

Decision of the Appeal Division

Number: 92-0293
Date: January 28, 1992
Panel: Hilrie Reimer
Subject: Asymmetrical Hearing Loss (#2)

The worker appeals a Review Board finding dated October 16, 1990. The issue is whether he is entitled to receive a pension award in respect to his hearing loss from long-term industrial noise exposure.

On September 21, 1989, the worker made application for compensation for hearing loss. His hearing loss was accepted as compensable and the Workers' Compensation Board provided him with hearing aids.

In a letter dated January 29, 1990, a claims adjudicator advised that he was not entitled to a pension under the provisions of Schedule D of the *Workers Compensation Act*. He was advised that to be eligible for a pension award, the worker must have an average loss of hearing of 28 dB or more, on an average at the frequency of 500 Hz, 1,000 Hz, and 2,000 Hz. The loss accepted on this claim was the average loss of 27 dB in the worker's left ear. This was less than the threshold level of 28 dB, and as a result he was not entitled to a pension.

The worker appealed to the Review Board, stating that the additional loss of hearing in his right ear should be accepted as a result of industrial noise exposure. He argued that the reason for the hearing loss being higher in his right ear than in his left was his use over a period of 15 years of a chain saw which had a muffler on the right side which would always be closer to his right ear than his left. The result of that additional noise, he submitted, would account for the higher hearing loss in his right ear.

The Review Board considered Section 7 of the *Workers Compensation Act*, which specifically sets out the requirements that the hearing loss for *pension purposes* must be greater than 27 dB as set out in Schedule D of the *Workers Compensation Act*. The Review Board also requested a further medical opinion from Dr. W regarding the acceptance of the additional hearing loss in the right ear as noise-induced hearing loss, particularly noting that the difference in hearing loss between left and right ear is only 3 dB. The Review Board received a reply from Dr. W which stated in part:



... although there may only be a 3 dB difference when the average loss at 500, 1000 and 2000 Hz is measured for each ear, it certainly exceeded 25 dB in 1978 and the difference is reduced as the left ear became more deaf due to occupational noise exposure.

... The progression in the left ear is typical of a noise-induced hearing loss whereas that in the right ear is not.

Recommendation

I respectfully suggest that the left ear best represents the hearing loss caused by excessive noise.

The Review Board accepted the opinion of Dr. W and accordingly denied the worker's appeal.

This panel of the Appeal Division requested a further medical opinion from Dr. G. Dr. G, who is a consultant in hearing claims, wrote in part, as follows:

... [the worker] has bilateral sensori-neural hearing loss but some asymmetry is noted. The left ear shows a notch type hearing loss with the maximum hearing loss at 3,000 Hz. The right ear shows a more U-shaped hearing loss with the maximum loss at 1,000 Hz.

With regard to the question as to how much of his hearing loss has been caused by long term industrial noise exposure I think the most significant information is to be found by a study of the industrial audiometric tests, which document the changes in his hearing from 1978 to 1987. Although these may not have been performed under ideal laboratory conditions, I believe they represent a consistent record of the changes in hearing between 1978 and 1987.

The 1978 audiogram shows considerable asymmetry between the two ears ... The left ear shows a typical noise-induced hearing loss consistent with his noise exposure between 1960 and 1978. The left ear shows a completely different configuration, not at all typical of a noise-induced hearing loss, with maximum hearing loss at 1,000 Hz which is almost certainly a combination of noise exposure and some other cause. Since noise would have affected both ears to a similar if not quite identical degree it can reasonably be assumed that the amount of hearing loss in the left ear represents the noise-induced hearing loss in both ears at this time. If this hearing loss is

subtracted from the total hearing loss in the right ear the residual non-noise hearing loss shows a single frequency hearing loss of 30 db at 1,000 Hz ... Such sharply notched hearing loss at a single frequency is not rare in otherwise normal individuals and is usually considered to have been present since birth or infancy and is not noticed by the patient until their first hearing test. This 1,000 Hz. loss shows no significant change between 1978 and 1987, which again rules very strongly against it having been caused by industrial noise exposure. (I regard the zero at this frequency in 1979 as most likely a recording or computer error in reading the test results, because every other audiogram shows a consistent loss with no significant change at 1000 hz.)

If the progression of the hearing loss between 1978 and 1987 is examined it shows a steady significant increase in severity at 2000, 3000 and 4000 Hz. in both ears which would be entirely typical of industrial noise exposure. The differences between ears at these frequencies would be no more than usually found in most noise exposed workers. Again it is noted that there is no significant change at 1,000 Hz.

Based on this evidence, my conclusion is that the hearing loss in the left ear best represents the extent of the noise-induced hearing loss in both ears. The additional loss at 1,000 Hz in the right ear can be said, *with a very high degree of certainty*, to be due to *other causes* for the reasons outlined above (emphasis added)

This panel accepted Dr. G's opinion which concurs with Dr. W's view that the loss in the left ear best represents the worker's noise-induced hearing loss. No pension is payable because the loss in the left ear is below the minimum hearing loss standard of 28 dB required by law, before a pension can be provided. The worker is nevertheless entitled to hearing aids.

THE APPEAL IS DENIED.

Editors' note: This decision has been edited for publication.

