-Corrected Binaural Hearing Loss

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The major new development with regard to occupational hearing loss occurred on July 1, 1998, the effective date of legislation requiring apportionment of hearing loss between that related to work and that not related, and specifying the method of apportionment. Whether that legislation changed, or merely reaffirmed and clarified prior law is subject to debate, but in either case, present law requires apportionment. There have been no major developments in the law subsequent to July 1, 1998, other than the workers' compensation commissioner's implementing rules. This article addresses the law as it now exists.

THE MEDICINE

In order to apply the law of occupational hearing loss it is necessary to have a basic understanding of relevant medicine and audiology. Hearing levels are measured in decibels (dB). You can think of 0 dB as equivalent to 20/20 sight. Those are the defined levels of "perfect" hearing and sight, even though some people see better than 20/20 and some people hear better than 0 dB. It would not be rare for a young child to hear at a negative dB level. As people age, their hearing levels gradually decline so that, as an example, an average 21 year old male who has grown up in a quiet environment hears at a 5.5 dB level. To say that someone hears at a 5.5 dB level means that for that person to hear a sound, its loudness must be at least 5.5 dB. An average 60 year old male who has lived his life in a quiet environment hears at a 16 dB level. By definition, 91.7 dB is the level of total hearing loss, although it is not literally correct that at that level a person is totally deaf. Someone who hears at 40 dB may be said to have a 40 dB hearing loss (but not a 40 dB impairment, disability or handicap).

As well as varying in loudness, sound varies in frequency. Frequency is measured in Hertz (Hz). Everyone is familiar with the fact that humans cannot hear sounds below or above certain frequencies. Typically, audiograms measure hearing levels at discrete intervals between 500 and 8000 Hz, all of which are diagnostically significant. The frequencies most important to speech are 500, 1000, 2000 and 3000 Hz. Opinions vary as to the importance of 4000 Hz.

Our hearing is not uniform across frequencies. Thus, as an example, an audiogram in one of my files shows 20dB at 500 Hz, 15 at 1000, and 65 at 2000 and

3000. For that person to hear a sound at 500 Hz, it would have to be at least 20 dB in loudness, but for the same person to hear a sound at 2000 Hz, it would have to be at least 65 dB. Because separate reference to each frequency is unworkable, an average hearing level is usually computed. Thus, in our example, the person would have an average hearing level over 500–3000 Hz of 41.25 dB (20+15+65+65 divided by 4).

A person who has an average hearing level of 10 or 15 or 20 dB would not likely notice any difficulty in hearing, but at 25 dB would probably start to notice a little difficulty. Such a person might start to have to listen closely to hear conversations in a crowd and his or her spouse might notice more requests to repeat in conversation. Since the 1950's the medical profession has regarded 25 dB as the level at which a hearing handicap begins. As stated in the AMA Guides, "If the average of the hearing levels at 500, 1000, 2000, and 3000 Hz is 25 dB or less...no impairment is considered to exist in the ability to hear everyday sounds under everyday listening conditions." *Guides to the Evaluation of Permanent Impairment, Fourth Edition, p. 224* For every dB over 25, a 1.5 per cent impairment is assigned. The 1.5 figure is derived by subtracting 25 (the level at which impairment begins) from 91.7 (the level of complete loss) to obtain a remainder of 66.7, which when multiplied by 1.5 equals 100. Thus, someone who hears at the 91.7 level has a 66.7 dB and a 100 per cent impairment, disability or handicap. Someone who hears at the 30 dB level has a 5 dB and 7.5 per cent impairment, disability or handicap.

Our hearing is not the same in both ears, so measuring percentage loss in each of our ears separately does not quantify how well we hear overall. Most of us know someone who is deaf in one ear, but who has good hearing in the other, and who overall hears reasonably well. Essentially, the good ear makes up for the bad ear. Therefore, since the 1950's the accepted method of weighting the ears has been to multiply the percentage impairment in the better ear by 5, add the percentage impairment in the worse ear, and divide the result by 6. Obviously, the exact numbers are somewhat arbitrary, but if you consider my example above the number will probably seem about right. A person with 0 per cent loss in one ear and 100 per cent in the other, would have a bilateral loss of 16.67 per cent (0+100 divided by 6=16.67).

Hearing loss is of two kinds, sensorineural and conductive. Conductive loss, as the name implies, relates to blockage in the conduction of sound waves. A torn or scarred eardrum is an example. Sensorineural loss, as the name again implies, relates to transmission of sound due to nerve damage. A pure tone audiogram, which is the kind usually initially utilized, does not distinguish between sensorineural and conductive loss, although the pattern of test results at the various frequencies can give some hints. Bone conduction audiograms are used to make the distinction.

The three most common causes of sensorineural hearing loss are age, genetics and exposure to excessive noise levels over time. A long list of other possible causes includes diseases and drugs.

Whether noise causes damage is a factor of loudness and duration. The vast majority of physicians and audiologists place 85dB, not 90dB, as the minimum noise level which will result in harm over a continuing 8 hour per day exposure. In other words, less than 85 dB would not be harmful. The louder the noise, the shorter the duration of exposure which will result in loss. For instance, most physicians would not think a continuing 4 hour per day exposure at 90 dB would be injurious, but 4 hours at 100 would be.

If there have been no noise studies of a particular location, the rule of thumb for whether a noise level is potentially injurious is whether someone conversing at arms length has to significantly raise his or her voice to communicate. Obviously, this is a rough estimate because people speak at different dB levels and an "arms length" is not uniform. Modern noise studies produce a variety of data for the measured location, including Lavg (average for an activity), Lmax (maximum sustained), Lpk (peak) and TWA (time weighted average). Of these, it is the time weighted average which is of most significance because it reflects both loudness and duration, which is the relevant information for determining whether the exposure is injurious. As an example, a study in one of my files shows that a particular worker operated a forge for .5 hours with Lavg of 102.7, Lmax of 111.1 and Lpk of 128.3 and another task for 6.75 hours with Lavg of 77.7 and Lmax of 84.9 (Lpk not applicable). The TWA was 87.2. Typically, older studies do not report a time weighted average and represent only Lavg or simply a point in time reading.

Whether sound is injurious is not dependant on ambient noise levels, but rather, on the level of sound reaching the eardrum. If hearing protection is not worn, these levels are the same, but if hearing protection is worn, the noise level is reduced. A yellow foam plug device currently in common usage has a noise reduction rating (NRR) of 29 dB, which means that under laboratory conditions it reduces ambient noise by 29dB. This, however, is fiction in the real world. With near uniformity among physicians and audiologists, the noise reduction provided by a protective device is half of the NRR. Thus, in the example above, using yellow foam plugs, ambient noise of 87.2 is reduced to 72.7 (87.2-14.5=72.7). Ambient noise above 99.5 would be necessary to produce a potentially injurious level of 85 after attenuation (99.5-14.5=85).

Sensorineural hearing loss due to noise is not progressive. In other words, when exposure to noise stops, progression of the loss stops. Likewise, once sensorineural loss occurs, hearing does not improve, with one exception. Some permanent improvement in hearing may occur within a few days, or at most few weeks, immediately following removal from excessive noise.

LAW AND MEDICINE

Now that we have a basic understanding of applicable medicine and audiology, the statute, Chapter 85B, becomes relatively easy to understand. Let's start with what constitutes an excessive noise exposure. An excessive noise exposure is defined as "exposure to sound capable of producing occupational hearing loss." *Section 85B.4(1), Code of Iowa*. Excessive noise exposure is further defined in Section 85B.5 wherein there is a chart which shows permissible durations of exposure to various sound levels ranging from 8 hours per day at 90 dB to 15 minutes at 115 dB. It is, however, not necessary to prove exposure to levels or durations above those in the chart to prove excessive noise exposure. Proof of exposure above the levels and durations in the chart is presumptive evidence of excessive noise exposure, but not the only means of proof. *Muscatine County v. Morrison, 409 N.W.2d 685(Iowa 1987).* In other words, excessive noise exposure may be proven just like any other medical fact: an appropriate expert, usually an otologist, otolaryngologist or audiologist, opines that the exposure was excessive. In fact, this author has never encountered a claim in which excessive noise exposure was sought to be established by proof of durations and levels above those in the chart, but you can imagine how difficult it would be and how many pitfalls would lie in the path. Due to a defect in his medical testimony, one claimant found himself in a position where he had to try, without success, to meet the requirements of the chart. *Scheuermann v. Oscar Mayer Foods, 515 N.W.2d546(Iowa 1994).* Review of *Scheuermann* demonstrates why use of the chart is not ordinarily a good way to prove a claim.

This does not mean that the chart in 85B.5 is irrelevant. It is very useful for persuasive purposes when coupled with expert testimony. The chart, perhaps in conjunction with medical literature, can be used by a claimant to challenge a doctor who is finding higher levels or longer durations of exposure not to be injurious. Conversely, it can be used by a defendant to challenge a doctor who is testifying that noise exposures are injurious. Either by use of the "arms length" rule or actual data, experts usually have information sufficient to express an opinion that noise levels are high, but often they do not have good information with respect to duration. In the case of the forge operator mentioned above who had Lavg of 102.7, Lmax of 111.1 and Lpk of 128.3, a doctor who testified with the knowledge that forge operating is noisy work, but without the knowledge that this particular operator's TWA was 87.2, might

be embarrassed, although in this example, 87.2 is still too high unless hearing protection was worn. The chart can also be used in conjunction with knowledge of part-time hearing protection usage to reflect on whether exposure levels and durations did or did not constitute excessive noise exposure.

Before it matters whether there is excessive noise exposure, there must first be a hearing impairment. Above, we have addressed measurement of hearing impairment from a medical standpoint, and now we turn to measurement legally. Section 85B.9 sets forth the methodology for computing percentage of impairment, and *it is exactly the same as the medical methodology* discussed above. The legislature simply codified the most commonly used and most widely accepted methodology in the medical profession–25dB as the impairment threshold (often referred to as the "low fence"); 500, 1000, 2000 and 3000 Hz as the relevant levels; 1.5 per cent impairment for each decibel of loss over 25dB; weighting of the better ear at 5 times the worse ear. Essentially, the legislature adopted the AMA guide, which, in turn, adopted the methodology of medical organizations.

If at this point we have determined that the workplace was too noisy and that the worker has a hearing impairment, the next step is determination of whether there is an *occupational hearing loss.* Here is the definition as stated in Section 85B.4:

> "*Occupational hearing loss*" means that portion of a permanent sensorineural loss of hearing in one or both ears that exceeds an average hearing level of twenty-five decibels for the frequencies of five hundred, one thousand,, two thousand, and three thousand Hertz arising out of and in the course of employment caused by excessive noise exposure. "*Occupational hearing loss*" does not include loss of hearing attributable to age or any other condition or exposure not arising out of and in the course of employment.

From the definition we note that an occupational hearing loss must be a sensorineural loss. That is because only sensorineural losses are caused by prolonged exposure to noise; conductive losses are not. Thus, it must be medically determined whether the loss measured by the audiograms is in whole or in part sensorineural or conductive. Most of the hearing losses which you encounter will be sensorineural, and if the audiologist or physician notices anything indicative of a conductive loss, he or she will most likely so note. If there is anything which points toward a conductive loss then a bone conduction audiogram is essential. (Actually, it could also just be wax in the ears, so cleaning and repeat pure tone audiogram might be sufficient.) Impairment due to sensorineural loss is compensable; impairment due to conductive loss is not.

If we have now determined that there was excessive noise exposure and have determined that all or what portion is sensorineural, we move on to determination of "*that portion*" "*arising out of and in the course of employment,*" which "*does not include loss of hearing attributable to age or any other condition or exposure not arising out of and in the course of employment.*" This is legalese for saying that we have to figure out what part of the sensorineural loss was caused by prolonged exposure at work and what part was caused by something else. This is, in fact, what most cases are about.

The starting point for making the apportionment is age. The definition of occupational hearing loss in Section 85B.4 as set forth above requires that age-related loss (presbycusis) be taken out. Section 85B.9 specifies the methodology:

> The apportionment of age-related loss shall be made by reducing the total binaural percentage hearing loss as calculated pursuant to section 85B.9, subsection 3, by the same percentage as the decibels of age-related loss occurring during the period of employment bears to the total decibel hearing level in each ear.

The methodology specified in Section 85B.9 is flawed, but whether or not flawed, it is the law, and is the methodology which the workers' compensation commissioner followed when promulgating a rule to implement the statute. If you carefully consider the statute you will note that the numerator in the equation reduces the age-related loss at the end of employment by that at the beginning of employment, but the denominator does not reduce the hearing level at the end of employment by that at the beginning, thus resulting in a smaller deduction for age. The reason for the omission is probably that the hearing level at the beginning of employment is usually unknown. The exact formula for apportioning age during the period of employment is specified in I.A.C. 876–8.10(4) and a worksheet is provided in 8.10(5). Two copies of the worksheet follow this article. One is completed as an example and the other is blank for your own use.

I.A.C. 876–810(3) is the reference for determining age-related loss at relevant points in time. The figures in the table are based on data relating to persons who had lived their lives in quiet environments, and thus, were minimally influenced by noise. Applying the table, the average female aged 50 who had lived in a quiet environment would have a 13.5 dB loss, so if her total loss was 30, the loss not due to age would be 16.5.

Once the non-age related impairment is computed, the apportionment process is not done. Next, we have to apportion out all of the loss before employment by the

employer began, all of the loss after the employment ended, and the loss during the period of employment not related to age or employment. If you are the employer, it is your burden to prove what portion of the age-corrected impairment as computed using the commissioner's worksheet is not related to employment. How is this done? The quick answer is by presenting expert testimony addressing causal relationship. Obviously, though, the expert needs information to formulate an opinion. This means that the experts, whether for the claimant or defendant, need to know as much as possible concerning the employee's noise exposures before, during and after the period of employment, as much as possible about medical conditions and activities that can result in hearing loss, and as much as possible about hearing levels before and after the period of employment. The possible bases for determining that a portion of the loss is unrelated to the employment are so numerous that I will give only a few examples.

If an entry audiogram or an audiogram preceding the employment exists, it is obvious that none of the decibels shown on those audiograms are related. If there is not an old audiogram, you still know that the decibels of age-related loss at the beginning of employment are not related, so using the commissioner's table, for a male aged 35 at beginning of employment, 8 dB of loss would probably preexist. Prior employments, hobbies such as hunting and music, medical conditions and activities such as drug usage are all possibilities. Most of the same information is useful for apportioning out loss during the period of employment. During the period of employment it may be that not all of the jobs claimant performed were noisy, so if you can relate part of the loss to a period when claimant was not exposed to excessive noise, such as by reference to annual audiograms, that part is obviously unrelated. The pattern of a series of audiograms over the period of employment may be relevant to a physician with respect to causation. Many physicians believe that a pattern of rapidly increasing sensorineural loss which occurs after many years of employment is not attributable to noise. If loss continues to increase after employment ends, that is not related to employment, and absent some known change in exposure, activities or health, may be evidence relevant to cause of loss during employment. If hearing protection effective to 14.5 dB is worn for the last 5 years of employment, and the employee is exposed to ambient noise of 95 dB TWA, the last 5 years of loss is not likely related. If loss beyond normal aging occurs during a period when effective hearing protection was worn, that may reflect on whether whatever was causing that loss was also the cause of loss when hearing protection was not worn. Most physicians will testify that in most cases the loss at 500 Hz is not related to noise, so you may be able to discard all of the decibels of loss at that frequency, and depending on duration of exposure many physicians will testify that all or some of the loss at 1000 Hz is unrelated. An asymmetrical loss is most often an indication that to the extent of asymmetry the loss is unrelated, although not always. Again, these are just

examples, and by no means complete.

Overall, there are two approaches to apportionment. It can be shown that a particular portion of the loss is not related to work. For instance, if there is hearing protection effectively reducing exposure to non-injurious levels worn during a portion of the employment, the loss occurring during that portion is unrelated and there is no need to show what did cause the loss. On the other hand, if an employee is subjected to excessive noise at work, there must be proof of an alternate cause, for instance, trap shooting or diabetes, and of the effect of the alternate cause.

If you are a claimant, how do you overcome evidence entitling the employer to apportionment? The easy answer is by developing contrary evidence. For example, if the employer's doctor thinks half of the loss at 1000 Hz is unrelated, perhaps your doctor will think that none of the loss or only a quarter of the loss at that frequency is unrelated. Additionally, it is crucial that you carefully examine the methodology utilized in making the apportionment. For instance, suppose a doctor discarded all of the decibels at 500 Hz as being unrelated and also discarded all pre-employment loss based on an entry audiogram. The entry audiogram would have included some of the decibels at 500 Hz, so some of the loss would have been thrown out twice. The points where this kind of double-dipping can occur are numerous, so the best advise that can be given is to think carefully about the methodology. It's not a matter of law or medicine, just a matter of reasoning

Another warning which must be given is to be sure that the process of deciding what portion of a loss is employment-related and what is not, is truly one of apportionment and not simply one of subtraction. Suppose, for example, a person hears at a 30 dB level, and therefore, has an impairment of 7.5 per cent. A physician might testify that half of the impairment is related to work, in which case the employee would be entitled to 3.75 per cent. That is proper apportionment. However, I have seen instances where invalid methodologies were used. Suppose the same person with hearing at the 30 dB level, some of which is work-related. Suppose also that the testimony in the case is that 15 of those 30 decibels are not work- related. If those 15 decibels are deducted, that leaves only 15 decibels of loss. Therefore, since the work-related loss is less than 25 dB, there is no compensable loss. Wrong! That is subtraction, not apportionment. The apportioned impairment is still 3.75 per cent because half of the loss is work-related.

Occupational hearing loss is compensated on the basis of the binaural loss. Once the percentage of occupational hearing loss (binaural) is known, the final step is to figure the worker's entitlement. Total loss of hearing equates to 175 weeks of compensation, and partial loss is figured as a percentage of 175. If a person has a

3.75 percent binaural loss, he or she is entitled to 6.56 weeks of compensation (.0375 X 175=6.56). *Section 85B.6, Code of Iowa*
The worker is also entitled to "a hearing aid for each affected ear unless it will not materially improve the employee's ability to communicate." *Section 85B.12, Code of Iowa*.

MORE LAW

Because the date of a hearing loss is neither certain nor intuitive, the date of occurrence is specified in the statute. Section 85B.8 provides in relevant part as follows:

> The date of injury shall be the date of occurrence of any one of the following events:
>
> 1. Transfer from excessive noise exposure employment by an employer.
> 2. Retirement.
> 3. Termination of the employer-employee relationship.
>
> The date of injury for a layoff which continues for a period of longer that one year shall be six months after the date of the layoff.

Whichever of the above occurs first is the date of injury. *John Deere Dubuque Works v. Weyant, 442 N.W.2d 101 (Iowa 1989).* However, the "discovery rule"applies to hearing loss claims, so if the worker did not "discover" the hearing loss and its relationship to work, the date of injury is extended to the point of discovery. *John Deere Dubuque Works v. Meyers, 410 N.W.2d 255 (Iowa 1987).* (For more on the discovery rule see the section of this book relating to statutes of limitations.)

Even though a date of injury can be determined, a claim for occupational hearing loss cannot be made until one month following the date of injury. *Section 85B.8, Code of Iowa.* The basis for this waiting period is, as discussed above, that there can be improvement in hearing for a short time following removal from excessive noise exposure. (Note that the "law book" published by the Iowa Workers' Compensation Advisory Committee contains a misprint and incorrectly states six months, rather than one month.)

Determination of a retirement or termination date is usually easy, but it can be

more difficult to determine whether there has been a "transfer from excessive noise exposure employment by an employer." In *John Deere Dubuque Works v. Weyant* the worker had been transferred from a noisy area of the factory to a job in a quieter area. If the date of injury was the date of transfer, the statute of limitations would have barred the claim. The Court, however, endorsed the test used by the deputy commissioner in his arbitration decision and adopted a four-step analysis for determining whether a transfer was an occurrence within the meaning of Section 85B.8:

> ...a transfer under section 85B.8 means:
>
> > (1) A clearly recognizable change in employment status
> > (2) which provides a reduction of noise exposure to a level that is not capable of producing an occupational hearing loss and
> > (3) which is permanent or indefinite in the sense that there is no reasonable expectation that the worker will be returned to a position with excessive noise level exposure in the ordinary course of operations in the employer's business.
> > (4) It must also actually continue for at least six months.

Under this test the normal rotation of an employee from one area of a factory to another is not an occurrence within the meaning of the statute, since that employee remains eligible for reassignment. However, one can envision circumstances where transfers would constitute an occurrence. An example might be a factory worker who received a promotion to supervisor or to a job in the office, or maybe a factory worker who, because of permanent physical restrictions, was permanently reassigned.

In evaluating a claim it is very important for both sides to consider whether there have been transfers within the meaning of the statute. A claimant can potentially lose the right to make a claim by failing to recognize a transfer, and a defendant can potentially defend a claim based on there having been a transfer more than two years prior to the filing. It is equally important, in the case of long term employment, that it be determined whether there have been layoffs lasting more that one year, since that could provide the basis for missing the statute or defending a claim. It is easy to recognize a layoff, but often memories fade as to the duration of a layoff which occurred many years ago.

If the employer's physician or audiologist has assessed occupational hearing loss and the assessment is disputed by the employee, "the employee may select a physician or licensed audiologist similarly trained and experienced to give an

assessment of the audiometric examinations." *Section 85B.9(4), Code of Iowa.* Use of the IME is useful for the purpose of determining apportionment, but only occasionally helps on the question of the extent of the unapportioned impairment. The relevant question is the impairment on the date of injury, since, medically, sensorineural hearing loss is not progressive. Thus, unless there is reason to question the accuracy or consistency of the audiogram closest in time to the injury date, a later audiogram showing a greater loss will not increase the value of the claim. On the other hand, an audiogram taken close in time to the injury date will not be followed if it appears to be out of line with other audiograms. Formerly, the law required use of the lowest audiogram taken after notice of an occupational hearing loss claim, but current law allows the physician or audiologist to determine which examinations to use. *Section 85B.9(4), Code of Iowa.*

PRACTICAL ADVICE

Some parts of handling hearing loss claims are very exact, for instance, the plugging of numbers into formulas. Other parts are very inexact, for instance, the determination of what portion of a hearing loss is related and what portion is unrelated to employment. Essentially, other than for age, the apportionment process is one of making estimates. If a case goes to hearing, the estimates are made by experts, but short of going to hearing, there is no reason why the parties cannot make those estimates themselves, perhaps with the assistance of attorneys, but without the expense of obtaining formal medical opinions. As an example, I defend a large number of hearing loss claims made by one group of very knowledgeable claimant's attorneys. We look at each claim in light of what we know about the extent of the noise, the wearing of hearing protection, the extent of outside exposures, and anything else relevant to the particular claim, and make our own estimates. Sometimes one side has developed its evidence. The employer has a doctor saying there should be a big deduction or the employee has a doctor saying there should be none. We don't usually make the other side develop its evidence because both sides know perfectly well that medical opinions will vary. Sometimes we deduct only a little from the age-corrected impairment as being unrelated and sometimes we deduct a lot, but I am confident that we don't miss the mark by far and deliver benefits to claimants more timely and at less expense. In short, we get to the bottom line much more quickly by simply being reasonable with each other.