WCAT Decision Number: WCAT-2004-00163-RB
WCAT Decision Date: **January 14, 2004**
Panel: Lorne Newton, Vice Chair

Introduction

The worker applied to the Workers' Compensation Board (Board) for benefits for what he believed is occupational noise-induced hearing loss. A hearing claims officer of the Board considered the worker's evidence and informed him in a letter dated January 23, 2002 that there was not any evidence of occupational noise-induced hearing loss and as a result his claim had been denied for benefits.

The worker has appealed this decision and takes exception with the Board's decision to deny his claim. The worker is requesting the purchase and maintenance of hearing aids. The worker submitted that while his audiometric history may not fit the general profile of "noise-induced hearing loss," he feels there are always variations and "I am sure that 30+ years in an industrial setting has contributed to my hearing loss."

Issue(s)

At issue is whether the worker developed noise-induced hearing loss that would warrant the acceptance of his claim in accordance with section 7 of the Act as in place in January 2002.

Jurisdiction

This appeal was filed with the Workers' Compensation Review Board (Review Board). On March 3, 2003, the Appeal Division and the Review Board were replaced by the Workers' Compensation Appeal Tribunal (WCAT). As this appeal had not been considered by a Review Board panel before that date, it has been decided as a WCAT appeal. (See the *Workers Compensation Amendment Act (No. 2), 2002*, section 38.)

The worker has not requested an oral hearing. I have reviewed the file record and written submissions and conclude that I can fairly decide this appeal without an oral hearing and based on the documentary evidence and written submissions.

Background and Evidence

As documented on the claim file, the worker provided evidence that he worked 30 plus years in an industrial environment where he was exposed to occupational noise. He noted on his application for hearing loss benefits that some of his early years of work resulted in exposure to occupational noise without hearing protection. The worker provided a breakdown of his employment history which shows he worked for the

accident employer from March 1968 until October 2001. The worker recorded that from March 1968 to May 1968 he used a jackhammer four to six hours per day; from May 1968 to December 1978 he worked as an operator in which he was required to operate various pieces of equipment; from December 1978 to September 1987 he worked as a development technician; from September 1987 to December 2000 he worked as a maintenance clerk and from December 2000 to October 2001 he worked as a first aid attendant.

The employer provided a letter to the Board dated October 19, 2000 in which they noted the worker had worked for the accident employer since March 1968. The employer noted that during the worker's many years of employment in different positions, he would have had limited exposure to noise levels between 60 and 100 dBA. The employer requested that the Board consider the worker's recreational exposures to noise. The employer also provided a permanent audiometric record which showed the worker's hearing was assessed in 17 different years between June 1979 and October 2001. From these records there is no indication the worker had signs of noise-induced hearing loss.

A registered audiologist of the Board Hearing Conservation Unit reviewed the file evidence and provided an opinion in an electronic file entry dated January 11, 2002. The audiologist noted the worker's exposure to any hazardous occupational noise occurred prior to 1978. The audiologist noted that after 1978 the worker would not have been exposed to any hazardous noise of intensity and duration to cause hearing loss in the most susceptible person. Also, the 1985 audiogram results showed the worker's hearing was within normal limits and since 1985 there had been a deterioration across the frequency range bilaterally. The audiologist noted that audiometric results dated October 2001 indicated the worker had a mild to severe sensorineural hearing loss bilaterally. The audiologist stated as follows:

> … The degree (mild to severe) and configuration (flat with low frequency involvement) of hearing loss, the deterioration across the frequency range and the time course of the hearing loss are not consistent with occupational noise-induced hearing loss or the client's work history…
>
> [reproduced as written]

The audiologist concluded that there was compelling evidence the worker's hearing loss was not related to hazardous noise exposure.

While the worker submits that he believes his hearing loss is related to occupational noise exposure, he has not provided any expert opinions contrary to the Board audiologist's opinion. The worker submitted that he has a significant hearing loss and was exposed to a hazardous noise environment for 17 years from 1968 to 1985. He submitted that from 1986 to 2001 he was exposed to noise levels that were far greater than someone not working in an industrial setting. The worker submitted that he feels at

least a portion of his hearing loss is due to 33 plus years in the industry. The worker noted he is not seeking a pension but is simply seeking the costs for the purchase and maintenance of hearing aids.

The employer has submitted that from December 1978 the worker was exposed to industrial noise less than three hours per day and hearing tests carried out in December 1985 showed the worker's hearing was within normal ranges. The employer submitted that as set out in policy item #31.20 in the *Rehabilitation Services and Claims Manual, Volume 1* (RSCM) that the worker does not meet the requirement for the minimum eight hours per day noise exposure. The employer submitted that the Board's registered audiologist of the Hearing Conservation Branch provided the only medical opinion regarding the cause of the worker's hearing loss. The employer submitted that the Board correctly denied the worker's claim as set out in the January 23, 2002 decision letter.

Reasons and Findings

At the time of the worker's application for benefits, section 7(1) of the *Workers Compensation Act* (Act) set out as follows:

> (1) …Where a worker suffers loss of hearing of non-traumatic origin, but arising out of and in the course of employment…, that is a greater loss than the minimum set out in Schedule D, the worker is entitled to compensation…

Policy items #31.00 through #31.40 of the RSCM sets out the terms and conditions for the acceptance of a non-traumatic noise-induced hearing loss claim.

Policy item #31.20 in the RSCM sets out as follows:

> A claim is acceptable where, as a minimum, evidence is provided of continuous work exposure for two years or more at eight hours per day at 85 dBA or more, and when other evidence does not disclose any cause of hearing loss not related to work. The Board considers it reasonable to set the 85 dBA minimum standard for compensation purposes and then to allow a restricted measure of discretion for the acceptance of claims where the evidence is abundantly clear that the worker is extraordinarily susceptible and has been affected by exposure to noise at a lesser level…

In this case, the worker has not provided sufficient evidence that he was exposed to continuous occupational noise exposure for two years or more at eight hours per day at 85 dBA as required by policy item #31.20 in the RSCM. The audiologist who has provided the only reasoned opinion on causation has taken into account all of the facts which includes the worker's history of noise exposure and concluded that there is not

evidence of occupational noise-inducted hearing loss. The panel finds that the worker does not meet the requirements of section 7(1) as there is not sufficient evidence the worker suffers a loss of hearing of non-traumatic origin that arose out of and in the course of his employment.

Conclusion

The panel denies the worker's appeal in accordance with the above findings and reasons and confirms the Board officer's decision.

The worker is not entitled to any costs incurred for his appeal.

Lorne Newton
Vice Chair

LN/rbe

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