

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

LARRY DITMER)	
Claimant)	
VS.)	
)	Docket No. 1,057,716
U.S.D. 345)	
Respondent)	
AND)	
)	
TRAVELERS INDEMNITY CO.)	
Insurance Carrier)	

ORDER

Claimant requested review of the December 3, 2012, Award by Administrative Law Judge Rebecca Sanders. The Board heard oral argument on March 13, 2013.

APPEARANCES

John J. Bryan, of Topeka, Kansas, appeared for the claimant. Katharine M. Collins, of Overland Park, Kansas, appeared for respondent and its insurance carrier. Due to a conflict, Board Member John F. Carpinelli has recused himself from this appeal. Accordingly, Joseph Seiwert, of Wichita, Kansas, has been appointed as a Board Member Pro Tem in this case.

RECORD AND STIPULATIONS

The Board has considered the record and adopted the stipulations listed in the Award.

ISSUES

The Administrative Law Judge (ALJ) found it has not been established that it is more probably true than not true that claimant's working conditions caused his hearing loss. The ALJ also concluded that claimant's hearing loss did not arise out and in the course of claimant's employment with respondent because the working conditions have not been shown to be the prevailing factor causing claimant's hearing loss.

The dispute involves whether claimant's hearing loss was caused by noise exposure at work, or as a result of presbycusis, age-related hearing loss, or some other cause. Claimant contends that the loss stems from his long term exposure to noise created in the shop where he worked for respondent. Claimant argues benefits should be awarded for a 14.4 percent binaural hearing loss, for payment of hearing aid bills in the amount of \$3,600, and for future authorized hearing aid repair through Dr. Tourillott.

The claimant requests review the following:

1. Whether claimant met with personal injury by repetitive trauma;
2. Whether the repetitive trauma is the prevailing factor in causing claimant's hearing loss and the resulting impairment or disability;
3. Whether claimant gave timely notice;
4. Nature and extent of claimant's disability;
5. Whether claimant is entitled to reimbursement of past and current medical expenses, and future medical treatment.

Respondent argues the Award should be affirmed and compensation denied as claimant failed to meet his burden of proving that his exposure to noise, while employed with respondent, is the prevailing factor in causing both the medical condition and resulting disability or impairment.

FINDINGS OF FACT

Claimant began working for respondent in August 1973 as a industrial technology teacher and school bus driver. He retired from teaching in May 2011, but continues to drive a school bus.

When claimant was teaching he taught 5-6 classes a day for 50 minutes each. He testified that the noise level in the shop was high due to having 30 students in a room with hard tile and concrete floors with at least 20 of those students using hammers for 40 minutes. He tried to use earplugs, but was unable to hear the students and address their issues without constantly removing the earplugs. Many of the other teachers at the school complained about the noise, especially those in the science department who shared an adjoining wall. At the end of the day, claimant had ringing in his ears that did not resolve until the next day, only to return when he went in for work.

Claimant testified that when he first began working for respondent no hearing protection was provided. Ultimately, when protection was finally provided, he only used it when he was using one of the real screaming machines like the router and the planers. The rest of the time he had to be able to hear the students. Claimant testified that radial arm

and table saws, along with jointer, and sanders were also used in the class and that it sounded like a bee hive when the those items were in use.

Claimant testified he first noticed problems with his hearing 20 years ago, when he had problems hearing the phone ring. He did not indicate that the difficulty hearing was related to his job. Claimant didn't go for a hearing test when he first noticed these problems, for economic reasons. He also didn't think it would make a difference and he was afraid to complain for fear of losing his job.

Claimant had his first hearing test in August 2011 with Dr. Tourtillott, who determined claimant could not hear high-pitched noises. Claimant testified Dr. Tourtillott told him the hearing loss was due to exposure to the loud noises in the shop at the school. Claimant was prescribed hearing aids, which he utilizes 90 percent of the time. He does not use them when he is sleeping or doing work around the house.

The problems with claimant's ears include ringing and inability to hear high-pitched noises, such as little kids' voices and ringing telephones. Claimant testified that the hearing aids have improved his hearing.

Claimant testified that after he was diagnosed with hearing loss on August 30, 2011, he went to respondent on August 31 to ask what could be done from a workers compensation standpoint to help cover the costs. Claimant testified that he first spoke to the principal and then to Val Warkentine in the central office where workers compensation paperwork was filled out and filed. Claimant testified that he did not find out until after he retired that one of his coworkers, Robert Davis, had also filed a workers compensation claim with respondent for hearing loss.

Robert Davis, a bus driver for respondent, testified that he worked with claimant for 32 years teaching classes in the Industrial Arts department for respondent. They continue to work with each other as bus drivers. Mr. Davis testified that during the construction process the noise level in the shop was horrendous and would literally give him a headache. He testified that because of the noise he only did the job for a couple of years while claimant continued on. He testified that while he performed the job he did not use hearing protection because he needed to be able to maintain a safe environment for the students, which he couldn't do if he couldn't hear what was going on. Mr. Davis testified that over the years he has suffered hearing loss and before he retired he had a hearing test, which confirmed the loss and he was provided hearing aids.

Claimant's wife of 41 years, Lois, testified that claimant has had problems with his hearing for at least 19 years. She testified that she noticed there was a problem when claimant would tell her to speak up louder and quit mumbling. And he would crank up the volume of the tv and radio. Mrs. Ditmer testified that there was a lot of noise in the construction classroom and there was a lot of miscommunication before her husband received his hearing aids.

Justin Tourtillott, Au.D, an audiologist, testified he specializes in hearing imbalance assessments. Dr. Tourtillott has been in private practice for nine years and sees 10-15 patients a day, five days a week.

Dr. Tourtillott testified that a hearing examination involves checking the ear canal to make sure everything is clear, checking the pressure in the middle ear to make sure there is no fluid or infections and then the patient is put in a booth to do a pure tone examination to check the threshold of different frequencies. He testified to different types of hearing loss: presbycusis, which is age-related hearing loss; noise induced hearing loss from noise exposure; conductive hearing loss, which is a medical condition in the middle ear; hereditary hearing loss; and some hearing loss with ototoxic medications or chemotherapy.

Dr. Tourtillott indicated that working in a 30 by 30 classroom with a hard floor, hard walls and 20 students hammering nails and wood for most of a 50 minute period, five to six classes a day for many years, could cause hearing loss. He testified that the general rule is if you can't hear conversation at three feet then there's noise at a level that's probably damaging your hearing.

Claimant was seen on two occasions and Dr. Tourtillott determined claimant's hearing loss is noise induced. He didn't feel claimant's loss was presbycusis because of the pattern of the loss. Claimant was found to have a binaural hearing loss of 14.4 percent and was prescribed hearing aids which have proven to be very beneficial.

Claimant met with Gregory A. Ator, M.D., a board certified otolaryngologist, for an examination on December 6, 2011, at the University of Kansas Medical Center. Dr. Ator examined claimant and opined he has sensorineural hearing loss not on the basis of occupational factors, but on an asymmetric hearing loss pattern. He believes claimant needs a hearing aid. He does not believe claimant's hearing loss is related to his work.

He testified that in order for claimant to have noise-induced hearing loss, claimant's hearing pattern would have to be symmetrical. In the alternative, if claimant had reported a specific event that went off in one ear, that would have probably produced an asymmetrical damage pattern.

Dr. Ator disagreed with Dr. Tourtillott's opinion regarding presbycusis, indicating that presbycusis can have a variable pattern possibly depending on genetic factors that can lead to the degeneration process that is presbycusis. Dr. Ator found that claimant has a weak noise pattern in the left ear and none on the right, with a family history of age-related hearing loss. He also feels hearing loss is dependent more on the genetic history than old age.

PRINCIPLES OF LAW AND ANALYSIS

The Board has reviewed the Award of the ALJ, finding it to be accurate and well set forth. The Board adopts the Analysis & Conclusions of Law contained in the Award in toto. The Board finds claimant has failed to prove that his working conditions caused or were the

prevailing factor in his hearing loss. The opinion of Dr. Ator is the more credible and persuasive. The Board finds the Award should be affirmed.

CONCLUSIONS

Having reviewed the entire evidentiary file contained herein, the Board finds the Award of the ALJ should be affirmed. Claimant has failed to prove his hearing loss stems from his work with respondent or that the noise from his class room is the prevailing factor in the development of the hearing loss.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Award of Administrative Law Judge Rebecca Sanders dated December 3, 2012, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of March, 2013.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: John J. Bryan, Attorney for Claimant
janet@ksjustice.com

Katharine M. Collins, Attorney for Respondent and its Insurance Carrier
dmfisher@travelers.com

Rebecca Sanders, Administrative Law Judge