

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

HOMERO GARZA)	
Claimant)	
VS.)	
)	Docket No. 189,508
IBP, INC.)	
Respondent)	
Self-Insured)	

ORDER

Claimant appealed the Award dated August 23, 1996, entered by Administrative Law Judge Floyd V. Palmer. On April 1, 1997, the Appeals Board heard oral argument. Jeff Cooper was appointed Board Member Pro Tem to serve in place of Board Member Gary Korte who recused himself from this proceeding.

APPEARANCES

Diane F. Barger of Wichita, Kansas, appeared for the claimant. Tina M. Sabag of Dakota City, Nebraska, appeared for the respondent.

RECORD AND STIPULATIONS

The parties' stipulations and the record are listed in the Award. In addition, the record includes the May 15, 1995, deposition of Jose Homero Garza, Jr. Pursuant to the parties' stipulation that was filed with the Division on May 3, 1995, the Appeals Board did not consider the various audiological and medical records attached to the preliminary hearing transcript.

ISSUES

This is a hearing loss case with a May 4, 1993, alleged date of accident. The Administrative Law Judge found claimant sustained some bilateral hearing loss as a result of working for respondent, but the loss was not great enough, according to administrative regulations, to constitute a compensable impairment.

The only issue before the Appeals Board on this review is whether claimant sustained a hearing loss for which he is entitled to receive permanent partial disability benefits as a result of working for the respondent between 1970 and 1993.

FINDINGS OF FACT

After reviewing the entire record, the Appeals Board finds as follows:

- (1) Homero Garza, the claimant, worked for IBP, Inc., in Emporia, Kansas, for more than 20 years, ending his employment in 1993.
- (2) Mr. Garza began to notice a hearing loss in 1985 or 1986 while working around air knives, hydraulic equipment, and air hoses. He also noticed a significant loss in 1991 and 1992. Because of the noise in the IBP plant, the company provided Mr. Garza with sponge ear plugs, which he constantly wore.
- (3) When Mr. Garza first noticed problems with his right ear in 1985 or 1986, he also experienced itching, headaches, and dizziness. He also testified he experienced dizziness, earaches, and infection in 1987. And when he testified in July 1994, he was experiencing dizziness, runny ears, and earaches.
- (4) Board-certified ear, nose, and throat specialist Shin-Fu Hsu, M.D., saw claimant in both 1987 and 1994. After performing an audiological evaluation on Mr. Garza in March 1994, the doctor diagnosed a bilateral hearing loss. He found Mr. Garza had a sensorineural hearing loss in the right ear of 35 decibels and a sensorineural hearing loss in the left ear of 25 decibels. The doctor believes the hearing loss was caused by the noise at IBP and was not congenital, hereditary, or caused by an ear infection.
- (5) Gregory A. Ator, M.D., a board-certified otolaryngologist who practices at the University of Kansas Medical Center, also testified. He limits his practice to the ears and otology, which is the study of medical and surgical diseases of the ear and related structures. Based upon his evaluation of asymmetrical audiogram results, he believes Mr. Garza's hearing loss is the result of infection rather than industrial noise. And any noise-related hearing loss that is present is mild:

It is my impression that the patient does have some element of sensorineural hearing loss caused by noise but there are characteristics, namely asymmetry of this, that in the absence of a one-sided source for the noise such as an explosion or something, one would have to suggest that this hearing loss is only minimally related to noise but, more importantly, related to some sort of congenital or other unknown cause for hearing loss. This is consistent with his self-assessment of his hearing at employment. . . .

In summary, this gentleman has most likely a pre-existing non-noise related cause for his asymmetric hearing loss. There is some element of noise-related hearing loss present but it is really quite mild.

- (6) The Appeals Board adopts the Administrative Law Judge's findings as set forth in the Award to the extent they are not inconsistent with the above.

CONCLUSIONS OF LAW

The Award should be affirmed.

The Appeals Board agrees with the Administrative Law Judge that it is more probably true than not that Mr. Garza's hearing loss was not caused by exposure to noise while working for the respondent. Dr. Ator's testimony is persuasive, and the Appeals Board finds that the asymmetrical hearing loss is more consistent with infection than industrial noise exposure. Mr. Garza's symptoms of earache, dizziness, and runny ears are consistent with infection.

When considering the entire record, the Appeals Board finds Mr. Garza has failed to prove his hearing loss is related to his work for IBP. The request for benefits should be denied.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award dated August 23, 1996, entered by Administrative Law Judge Floyd V. Palmer should be, and hereby is, affirmed.

IT IS SO ORDERED.

Dated this ____ day of March 1998.

BOARD MEMBER PRO TEM

BOARD MEMBER

BOARD MEMBER

- c: Diane F. Barger, Wichita, KS
- Tina M. Sabag, Dakota City, NE
- Floyd V. Palmer, Administrative Law Judge
- Philip S. Harness, Director