

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

PHILIP ONDLER,

Claimant,

vs.

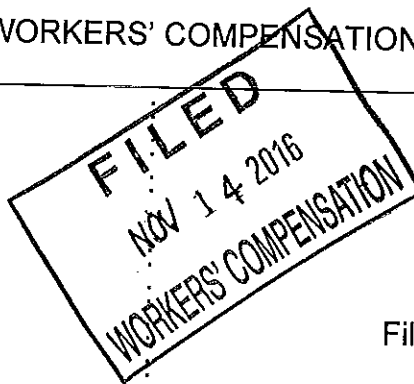
QUAKER OATS COMPANY,

Employer,

and

INDEMNITY INSURANCE CO. OF
NORTH AMERICA,

Insurance Carrier,
Defendants.



File No. 5052607

ARBITRATION
DECISION

Head Note No.: 1100

STATEMENT OF THE CASE

Claimant, Philip Ondler, filed a petition in arbitration seeking workers' compensation benefits from Quaker Oats Company, employer, and Indemnity Insurance Company of North America, insurance carrier, both as defendants, as a result of an alleged injury sustained on February 1, 2015. This matter came on for hearing before Deputy Workers' Compensation Commissioner Erica J. Fitch, on June 9, 2016, in Cedar Rapids, Iowa. The record in this case consists of claimant's exhibits 1 through 8 and 10 through 13, defendants' exhibits A through B and D through F, and the testimony of the claimant. The parties submitted post-hearing briefs, the matter being fully submitted on June 30, 2016.

ISSUES

The parties submitted the following issues for determination:

1. Whether claimant sustained an injury on February 1, 2015 which arose out of and in the course of his employment;
2. Whether claimant's claim is barred as an untimely claim under Iowa Code section 85.26;

3. Whether the alleged work injury is a cause of permanent disability;
4. The extent of claimant's industrial disability;
5. Whether defendants are responsible for claimed medical expenses;
6. Whether claimant is entitled to reimbursement of an independent medical examination pursuant to Iowa Code section 85.39; and
7. Specific taxation of costs.

STIPULATIONS

The stipulations of the parties in the hearing report are incorporated by reference in this decision and are restated as follows:

1. The existence of an employer-employee relationship at the time of the alleged work injury.
2. If the injury is found to be a cause of permanent disability, the disability is an industrial disability.
3. The commencement date for permanent partial disability benefits, if any are awarded, is February 1, 2015.
4. At the time of the alleged injury, claimant's gross earnings were \$1,417.99 per week, claimant was married, and claimant was entitled to four exemptions.

FINDINGS OF FACT

The undersigned, having considered all of the evidence and testimony in the record, finds:

Claimant's testimony was clear and consistent as compared to the evidentiary record and his deposition testimony. Claimant was personable and his demeanor at the time of evidentiary hearing gave the undersigned no reason to doubt claimant's veracity. Claimant demonstrated no obvious difficulty hearing and interpreting the questions posed during the course of hearing. Claimant is found credible.

Claimant was 38 years of age at the time of hearing. He is married and the father of two young children. Claimant graduated high school in 1996 and obtained an associate's degree in 2001. (Claimant's testimony; Exhibit E, page 3)

Claimant's relevant medical history includes childhood ear difficulties. (Claimant's testimony) In September 1985, E.L. Grandon, M.D. performed a left mastoidectomy and tympanoplasty with tympanic membrane homograft. Dr. Grandon noted a diagnosis of left chronic residual otitis media with chronic mastoiditis, conductive hearing loss and tympanic perforation. (Ex. 6, p. 1) In February 1987, J.E. Spoden, M.D. performed a left tympanotomy with tube insertion and a right ear examination under anesthesia. (Ex. 6, p. 2) Subsequently, in June 1987, Dr. Spoden performed a bilateral type I tympanoplasty with canaloplasty of the left ear. He noted a diagnosis of bilateral tympanic membrane perforation with defect in the left external auditory canal from the previous tympanomastoidectomy. (Ex. 6, pp. 3-4) Claimant denied any ongoing problems or difficulty hearing following these procedures. (Claimant's testimony)

Claimant's work history prior to his course of employment at defendant-employer includes stocking shelves at a grocery store, sales at a sporting goods store, production worker at a battery manufacturer, and unloading trucks of food products. (Claimant's testimony; Ex. E, p. 4) From 1998 to 2002, claimant served in the US Army Reserves. His primary responsibility in the service was driving equipment such as dump trucks. During his time in the reserves, claimant participated in training and was required to shoot weapons at a firing range. However, claimant denied any hearing problems related to this activity. (Claimant's testimony; Ex. E, p. 6)

In August 2000, claimant applied for work at defendant-employer. (Ex. D, pp. 1-2) Prior to beginning work, claimant was required to participate in a preemployment physical examination and hearing test. These tests were performed on September 8, 2000. During physical examination, claimant disclosed he had "tubes" inserted in his ears as a child. Examination of claimant's ears revealed slight wax impaction of the left ear. (Ex. 1, p. 1) Claimant also underwent a baseline hearing evaluation which revealed mild hearing loss at the high frequencies of the left ear. (Ex. 1, pp. 3-4)

Following satisfactory completion of the pre-placement examinations, claimant began work at defendant-employer in September 2000. Claimant's first position was as a steamer operator in the chemical department. Claimant testified he worked around large digester machines which were quite noisy. Each digester had its own motor, gears, and belts which ran continuously. Claimant testified he would also utilize a pneumatic impact wrench to seal the doors; this task was done approximately every 30 minutes. Claimant further testified the digesters would have steam leaks, leading to a high pitched squealing sound until an employee could resolve the leak. He would also fill in as needed as a cook tender and utility employee. (Claimant's testimony)

Defendant-employer has an implemented mandatory hearing protection program and a manual is available to employees. (Ex. D, pp. 7-11) A sound level survey and dosimetry assessment was completed of defendant-employer's facility from June to August 2000. The sound level survey revealed noise levels ranging from 62 to 112 dBA throughout the facility. Personal dosimetry records revealed employees' time-weighted average (TWA) varied from 75.7 to 97.4 dBA. The evaluator found 85 percent of

monitored employees had a TWA greater than 85 dBA, corresponding to a 100 percent dosage for an 8 hour shift. The highest dosages were found in the RTE, Oat Mill, and Corn Mill departments. The evaluator noted that hearing protection devices should be sufficient to keep exposures below OSHA limitations, provided they were properly used. The evaluator also noted examples of equipment with damaged, loose, or missing parts; he indicated abatement of these issues would significantly lower noise levels in these areas. (Ex. 13, pp. 2, 9, 11)

Claimant testified when he began work in the chemical department, he was offered ear muffs or ear plugs to use. Claimant chose to use muffs; however, he testified his safety glasses affected how the muffs fit over his ears. Claimant testified he also needed to lift one of the muffs in order to communicate with his coworkers. (Claimant's testimony)

As an element of defendant-employer's hearing conservation policy, employees submit to annual hearing tests. (Claimant's testimony) Claimant underwent a hearing test on January 4, 2001 which revealed continued mild high frequency hearing loss of the left ear. (Ex. 1, p. 5) A test of June 24, 2002 revealed mild high frequency hearing loss of the left ear and a standard threshold shift (STS) of the left ear. (Ex. 1, pp. 6-8) Claimant underwent a retest on July 22, 2002, which found mild high frequency hearing loss of the bilateral ears and no STS, without significant change from the baseline examination. (Ex. 1, pp. 9-11)

On May 9, 2003, claimant underwent annual hearing evaluation. The examination revealed mild high frequency hearing loss of the left ear and an STS of the left ear, but normal hearing of the right ear. (Ex. 1, pp. 12-14) A retest on May 27, 2003 revealed mild high frequency hearing loss of left ear and an STS of the left ear. Normal hearing in the right ear was noted. (Ex. 1, p. 15) Claimant underwent a second retest on June 17, 2003. One document from the examination reports mild high frequency hearing loss of the left ear and a normal right ear. (Ex. 1, p. 16) Two accompanying documents report normal hearing in the bilateral ears and no STS. (Ex. 1, pp. 17-18)

Claimant worked in the chemical department until it closed in December 2003. At that time, claimant was trained for a position in the Corn Mill department, but refused the posting due to the noisy environment. Thereafter, claimant took a position as a DPM Operator in the Ready-To-Eat (RTE) department. Claimant testified his duties involved sealing cereal bags, placing the bags in boxes, and then sending the boxes down the production line. In the RTE Department, claimant began to utilize foam ear plugs for hearing protection. (Claimant's testimony)

Claimant described the RTE department as "loud." He described various sources of noise near his work station, including several production lines with multiple running machines. He testified the machines run constantly and the machines sealing cereal bags make a clanking noise every few seconds as bags are sealed. Claimant remained employed in this position on the date of hearing; he testified he is also trained on other job positions within the RTE department, so he travels between areas as

needed. Claimant testified he works first shift, from 7:00 a.m. to 3:30 p.m. Overtime is mandatory and claimant testified he easily averaged 12 hours of overtime per week over the course of his employment with defendant-employer. On occasion, claimant has worked 20 to 30 days consecutively. (Claimant's testimony)

On March 10, 2004, claimant participated in an annual hearing evaluation. One resulting document reports mild high frequency hearing loss of the left ear and normal hearing in the right ear. Other documents reflect mild high frequency hearing loss of the bilateral ears. (Ex. 1, pp. 19-21)

Dosimetry readings taken in September 2004 revealed an 8-hour TWA of 90.1 dBA in the RTE department and 90.4 dBA in the packaging department. (Ex. 13, p. 26)

Claimant continued to participate in defendant-employer's hearing monitoring program. On February 23, 2005, testing revealed mild high frequency hearing loss of the left ear and normal hearing in the right ear. (Ex. 1, pp. 23-24) Testing on April 20, 2006 revealed normal hearing of the right ear, but mild high frequency hearing loss and an STS of the left ear. (Ex. 1, pp. 26-27) A retest on May 19, 2006 revealed mild high frequency hearing loss of the left ear, but no STS, and normal hearing of the right ear. (Ex. 1, pp. 28-30)

Dosimetry readings from August 2006 revealed a 12-hour TWA of 92.2 dBA for a DPM Operator. (Ex. 13, pp. 30, 32)

On April 30, 2007, claimant underwent a hearing evaluation. Results demonstrated a mild high frequency hearing loss and an STS of the left ear, but normal hearing of the right ear. (Ex. 1, pp. 32-33) Retest on May 25, 2007 revealed mild high frequency hearing loss of the left ear, normal hearing of the right ear, and no STS. (Ex. 1, pp. 34-36)

Hearing evaluations on August 13, 2009 and September 11, 2009 revealed an STS of the left ear. (Ex. 1, p. 37) Doctor of audiology, Laurie Wells, Au.D., reviewed claimant's records and defendant-employer's hearing conservation program. Dr. Wells opined the "pattern and progression" of claimant's hearing loss were not commensurate with occupational noise-induced hearing loss given claimant's occupational setting. She noted claimant demonstrated a history of fluctuating hearing loss with multiple findings of STS; however, until 2009, the STS findings were repealed by retesting. Dr. Wells noted claimant's reported exposure was to 90 dBA TWA and indicated over the preceding two years, claimant's exposure had been reduced due to spending 30 percent of his work time in an office setting. She also noted claimant's history of childhood ear infection and surgery for pressure equalization tubes. (Ex. 1, p. 37)

Following consideration of these factors, Dr. Wells opined claimant had sustained a hearing shift which was non-recordable by OSHA standards, as it was probably not related to noise exposure at defendant-employer. She did recommend claimant use hearing protection devices. Dr. Wells also advised claimant to follow up with his

personal physician in order to rule out a possible collapsed ear canal, which possessed the potential to impact hearing testing. (Ex. 1, p. 37)

Claimant underwent hearing evaluation on April 9, 2010 which revealed mild high frequency hearing loss of the bilateral ears and an STS of the left ear. (Ex. 1, pp. 42-43)

A May 2010 noise assessment of defendant-employer's facility revealed certain employees were exposed to an 8-hour TWA at or above 85 dBA, including individuals in the RTE department. (Ex. 13, pp. 35-37) The accompanying report found the hearing protection devices offered were not sufficient to protect against noise levels that some employees were exposed to. (Ex. 13, p. 42)

Claimant returned for hearing evaluation on March 15, 2011. On that date, claimant reported he suffered from severe ringing in his ears after work. (Ex. 1, p. 46) The reports regarding the results of claimant's evaluation on that date conflict, with one document revealing moderate high frequency hearing loss and an STS of the left ear, while another document noted only mild high frequency hearing loss of the left ear. Both documents reflect normal hearing of the right ear. (Ex. 1, pp. 44-45, 47)

On June 7, 2011, claimant presented to Kevin Carpenter, M.D. for evaluation of nasal polyps and a deviated septum. Dr. Carpenter recommended a septoplasty and submucous resection (SMR) of the turbinates in order to assist with breathing. (Ex. B, pp. 1-2) On July 18, 2011, claimant underwent surgery performed by Dr. Carpenter. Dr. Carpenter's operative note describes the procedures performed as a septoplasty, submucous resection of the inferior turbinates with outfracture bilaterally, and examination of the left ear under anesthesia with removal of cerumen utilizing the operating microscope. Dr. Carpenter's operative notes indicate he viewed a "pretty significant collapsing canal" of the left ear. His post-operative diagnoses were listed as left nasoseptal deviation, inferior turbinate hypertrophy, and cerumen impaction of the left ear with "collapsing canals." (Ex. 3, p. 1)

On July 25, 2011, claimant returned to Dr. Carpenter in post-surgical follow up. Dr. Carpenter examined claimant and noted he reported suffering with ear problems as a child and currently experienced tinnitus. Dr. Carpenter informed claimant he might receive some relief of tinnitus symptoms with use of Melatonin. (Ex. 3, pp. 3-4) Claimant testified he used Melatonin, but received no relief. (Claimant's testimony)

In 2012, defendant-employer incorporated custom molded ear protection into its hearing protection program. Claimant received his molded ear plugs on May 4, 2012. (Ex. 1, p. 48) Claimant testified the custom molded earplugs have a small hole that allows employees to communicate without removing the hearing protection device. (Claimant's testimony)

Claimant underwent hearing evaluation on September 21, 2012. One report notes mild high frequency hearing loss of the bilateral ears, but no STS. Another

document notes mild high frequency hearing loss of the left ear only, with normal hearing of the right ear. (Ex. 1, pp. 49-50, 52)

A noise assessment of defendant-employer's facility was completed on October 10, 2012. The report noted some employees' noise exposures were at or above the 8-hour 85 dBA TWA, including people in the RTE department. (Ex. 13, pp. 45-46, 53-55) The report further indicated some employees were not provided sufficient protection by the custom molded hearing protection devices utilized by defendant-employer. For these employees, dual protection was advised. (Ex. 13, p. 50)

On April 10, 2013, claimant returned to Dr. Carpenter to discuss a recurring sinus infection and also mentioned suffering from tinnitus. (Ex. 3, p. 5) With respect to the tinnitus condition, Dr. Carpenter advised claimant to take Melatonin and utilize fans at night or hearing aids to mask the sounds. (Ex. 3, p. 7)

Claimant underwent hearing evaluation on October 17, 2013. Results revealed mild high frequency hearing loss of the right ear and moderate high frequency hearing loss of the left ear, as well as an STS of the right ear. (Ex. 1, p. 56) At the time of retest on November 5, 2013, claimant reported he suffered from ringing or roaring of his ears, which he noted had worsened over the "last few years," resulting in concentration and sleep difficulties. (Ex. 1, p. 59) Results revealed mild high frequency hearing loss of the right and left ears, as well as mild loss at the speech frequencies in the left ear. The testing also confirmed an STS of the right ear. (Ex. 1, pp. 60-61)

On November 6, 2013, claimant presented to the plant nurse and requested a physician referral for evaluation of tinnitus. Claimant indicated he did not believe he should be forced to pay for the evaluation "since he never had this until" he began working for defendant-employer. The nurse informed claimant he would need to file a claim in the event he were claiming his condition as a work-related injury. (Ex. 1, p. 66)

That same date, November 6, 2013, claimant authored a written statement regarding his claimed injury. By the statement, claimant reported suffering with ringing in his ears for three or more years. Claimant stated the ringing was present bilaterally, with the left ear more severe than the right. He indicated the "ringing/tinnitus" had progressively worsened and over the previous year, resulting in difficulty sleeping, concentrating, and hearing others. Claimant stated he desired evaluation by a physician. (Ex. 1, p. 63)

Defendants referred claimant for evaluation on November 7, 2013 by Shirley Pospisil, M.D. of St. Luke's Work Well. Claimant reported ringing of the bilateral ears, left greater than right. Claimant noted suffering with the symptom for at least three years; he also noted a history of implantation of tubes in his ears. Dr. Pospisil assessed bilateral tinnitus, left greater than right and advised claimant to return to the clinic in one week in order to allow Dr. Pospisil to conduct further research. Dr. Pospisil advised claimant to wear hearing protection and utilize white noise to mask the ringing sound.

Dr. Pospisil imposed no restrictions and recommended claimant follow up with his personal provider for ear assessment and cleaning. (Ex. 4, p. 1)

As recommended, claimant returned to Dr. Pospisil on November 14, 2013. At that visit, Dr. Pospisil provided claimant an article on tinnitus, which the two discussed. Dr. Pospisil indicated the article explained "other causes of tinnitus that are not work related." Accordingly, Dr. Pospisil discharged claimant from care and advised him to seek evaluation by a specialist. (Ex. 4, p. 2)

Defendants referred claimant to the University of Iowa Hospitals and Clinics (UIHC) Department of Otolaryngology for evaluation by Marlan Hansen, M.D., a board certified physician in otolaryngology. (Ex. A, p. 6) Dr. Hansen noted claimant was present for evaluation of tinnitus, left dominant, involving a constant high pitched ringing tone for several years. Claimant reported he utilized a fan or the television to mask the sound while falling asleep. Dr. Hansen noted while the tinnitus delayed claimant falling asleep, it did not wake him from sleep. (Ex. 5, p. 1)

Dr. Hansen noted he reviewed provided records, described as "old/outside records." (Ex. 5, p. 4) He noted claimant had a history of left mastoidectomy and tympanoplasty for chronic otitis media with effusion in 1985. He also noted in 1987 claimant subsequently underwent left canal plasty and temporalis fascia tympanoplasty for bony canal defect and persistent left tympanic membrane perforation. (Ex. 5, p. 1)

In connection with his evaluation by Dr. Hansen, claimant underwent an audiogram. The audiogram was performed by audiologist, Lisa Stille. She opined the results revealed claimant's right ear demonstrated hearing within normal limits, but the left ear demonstrated mild conductive loss. (Ex. 5, pp. 5-6) Dr. Hansen opined the audiogram revealed mild conductive hearing loss of the left ear and normal hearing of the right ear. Dr. Hansen performed a physical examination and also performed an otomicroscopy and cerumen removal. (Ex. 5, pp. 3-4) Dr. Hansen assessed bilateral tinnitus, subjective; conductive hearing loss of the left ear; and left otitis media, chronic nonsupportive. Dr. Hansen provided claimant a brochure for the tinnitus/hyperacusis clinic and the two discussed possible etiologies for tinnitus. (Ex. 5, pp. 1, 4)

Claimant testified he spent approximately 10 minutes with Dr. Hansen and the two did not discuss claimant's work or noise exposure. (Claimant's testimony) Claimant represented he travelled 53 miles in connection with Dr. Hansen's January 23, 2014 medical appointment. (Ex. 11)

Dr. Hansen authored a follow up letter to defendant-insurance carrier dated June 10, 2014. Dr. Hansen opined claimant demonstrated a long history of chronic otitis media of the left ear, for which he had undergone multiple surgeries and from which he had a residual conductive hearing loss of the left ear. Dr. Hansen opined the cochlear and neural functioning of claimant's left ear was normal and the hearing in claimant's right ear was normal. (Ex. 5, p. 7) With regard to causation, Dr. Hansen opined:

Tinnitus is usually related to ear disease and hearing loss. In his case, these are mostly [sic] likely the result of chronic otitis media. There is no evidence of noise induced hearing loss. To a reasonable degree of medical certainty, his hearing loss and tinnitus are not related to employment at [defendant-employer].

(Ex. 5, p. 7)

On July 11, 2014, claimant underwent hearing testing in conjunction with defendant-employer's hearing conservation program. Results revealed mild high frequency hearing loss of the right ear, moderate high frequency hearing loss of the left ear, and mild speech frequency hearing loss of the left ear. (Ex. 1, p. 68)

Claimant retained audiology consultant, Richard Tyler, Ph.D., to perform an independent medical evaluation (IME). In preparation for the evaluation, claimant's counsel authored a letter to Dr. Tyler dated January 9, 2015. The letter provided a brief narrative regarding claimant's condition; absent is a reference to claimant's childhood hearing issues and conditions. (Ex. 2, pp. 1-3) Counsel also included documents for Dr. Tyler's review, including a questionnaire requested by Dr. Tyler; the November 6, 2013 report of injury; claimant's pre-employment physical and audiogram of September 8, 2000; audiogram and hearing records from defendant-employer dated 2000 to 2014; Dr. Hansen's records of January 23, 2014 through June 10, 2014; and Dr. Pospisil's records of November 7, 2013 through November 14, 2013. (Ex. 2, p. 1)

Review of claimant's completed questionnaire reveals a complaint of a constant, high-pitched ringing in his bilateral ears, which had been intermittent since approximately 2005 and constant since 2010. He rated the loudness of the tinnitus as a 98 on a 1 to 100 scale. Claimant expressed belief his condition resulted from exposure to loud noises at defendant-employer. (Ex. 2, p. 8)

On January 30, 2015, claimant participated in a phone interview with Dr. Tyler. (Ex. 2, p. 12) Claimant testified the interview lasted approximately 45 minutes and the two discussed his occupational noise exposure in detail. (Claimant's testimony)

Dr. Tyler ultimately authored a report of his opinions dated February 1, 2015. (Ex. 2, p. 12) Dr. Tyler reviewed the provided records. Following review of Dr. Hansen's January 23, 2014 note, Dr. Tyler opined claimant suffered from a "mild case of otitis media" as a child. He disagreed with Dr. Hansen's opinion that claimant's tinnitus was causally related to this condition, as Dr. Tyler noted the condition occurred during claimant's childhood years. (Ex. 2, p. 17)

With respect to the question of causation, Dr. Tyler noted there was no evidence claimant began his employment at defendant-employer with ill health, significant hearing loss, or tinnitus. During claimant's employment, Dr. Tyler opined claimant was exposed to high levels of damaging noise, impulsive noise and chemicals. Dr. Tyler also noted claimant worked overtime, resulting in exposure to excessive noise for greater than

40 hours per week. He opined it was very unlikely claimant's hearing loss and/or tinnitus were due to aging or heredity and further opined claimant's audiograms were consistent with noise-induced hearing loss. (Ex. 2, p. 24) Dr. Tyler ultimately opined claimant's sensorineural hearing loss and tinnitus were "probably a result of his work." (Ex. 2, p. 25)

Dr. Tyler opined claimant sustained a 17 percent whole person impairment as a result of tinnitus. He based this rating upon his own methodology which assigned a maximum 60 percent whole person impairment to tinnitus. (Ex. 2, p. 22) Dr. Tyler opined claimant would benefit from counseling and a sound therapy device to combat the effects of his tinnitus. Dr. Tyler also recommended the following permanent restrictions; however, he does not specify if the restrictions are attributable to the hearing loss, tinnitus, or a combination thereof. (Ex. 2, p. 24) Recommended permanent restrictions included no work around loud noises, in unpredictable noise, in dangerous situations requiring accurate concentration, or in stressful situations. (Ex. 2, p. 25)

On May 26, 2015, claimant filed an original notice and petition with the Division of Workers' Compensation, seeking benefits as a result of an alleged February 1, 2015 injury. Claimant claimed cumulative noise exposure at defendant-employer had impacted his hearing.

On June 2, 2015, defendants' counsel authored a letter to claimant's counsel acknowledging receipt of claimant's petition. Counsel represented that defendants denied claimant's tinnitus was caused by his employment or that claimant's noise exposure aggravated or accelerated the condition. Counsel relied upon the medical evidence provided and disputed Dr. Tyler's opinion on the basis he failed to fully consider claimant's history and medical conditions. (Ex. F, pp. 1-2)

On August 11, 2015, claimant underwent annual hearing evaluation. Results revealed mild high frequency hearing loss of the right ear, moderate high frequency hearing loss of the left ear, and mild speech frequency hearing loss of the left ear. (Ex. 1, p. 70)

Claimant testified he continues to experience constant ringing in his ears. The ringing affects his concentration and he is unable to maintain attention. He has difficulty focusing on reading or locating a source of a noise, trouble communicating in noisy environments, and also notes difficulty with processing complex thoughts due to distraction by the ringing. He utilizes a fan, as well as a radio or television, in order to counteract the ringing sound while trying to fall asleep. Once asleep, claimant testified he is able to remain asleep. Claimant testified he continues to engage in social and recreational activities, but can be irritable due to the ringing in his ears. (Claimant's testimony)

Claimant denied participation in hunting or use of a chainsaw or snowmobile. He does not own a firearm and has not shot a weapon outside of his military training.

Claimant owns a snowblower which he uses sporadically and also handles mowing and weed-eating of his property. He testified he occasionally uses hearing protection while performing these tasks. (Claimant's testimony)

Claimant continues to work for defendant-employer as a DPM Operator, without any accommodation. He remains on first shift and has not missed work as a result of his tinnitus condition. Claimant earns \$30.58 per hour. Claimant also maintains a leadership role in the union and acts as the union recorder. In this role, claimant is paid by defendant-employer to participate in union grievances and meetings. He estimated an average of 15 to 20 percent of his work hours are spent performing office-type duties for the union. (Claimant's testimony)

Defendants admit claimant was occasionally exposed to impulsive noise at defendant-employer. Defendants also admit defendant-employer's guidelines for noise exposure are based upon a 40-hour work week. (Ex. 12, p. 2)

CONCLUSIONS OF LAW

The first issue for determination is whether claimant sustained an injury on February 1, 2015 which arose out of and in the course of his employment.

The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.14(6).

The claimant has the burden of proving by a preponderance of the evidence that the alleged injury actually occurred and that it both arose out of and in the course of the employment. Quaker Oats Co. v. Ciha, 552 N.W.2d 143 (Iowa 1996); Miedema v. Dial Corp., 551 N.W.2d 309 (Iowa 1996). The words "arising out of" referred to the cause or source of the injury. The words "in the course of" refer to the time, place, and circumstances of the injury. 2800 Corp. v. Fernandez, 528 N.W.2d 124 (Iowa 1995). An injury arises out of the employment when a causal relationship exists between the injury and the employment. Miedema, 551 N.W.2d 309. The injury must be a rational consequence of a hazard connected with the employment and not merely incidental to the employment. Koehler Electric v. Wills, 608 N.W.2d 1 (Iowa 2000); Miedema, 551 N.W.2d 309. An injury occurs "in the course of" employment when it happens within a period of employment at a place where the employee reasonably may be when performing employment duties and while the employee is fulfilling those duties or doing an activity incidental to them. Ciha, 552 N.W.2d 143.

The claimant has the burden of proving by a preponderance of the evidence that the injury is a proximate cause of the disability on which the claim is based. A cause is proximate if it is a substantial factor in bringing about the result; it need not be the only cause. A preponderance of the evidence exists when the causal connection is probable rather than merely possible. George A. Hormel & Co. v. Jordan, 569 N.W.2d 148 (Iowa 1997); Frye v. Smith-Doyle Contractors, 569 N.W.2d 154 (Iowa App. 1997); Sanchez v. Blue Bird Midwest, 554 N.W.2d 283 (Iowa App. 1996).

The question of causal connection is essentially within the domain of expert testimony. The expert medical evidence must be considered with all other evidence introduced bearing on the causal connection between the injury and the disability. Supportive lay testimony may be used to buttress the expert testimony and, therefore, is also relevant and material to the causation question. The weight to be given to an expert opinion is determined by the finder of fact and may be affected by the accuracy of the facts the expert relied upon as well as other surrounding circumstances. The expert opinion may be accepted or rejected, in whole or in part. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); IBP, Inc. v. Harpole, 621 N.W.2d 410 (Iowa 2001); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995). Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417 (Iowa 1994). Unrebutted expert medical testimony cannot be summarily rejected. Poula v. Siouxland Wall & Ceiling, Inc., 516 N.W.2d 910 (Iowa App. 1994).

Claimant relates his tinnitus condition to his cumulative noise exposure at defendant-employer. In support of his allegation, claimant relies upon the opinions of Dr. Tyler. Dr. Tyler opined claimant's tinnitus was "probably a result of his work." Defendants deny a causal relationship exists between claimant's exposure to noise at defendant-employer and his tinnitus. In support of their position, defendants rely upon the opinions of Drs. Pospisil and Hansen.

Following review of the entirety of the evidentiary record and with paying particular attention to the records of the opining physicians, I find the opinion of Dr. Hansen to be entitled to the greatest weight. Dr. Hansen is a medical doctor, board certified in otolaryngology. He was selected by defendants to evaluate claimant relative to treatment options and had the opportunity to physically examine claimant prior to rendering his opinions.

While Dr. Hansen's specialized education and examination of claimant lend support to the probative value to be assigned to his opinion, the undersigned provides Dr. Hansen's opinion greater weight based largely upon the accuracy of the history he relied upon in crafting his opinion. While Dr. Hansen's report contains only a generic reference to review of outside records, review of the content of his report reveals he possessed specific knowledge of the procedures undergone by claimant in his childhood. As claimant did not personally have knowledge of the exact procedures, Dr. Hansen presumably reviewed the contemporaneous medical records. Dr. Tyler, on the other hand, did not possess claimant's past medical records and referenced only a mild case of otitis media.

Given specialist, Dr. Hansen, causally related claimant's ongoing hearing difficulties and tinnitus to his preexisting conditions, Dr. Tyler's apparent lack of full knowledge of these conditions leads the undersigned to discount the opinions of Dr. Tyler on causation. Absent Dr. Tyler's opinion, claimant possesses no opinion causally relating his tinnitus to his noise exposure at defendant-employer. Therefore, it is determined that claimant has failed to carry his burden of proving he sustained an injury arising out of and in the course of his employment. As claimant has failed to carry

his burden of proving by a preponderance of the evidence that he sustained an injury arising out of and in the course of his employment, consideration of the issues of timeliness of the claim and causation and extent of permanent disability is unnecessary.

The next issue for determination is whether defendants are responsible for claimed medical expenses.

The employer shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, and hospital services and supplies for all conditions compensable under the workers' compensation law. The employer shall also allow reasonable and necessary transportation expenses incurred for those services. The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Section 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening October 1975).

Claimant seeks payment for medical mileage incurred in connection with Dr. Hansen's evaluation in January 2014. Defendants arranged and authorized the care with Dr. Hansen and thus, are responsible for reasonable transportation expenses incurred in connection with the evaluation. Claimant claims he travelled 53 miles in connection with the appointment; there is no evidence this claimed mileage is unreasonable or inaccurate. Accordingly, defendants shall pay claimant medical mileage in the amount of \$29.95 (53 miles x \$.565 = \$29.95).

The next issue for consideration is whether claimant is entitled to reimbursement of an independent medical evaluation pursuant to Iowa Code section 85.39. At the time of hearing, defendants stipulated in the event payment had not previously been paid thereof, defendants would reimburse claimant for Dr. Tyler's IME in the requested amount of \$1,303.50. Further consideration of this issue is therefore, unnecessary.

The final issue for determination is a specific taxation of costs pursuant to Iowa Code section 86.40 and rule 876 IAC 4.33. Claimant requests taxation of the costs of: \$100.00 filing fee, \$6.48 service fee, and \$61.50 in transcription costs related to claimant's deposition. These are allowable costs and are taxed to defendants.

ORDER

THEREFORE, IT IS ORDERED:

Claimant shall take nothing from these proceedings by way of indemnity benefits.

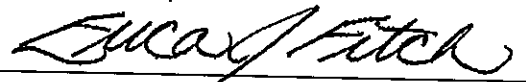
Defendants shall pay claimant's prior medical expenses submitted by claimant at the hearing as set forth in the decision.

Defendants shall reimburse claimant for Dr. Tyler's independent medical evaluation in the amount of one thousand three hundred three and 50/100 dollars (\$1,303.50).

Defendants shall file subsequent reports of injury as required by this agency pursuant to rule 876 IAC 3.1(2).

Costs are taxed to defendants pursuant to 876 IAC 4.33.

Signed and filed this 14th day of November, 2016.



ERICA J. FITCH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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EJF/sam

Right to Appeal: This decision shall become final unless you or another interested party appeals within 20 days from the date above, pursuant to rule 876-4.27 (17A, 86) of the Iowa Administrative Code. The notice of appeal must be in writing and received by the commissioner's office within 20 days from the date of the decision. The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday. The notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 1000 E. Grand Avenue, Des Moines, Iowa 50319-0209.