BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

STEVEN L. SCHULTZ, Claimant, vs. JOHN DEERE DUBUQUE WORKS, Self-Insured Employer, Defendant.	File Nos. 5046288, 5046289 A R B I T R A T I O N D E C I S I O N Head Note Nos.: 1100, 1803, 2208, 3001

STATEMENT OF THE CASE

Claimant, Steven Schultz, filed petitions in arbitration seeking workers' compensation benefits from John Deere Dubuque Works, self-insured employer, as defendant, as a result of alleged injuries sustained on November 2, 2011, and December 15, 2011. This matter came on for hearing before Deputy Workers' Compensation Commissioner, Erica J. Fitch, on January 30, 2015, in Des Moines, Iowa. The record in this case consists of claimant's exhibits 1 through 4 and 6 through 10, defendant's exhibits A through P, and the testimony of claimant, Joleen Schultz and Eric Hillary. The parties submitted post-hearing briefs, the matter being fully submitted on February 20, 2015.

ISSUES

In File No. 5046288 (Date of Injury: November 2, 2011, Tinnitus)

The parties submitted the following issues for determination:

1. Whether claimant's claim is barred as an untimely claim under Iowa Code section 85.26;
2. Whether claimant sustained an injury on November 2, 2011, which arose out of and in the course of his employment;
3. The extent of claimant's industrial disability;
4. The proper rate of compensation;
5. Whether claimant is entitled to payment of various medical expenses;
6. Whether claimant is entitled to reimbursement of an independent medical evaluation pursuant to Iowa Code section 85.39; and
7. Specific taxation of costs.

The stipulations of the parties in the hearing report are incorporated by reference in this decision.

In File No. 5046289 (Date of Injury: December 15, 2011, Occupational Hearing Loss)

The parties submitted the following issues for determination:

1. Whether claimant sustained an injury on December 15, 2011, which arose out of and in the course of his employment;
2. The extent of permanent disability;
3. The proper rate of compensation;
4. Whether claimant is entitled to payment of various medical expenses;
5. Whether claimant is entitled to reimbursement of an independent medical evaluation pursuant to Iowa Code section 85.39; and
6. Specific taxation of costs.

The stipulations of the parties in the hearing report are incorporated by reference in this decision.

FINDINGS OF FACT

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

Claimant's testimony was consistent as compared to the evidentiary record and his deposition testimony. His demeanor at the time of evidentiary hearing gave the undersigned no reason to doubt claimant's veracity. Claimant is found credible.

Claimant was 61 years of age at the time of hearing. (Claimant's testimony) He graduated high school and subsequently obtained a bachelor's degree in agricultural engineering. (Exhibit 8, page 111) While in college, claimant's work experience included working as a mechanic, fertilizer plant technician, truck driver, engineer co-op, and civil engineer co-op. (Ex. 8, pp. 112-113) Following college graduation, claimant began work at defendant in 1977 as an engineer. (Ex. 8, p. 113) Claimant has remained employed by defendant since that date, totaling 38 years of continuous employment as an engineer. (Claimant's testimony)

In 2009, claimant earned a base salary, plus a short term incentive of $2,217.82 and a mid-term incentive of $6,406.00. (Ex. P, p. 209) In 2010, claimant earned a base salary, plus a short term incentive of $8,702.99 and mid-term incentive of $6,886.00. (Ex. P, p. 210) In 2011, claimant earned $94,416.00 in salary. Claimant also received a short term incentive of $18,836.40 and a mid-term incentive of $7,290.00, for a total variable pay award of $26,126.40. (Ex. 9, pp. 118-119; Ex. P, p. 211) In 2012, claimant received a base salary, plus short term incentive of $18,103.87 and a mid-term incentive of $7,436.00. (Ex. P, p. 212) In 2013, claimant earned a base salary, plus a short term incentive of $14,431.86 and a mid-term incentive of $7,436.00. (Ex. P, p.

213) In 2014, claimant earned a base salary, plus a short-term incentive of $15,058.09. (Ex. P, p. 214)

Claimant believes his exposure to loud noises during his employment at defendant is a causative factor in his development of hearing loss. Over the course of his 38 years with defendant, claimant testified his exposure to loud noises has varied. When he began at defendant, defendant lacked a hearing protection program. Such a program was implemented in 1984. Claimant testified prior to implementation of the program, he was exposed to loud noises while running tests on machines. Although he was assigned an office space, he was also required to perform tests in the field, factory, proving grounds, or experimental shop. Claimant estimated 20 to 30 percent of his time was spent in noisy environments during this period, including entire shifts at a time. (Claimant's testimony)

In 1984, defendant implemented a hearing protection program mandating use of hearing protection in the factory, proving grounds, and experimental shops. Claimant testified he initially used ear plugs. Although use of hearing protection was mandatory, claimant testified he was forced to remove his hearing protection to communicate at times, even when located in a noisy setting. For example, if located near a running machine or welding equipment, claimant testified he was required to remove his earplugs in order to converse with coworkers. (Claimant's testimony)

Claimant explained his hearing deteriorated more rapidly during the periods his physical office was located inside the factory and when he had assignments in the factory. Claimant testified from 2000 to 2003, his office was located inside of the backhoe factory. While in his office, he removed his earmuffs, but wore the earmuffs while outside the office module. The office was located between the welding department and assembly department. Therefore, whenever one left the office, he immediately entered the factory floor. In addition to entering and exiting his office, claimant was required to be on the factory floor on occasion, including for entire shifts. (Claimant's testimony)

In 2003, claimant's office was moved to the separate engineering department in order to allow him to oversee the design of the skid-steer product. During this time, claimant worked primarily in the office, but also performed testing and spent time in the experimental shop. Also during this approximate time, claimant testified his family complained of him missing portions of conversations. Claimant testified he then began to notice his hearing was declining. (Claimant's testimony)

Claimant testified he ultimately sought evaluation at Dubuque ENT in August 2005. (Claimant's testimony) Dubuque ENT records dated August 8, 2005, denote claimant had suffered with hearing loss for a number of years, but worsened over the last couple years. Claimant also admitted to suffering with a buzzing in his ears, but indicated it did not interfere with sleep or activities of daily living. The evaluator noted a "strong family history of hearing loss," as claimant's mother began to lose hearing in her 40s. Claimant denied significant noise exposure at defendant. Claimant was assessed

with sensorineural hearing loss, with a configuration noise induced hearing loss. It was noted claimant's past hearing screens showed a progression of hearing loss "through the years." Claimant was also assessed with slight tinnitus. Amplification and a recheck in six months were recommended. (Ex. 3, p. 6; Ex. L, p. 188)

Claimant testified he suffered with some form of tinnitus prior to his 2005 appointment. At that time, claimant testified the tinnitus was not problematic. (Claimant's testimony)

In November 2005, claimant's office was moved into the skid-steer factory. He remained in the skid-steer factory until 2011. While in the skid-steer factory, claimant was again assigned to an office on the factory floor located between the welding and assembly areas. In order to get to or from his office, he was required to traverse the factory floor. The office was located adjacent to the boom spin out area, an area claimant described as particularly noisy due to sanders, scrapers, and polishers being used. He spent the majority of his time in the office, but as a supervisor, he was often required to be on the factory floor. The majority of claimant's factory time was spent in the welding and fabrication area. Claimant testified he could be on the factory floor one to four times per day, or for an entire day several days in a row. Noises on the factory floor were generally continuous, but could include isolated impulsive noise like backup alarms and hammering. He explained some impulsive noises occurred only feet away and could be loud enough to make one jump. Claimant also testified to some bleed of factory noise into the office, including into a conference room where the noise could be sufficient enough to interrupt meetings. (Claimant's testimony)

Claimant returned to Dubuque ENT on December 20, 2006. The provider noted testing showed stable hearing from the last audiogram six months prior. Claimant reported worsened tinnitus, including a couple periods where his tinnitus was significantly worse. During these times, claimant related 15-minute periods when he was able to hear his heart rate in his ears. The provider assessed moderately severe hearing loss in the mid to high frequencies. Amplification was again recommended, as well as a repeat audiogram in one year or sooner if claimant suffered from additional subjective complaints. (Ex. 3, p. 7; Ex. L, p. 189)

Claimant began use of hearing aids in 2007 and has worn them each day since. When he began to wear hearing aids, the hearing aids interfered with use of earplugs at work. Claimant testified he spoke with defendant's physician, Lloyd Luke, M.D., who recommended use of amplified earmuffs which cover the entire ear and suppress noise. Claimant began to wear these amplified muffs in January 2007. The earmuffs also contained an amplifier which could be adjusted to allow sound into the ear. Claimant explained he would manually turn up the amplification during conversations in noisy environments; however, he indicated the amplifier made all noises louder, not just the conversation frequencies. Claimant testified he has used amplified muffs each time he has been required to enter noisy environments at defendant since being fitted in January 2007. (Claimant's testimony; Ex. L, p. 165)

On April 28, 2009, claimant returned to Dubuque ENT and complained of worsening hearing and increased difficulty understanding. Claimant reported getting along acceptably with respect to his tinnitus. Claimant's hearing aids were adjusted. (Ex. 3, p. 7; Ex. L, p. 189)

Claimant presented to defendant's medical office on October 31, 2011. At that time, he requested new amplified muffs, as claimant had misplaced his pair. Claimant expressed many questions regarding an increased hearing loss and accordingly, was scheduled to see Dr. Luke. (Ex. 4, p. 17; Ex. L, p. 164)

Claimant explained during this period he experienced the need to have his hearing aids adjusted to a higher level. According to claimant, the need for adjustments happened quickly and he became concerned he was losing his hearing so rapidly. He began to question whether his hearing loss was affecting his job performance and whether he would lose the remainder of his hearing before he had the opportunity to retire. Claimant testified while he was questioning the cause of his deteriorating hearing, he had not related the loss to his noise exposure at defendant. (Claimant's testimony)

Claimant presented to Dr. Luke on November 2, 2011. Records from defendant's medical office indicate Dr. Luke discussed hearing loss and compensatory strategies with claimant. (Ex. 4, p. 17; Ex. L, p. 164)

On November 14, 2011, claimant returned to Dubuque ENT and was evaluated by Gregory White, M.D. Dr. White noted worsened tinnitus over the last few months, to a level where the noise was constant and sounded like crickets. Dr. White recommended claimant return in one year for hearing loss evaluation. (Ex. 3, p. 9; Ex. L, p. 190)

Claimant testified in November 2011 his job classification was changed from that of supervising engineer to engineer. Claimant testified a year prior, his supervisors had expressed concern over claimant's job performance. Claimant testified he began to consider what facts were contributing to his performance issues and realized his hearing loss and tinnitus played a role. Claimant testified at that time, he did not understand the difference between his hearing loss and tinnitus. He was simply aware of an inability to hear certain words and the presence of a background noise which blocked certain words. (Claimant's testimony)

In December 2011, claimant's office moved from the factory floor back to the engineering department. (Claimant's testimony)

Claimant testified when his November 2012 audiogram revealed further hearing loss, claimant requested evaluation at defendant's medical office and was seen by Peter Matos, D.O. (Claimant's testimony)

Records from defendant's medical office indicate claimant was seen by Dr. Matos on December 18, 2012. Dr. Matos' records indicate he reviewed OSHA paperwork with claimant and advised claimant to wait and see how his new hearing aids worked out. If claimant developed problems or concerns with his hearing at work, Dr. Matos recommended claimant follow-up with defendant's clinic and claimant's personal ENT. Notes indicate Dr. Matos recommended a "companion mic and streamer" to enhance claimant's hearing quality. Dr. Matos also recommended defendant have the safety department review hearing tests and claimant's work areas. (Ex. 4, p. 17)

Claimant testified only he and Dr. Matos were present during the approximately 15-minute visit. Claimant testified Dr. Matos showed him an audiogram chart with some numbers circled and indicated the circled numbers were not good. Claimant now believes Dr. Matos was referencing a notch visible on claimant's audiogram. Claimant testified Dr. Matos also informed him the results of the audiogram showed the hearing loss happened at defendant and accordingly, they needed to begin disability compensation paperwork. Claimant testified Dr. Matos inquired when claimant intended to retire and advised him the disability process ran more smoothly if begun while still employed. Following the evaluation, claimant testified Dr. Matos handed his file to the nurse on duty and indicated the process for compensation should be begun. Claimant testified the nurse inquired if the safety department had approved beginning the process and Dr. Matos appeared confused, as if he was unaware of how defendant's process ran. Claimant testified prior to this date, he had no definitive reason to believe his hearing loss was related to his employment at defendant. (Claimant's testimony)

Dr. Matos provided deposition testimony in this matter. Dr. Matos is board certified in occupational medicine and preventative medicine. (Ex. K, pp. 131-132) Although no longer employed in this capacity, Dr. Matos previously served as chief medical officer at the Rock Island Arsenal. During this time, he also moonlighted, including at Concentra. Concentra had a contract with service at defendant. The physician typically assigned to defendant was unavailable for personal reasons, so Dr. Matos filled in at defendant on a few occasions. (Ex. K, pp. 132-133)

According to Dr. Matos' testimony, he evaluated claimant on December 18, 2012. Dr. Matos estimated his evaluation with claimant lasted 5 to 10 minutes. (Ex. K, pp. 136, 139) At the time of the evaluation, Dr. Matos testified a nurse informed him claimant had a significant threshold shift in his hearing and needed to be seen for work-up and care. (Ex. K, p. 136) During deposition, Dr. Matos reviewed his medical notes regarding the details of his evaluation of claimant. Dr. Matos recalled the nurse had completed the requisite OSHA paperwork regarding the threshold shift and Dr. Matos handed the paperwork to claimant. (Ex. K, p. 137) Dr. Matos explained OSHA requires notification to the employee when a significant threshold shift in hearing occurs. Dr. Matos indicated this is designed to allow an employee to investigate work-relatedness and allow the employer the ability to take corrective action in a work area if need be. (Ex. K, p. 138)

Dr. Matos did not recall informing claimant the audiogram numbers were "bad." (Ex. K, p. 139) He also did not recall pointing to portions of the audiogram and stating the results indicated the hearing loss occurred at defendant. (Ex. K, p. 139) The following interaction occurred on further examination:

> Q. Okay. Do you recall circling numbers on an audiogram?
> A. I'm sure I did it to show where the shift may have occurred, and I think the one thing that comes to mind is perhaps the nurse had equated that this was work-related.
> Q. What do you recall about that?
> A. And, again, I don't have the benefit of looking at – at any documents or I don't know what she looked at, except that I want to say that she thought that this was work-related, that the nurse did.
> Q. Okay; and as we sit here today do you know what nurse that was?
> A. It would have been – It had to be the lead occupational health nurse, the same one that would have set up everything.
> Q. Do you recall when she would have shared that position or belief with you?
> A. Perhaps during the interview with the patient.
> ...
> Q. Okay. Do you recall informing [claimant] about hearing loss disability compensation?
> A. I think that is part of the paperwork for OSHA that discusses the process.
> Q. And do you recall having any discussion with [claimant] about that?
> A. If it's part of the paperwork, I would imagine I would have because you'd have to inform them, again, what the OSHA process is, and that's part of the hearing claim process.

(Ex. K, p. 139)

Dr. Matos testified he recommended "companion mic and streaming" to assist claimant with hearing quality. Dr. Matos indicated he recommended the companion mic and streaming because he was informed it had provided assistance in the past. However, he did not recall if claimant or the nurse mentioned the prior success with such a device. (Ex. K, p. 138) In his notes, Dr. Matos also indicated the safety department should review claimant's hearing test and work area. Dr. Matos explained his intention was two-fold:

> [N]umber one, to look at what's the corrective action that the employer needed to take in the work area and the second is causation, is the person in the work area that's above -- you know, that's in a – that's above 85 decibels and requires hearing protection.

(Ex. K, p. 138)

On April 22, 2013, claimant returned to Dubuque ENT and was evaluated by Dr. White. At that time, claimant expressed complaints of ear popping and a concern his

hearing had decreased since December 2012. Claimant reported no change in his tinnitus. Dr. White opined claimant's audiogram revealed severe hearing loss of the high frequencies, with claimant's discrimination lower than on previous audiograms. Dr. White assessed bilateral sensory hearing loss. (Ex. 3, p. 10) He cautioned claimant's change in hearing may be explained by test variability and having a tight cerumen plug just removed. Accordingly, he recommended claimant consider repeat testing in 6 weeks. (Ex. 3, p. 11)

On June 3, 2013, claimant returned to Dr. White at Dubuque ENT and underwent an audiogram. Dr. White opined the audiogram revealed no change and perhaps slight improvement. However, he noted claimant had an abrupt worsening of his high-frequency sensorineural hearing loss. Dr. White assessed sensorineural hearing loss, asymmetrical. (Ex. 3, pp. 13-14) Documentation reveals age-corrected hearing loss of 45.50 percent left and 36.82 percent right ears for a total age-corrected binaural hearing loss of 38.26 percent. (Ex. 1, p. 1)

Dr. White indicated claimant required strict hearing protection. He took time to examine claimant's earmuffs and opined the device amplified all sounds, including the background sounds of machines running. He opined this amplification was detrimental to claimant's hearing. Dr. White recommended claimant avoid exposure to loud sounds and utilize hearing protection which did not amplify sounds. (Ex. 3, pp. 13-14)

A summary of claimant's age-corrected binaural hearing loss reveals: 0 percent loss up through the September 1998 test (Ex. B, pp. 23-26; Ex. L, pp. 152-155); 0.5 percent in March 2001 (Ex. B, p. 27; Ex. L, p. 156); 3.33 percent in October 2003 (Ex. B, p. 28; Ex. L, p. 157); 12.98 percent in August 2005 (Ex. B, p. 29; Ex. L, p. 158); 14.36 percent in December 2006 (Ex. B, p. 30; Ex. L, p. 159); 14.91 percent in February 2007 (Ex. B, p. 31; Ex. L, p. 160); 23.22 percent in April 2009 (Ex. B, p. 32; Ex. L, p. 161); 30.79 percent in November 2011 (Ex. B, p. 33; Ex. L, p. 162); 35.12 percent in November 2012 (Ex. B, p. 34; Ex. L, p. 163); 34.54 percent in December 2012 (Ex. B, p. 35); 36.83 percent in April 2013 (Ex. B, p. 36); and 38.26 percent in June 2013 (Ex. B, p. 37). (*See also* Ex. 1, p. 3; Ex. L, p. 151)

Although medical providers expressed concern with respect to the amplifier, claimant admitted he did not subjectively perceive increasing noise exposure as a result of use of the amplifier. Claimant testified he eventually ceased using the amplifier feature of his earmuffs due to concerns raised by medical providers. At the recommendation of his personal ENT, claimant received a remote microphone. Claimant explained he hands the remote microphone to an individual and the ensuing conversation is transmitted directly into a streamer he wears about his neck. From the streamer, the words are fed directly into his hearing aids. Claimant testifies he uses the microphone in noisy environments or during meetings. However, when he uses the microphone feature, the remainder of his hearing aid is effectively shut off and he is only able to hear the person or persons with or adjacent to the microphone. Additionally, the microphone does not relay whispers or under-the-breath comments. (Claimant's testimony)

At the arranging of claimant's attorney, claimant secured the opinions of Richard Tyler, Ph.D. Dr. Tyler is an audiologist and consultant in hearing loss, tinnitus, hyperacusis and acoustics, with a Ph.D. in psychoacoustics. (Ex. 6, p. 70) Dr. Tyler reviewed various documents and interviewed claimant on the telephone on July 3, 2013. (Ex. 6, p. 34) One document reviewed by Dr. Tyler was titled a Hearing Loss and Tinnitus Questionnaire. On this questionnaire, claimant indicated he used earplugs at work from 1984 to 2007, at which time he began to utilize earmuffs along with his hearing aids. Claimant admitted he was required to turn up his amplifiers 2 or 3 times per day in order to communicate, for a total of 2 minutes per event. (Ex. J, p. 121-122) Claimant provided a detailed estimate of his noise exposures during his employment with defendant: 30 percent from 1977 to 1982; intermittent from 1982 to 1989; 30 percent from 2000 to 2003; and 30 percent from 2005 to 2012. (Ex. J, p. 126)

Claimant noted past work exposure to noise on the family farm from 1963 to 1976. Claimant reported he wore earmuffs in this role after 1970. (Ex. J, p. 124) Claimant also reported some recreational noise exposure, including use of power tools, a lawn mower, a snow blower, and a motorcycle between 1982 and 1988 for a total of 30 hours per year. (Ex. J, pp. 123-124) Claimant noted his mother began using hearing aids at age 40 and underwent stapes surgery. (Ex. J, p. 122)

Claimant indicated he first noticed tinnitus symptoms in 2005. Claimant indicated his tinnitus sounded like crickets and was constant in nature. He rated the loudness of the noises as a level 25 out of 100. He also reported word association problems which he attributed to the tinnitus masking some voice sounds. On the questionnaire, claimant indicated he did not know the cause of his tinnitus. (Ex. J, p. 124)

Following records review and interview of claimant, Dr. Tyler issued a report of his opinions dated September 1, 2013. As an initial matter, Dr. Tyler noted no evidence of impairment of hearing on incoming audiogram documents and no indication of ringing in the ears. (Ex. 6, p. 35) Dr. Tyler reviewed claimant's hearing evaluations and opined claimant's incoming audiogram of December 1976 demonstrated 0 percent hearing loss bilaterally. Thereafter, Dr. Tyler opined claimant's hearing worsened bilaterally over the years. Dr. Tyler opined he observed the presence of a noise induced notch in both of claimant's ears and opined the progression of loss was consistent with noise induced hearing loss. Dr. Tyler noted claimant stated he was informed by Dr. Matos on December 18, 2012, that he should be awarded hearing loss compensation from defendant and accordingly, informed nurses to begin the process. (Ex. 6, p. 37)

Dr. Tyler opined the November 30, 2012, audiogram data revealed bilateral hearing loss pursuant to Iowa Code chapter 85B of 35 percent after age correction. (Ex. 6, p. 39) Dr. Tyler explained the calculation of percentage hearing loss is designed to be an approximation of the speech handicap expected in a patient. Dr. Tyler opined, however, that claimant's hearing loss mainly existed at higher frequencies and the percentage hearing loss calculation "grossly underestimates" claimant's hearing difficulties and did not adequately quantify claimant's hearing impairment. (Ex. 6, p. 39) He explained profound high-frequency hearing loss prevented claimant from hearing

high-frequency speech sounds such as 's', 'z', 'ch', and 'sh', thus making communication difficult in some situations. Dr. Tyler explained women and children speak at a higher pitch, leaving it more difficult for claimant to successfully communicate with such individuals. Dr. Tyler opined claimant will experience greater difficulty communicating in noisy situations or localizing the direction of a sound. (Ex. 6, p. 40)

Dr. Tyler found claimant was exposed to noise in conjunction with his work at defendant, including that he was often required to be on the factory floor, even for entire shifts when a new product was introduced; his office was located beside the assembly line, often exposing him to the noise of impact wrenches even when in his office; he often had to walk ½ mile through the noisy factory to get to his office, sometimes 2 to 4 times per day; he had to raise his voice to communicate "suggesting that the noise was intense enough to produce noise induced hearing loss and tinnitus"; he was exposed to impulsive noise, including impact wrenches and banging of metal on metal; and he had to move about in different noise areas, but defendant did not provide him a dosimeter which Dr. Tyler opined was an OSHA violation. (Ex. 6, p. 35)

Dr. Tyler also summarized claimant's participation in defendant's hearing protection program. Dr. Tyler indicated hearing protection was not required until September 1984. When the protection plan was implemented, Dr. Tyler indicated no one monitored claimant to be sure he was implanting the earplugs properly and no one advised claimant as to simple safety checks which could ensure claimant was properly wearing his hearing protection. Dr. Tyler noted claimant eventually received a device including earmuffs and a microphone/amplifier. Dr. Tyler indicated the earmuffs attenuated mostly in the high frequencies, preventing claimant from communicating and leading claimant to turn up the amplifier in order to communicate with fellow workers. He opined turning up the amplification amplified speech and background noise, leading claimant to turn up the amplification to damaging levels in order to hear his coworkers. (Ex. 6, p. 36)

Dr. Tyler opined defendant's hearing protection program provided inadequate support and advice, did not protect claimant's hearing, and did not provide claimant multiple hearing devices to choose from as required by OSHA. Dr. Tyler opined defendant should have provided claimant a remote microphone to use in connection with his earmuffs which would allow him to hand the microphone to the person with which he was communicating. He noted claimant ultimately received such a device on June 8, 2013. (Ex. 6, p. 36)

Dr. Tyler also noted claimant's mother underwent a stapedectomy which he attributed likely to otosclerosis. Dr. Tyler opined claimant did not have otosclerosis and his siblings did not have hearing loss or tinnitus. On this basis, Dr. Tyler opined it was unlikely claimant's hearing loss was a result of hereditary factors. (Ex. 6, p. 37) Dr. Tyler also opined it unlikely claimant's hearing loss was attributable to recreational factors such as limited gun shooting, use of a snow blower, or riding a motorcycle. (Ex. 6, p. 37)

With respect to claimant's tinnitus, Dr. Tyler noted the condition began in approximately 2005. While it began gradually, the tinnitus progressed to a now-constant presence in claimant's bilateral ears, with an estimated loudness of the noise of approximately 25 percent. Dr. Tyler noted claimant first noted ear ringing after noise exposure. Dr. Tyler opined this is a typical symptom of noise induced tinnitus, specifically to begin intermittently after work, progress in duration over time, and eventually become permanent. (Ex. 6, p. 40)

Dr. Tyler opined tinnitus can produce a permanent impairment. Dr. Tyler created his own severity of impairment method in computation of the extent of permanent impairment. His method suggests a maximum whole person impairment of 60 percent for tinnitus. Utilizing his computation of the severity of claimant's impairment and the maximum permanent impairment of 60 percent, Dr. Tyler opined claimant sustained a whole person impairment of 5 percent. (Ex. 6, pp. 43-44)

Dr. Tyler ultimately opined claimant's sensorineural hearing loss and tinnitus were probably a result of his work at defendant. He found it "very unlikely" claimant's hearing loss and tinnitus were due to aging, other job experiences, recreational noise, or hereditary factors. He reasoned claimant's audiograms were consistent with a noise induced hearing loss, and claimant was exposed to impulsive noise and was not properly shown hearing protection strategies. Dr. Tyler opined claimant sustained permanent impairments of 35 percent whole person due to hearing loss and 5 percent whole person due to tinnitus. (Ex. 6, p. 45) As hearing loss has the potential to impact communication and activities, Dr. Tyler recommended permanent restrictions of no work around loud noise, no work around unpredictable noise, no work in dangerous situations requiring accurate concentration, no work in stressful situations, and no work in situations requiring auditory localization. Additionally, Dr. Tyler noted claimant would require bilateral hearing aids which need to be changed approximately every 5 years and was potentially a candidate for a short-electrode cochlear implant. (Ex. 6, p. 46)

Dr. Tyler also addressed assertions of defendant's counsel made in the letter informing claimant of denial of his workers' compensation claim. Dr. Tyler opined counsel was unqualified to make certain statements. While counsel stated excessive noise is defined by Iowa law as that in excess of 90 dBA, Dr. Tyler indicated this is untrue, as exposure to 90 dBA for 40 hours per week can produce noise induced hearing loss in some. Dr. Tyler also opined counsel did not have the training necessary to suggest claimant's exposure to those levels was very limited and indicated counsel lacked dosimeter readings to back up his assertion. Dr. Tyler acknowledged the presence of a hearing protection plan at defendant, but highlighted the lack of such a program prior to 1984 at which time defendant exposed employees to "damaging noise." Dr. Tyler also noted the earmuffs provided by defendant as part of this program likely made claimant's noise induced hearing loss and tinnitus worse. (Ex. 6, p. 38)

Dr. Tyler went on to address counsel's suggestion that noise induced hearing loss does not progress after the damaging noise is removed. Dr. Tyler opined research on this topic showed this statement was incorrect. He also opined claimant had not

been protected from noise exposure during the last decade as he had inappropriate protection and was exposed to impulsive noise. (Ex. 6, pp. 38-39)

Additionally, Dr. Tyler opined counsel's suggestion the middle ear hearing loss demonstrated by claimant's mother indicated there was a potential hereditary component of claimant's hearing loss was an incorrect assumption. Dr. Tyler opined counsel lacked training and expertise in this subject. He further opined:

> This middle ear hearing loss is not related at all to [claimant's] noise induced hearing loss. [Counsel] states that it 'may not apply'. It does not apply. I suspect the only reason [counsel] brings this up is to add some confusion to this case. [Claimant's] hearing loss is sensorineural, most probably related to noise, is not a middle ear hearing loss, and is not hereditary. [Counsel's] assertion is unfounded, and I believe inappropriate.

(Ex. 6, p. 39)

Claimant testified he did not consider the possibility his tinnitus was related to noise exposure at defendant until he filled out Dr. Tyler's questionnaire. (Claimant's testimony)

Claimant secured vocational consultant, Barbara Laughlin, to perform an employability assessment. Ms. Laughlin issued a report containing her opinions on April 7, 2014, following records review and a meeting with claimant. (Ex. 7, p. 93) Ms. Laughlin performed a computerized Skilltran analysis utilizing Dr. Tyler's restrictions for positions which "run at a quiet level of noise" and found claimant lost access to 98 percent of unskilled occupations (Ex. 7, p. 97) She performed the same computerized analysis utilizing Dr. Tyler's restrictions at a moderate level of noise and found a loss of 50.8 percent of unskilled occupations. (Ex. 7, p. 98)

After reviewing claimant's medical records, Dr. White authored a letter to claimant's attorney dated April 8, 2014. Dr. White opined audiologic testing of claimant revealed an audiometric or acoustic notch. He explained such notches are typically associated with some type of acoustic trauma which can occur with head trauma or exposure to loud sounds. Dr. White also opined sensorineural hearing loss was demonstrated, indicating some loss in function between the most peripheral hearing receptors and the brain with respect to the transmission of information. Dr. White opined at the time of his June 3, 2013 evaluation of claimant, claimant had been using a sound amplifying device which Dr. White believed was counterproductive. He recommended wearing sound attenuating devises to prevent further acoustic trauma (Ex. 3, p. 15) Dr. White opined claimant could continue working in an environment with noise exposure so long as he observed a hearing conservation program. (Ex. 3, p. 16)

In 2014, Anderson Consulting Associates completed a Sound Exposure Monitoring Report of defendant's plant. (Ex. 10, pp. 122-123) Of note, an area directly

adjacent to claimant's office module was found to have exposure levels exceeding 90 dBA. (Ex. 10, pp. 122, 124)

Defendant secured board certified otolaryngologist, Robert Dobie, M.D., to perform a records review. Dr. Dobie issued a report of his opinions dated April 29, 2014. (Ex. D, p. 41; Ex. I, p. 59) Following review of the 2014 sound survey, Dr. Dobie opined claimant's typical daily time-weighted average noise exposure was estimated to be far below 85 dBA, without consideration of hearing protection. He explained 80 percent of day shift workers at defendant had exposures below 85 dBA and in the skid-steer department most day shift workers had exposures below 85 dBA. As claimant spent considerable time in an office setting, Dr. Dobie opined his typical exposures would have been less than those of most day shift workers. (Ex. D, p. 42) Based upon Dr. Tyler's note that claimant estimated raising his voice about 30 percent of the time in certain years, Dr. Dobie opined this would reduce claimant's time-weighted average by 8.7 dBA. Given this pattern of exposure, Dr. Dobie indicated he would not expect a substantial risk of noise induced hearing loss, even without hearing protection. (Ex. D, p. 42)

Dr. Dobie noted claimant's 1976 audiogram showed borderline bilateral high-frequency hearing loss, worse on the right, and a probable noise notch in the left ear and a possible notch in the right ear. Dr. Dobie indicated most of claimant's right ear audiograms from 1981 through 2013 revealed no notching. He observed notching in approximately half of claimant's audiograms; he attributed the ones present to test variability. Dr. Dobie opined this pattern of notching was "suggestive, but not diagnostic" of a noise induced hearing loss in the left ear. Dr. Dobie also opined he observed progressive hearing loss of both ears during this period and especially after age 50. Dr. Dobie indicated nearly all the progression of hearing loss occurred after defendant imposed hearing protection measures in 1984, with the majority of loss occurring after 1993 when claimant was 40 years of age. Dr. Dobie also opined claimant's speech-frequency average hearing loss fell within normal limits until he reached age 55. (Ex. D, p. 43)

Dr. Dobie opined claimant's audiogram of June 2013 revealed bilateral sloping and notched hearing loss, with a binaural hearing impairment of 46.7 percent. Dr. Dobie opined this equated to a whole person impairment rating of 16 percent. Dr. Dobie opined the AMA Guides to the Evaluation of Permanent Impairment recommended adding up to 5 percent whole person impairment for tinnitus which substantially affected activities of daily living. Dr. Dobie opined claimant's tinnitus warranted an addition of zero to one percent. When the tinnitus rating was combined with hearing loss, Dr. Dobie opined a 17 percent whole person impairment. Dr. Dobie opined claimant's condition was sensorineural in nature and hearing aid use was appropriate. (Ex. D, p. 43)

On the issue of causation, Dr. Dobie opined claimant's sensorineural hearing loss was primarily attributable to age-related hearing loss. Dr. Dobie reasoned given claimant had some borderline hearing loss at the time of his preemployment audiogram

and had a history of exposure to farm machinery, it was likely claimant had noise induced loss prior to beginning his employment at defendant. Dr. Dobie opined occupational noise exposure at defendant prior to 1984 may have been sufficient to cause additional noise induced loss, but if that were the case, he would have anticipated observing worsened hearing on the 1981 hearing test. Dr. Dobie opined no such worsened hearing was evident. (Ex. D, p. 44) With respect to subsequent exposure, Dr. Dobie opined:

> After 1984, when [hearing protection device] use became mandatory, his subsequent typical time-weighted average exposures, considering his use of [hearing protection device]s, were probably less than 80 dBA. It is therefore highly unlikely that any [noise induced hearing loss] occurred after 1984. In addition, both the trajectory of hearing loss (accelerating) and the audiometric configuration (no consistent bilateral notching) were typical of age-related hearing loss and atypical of occupational noise-induced hearing loss.

(Ex. D, p. 44)

Dr. Dobie opined noise induced hearing loss is evident immediately after exposure to damaging noise and does not continue to progress or sustain further damage after the exposure ceases. He also opined claimant's use of earmuffs with an amplifier did not cause claimant to sustain hearing loss. (Ex. D, p. 44)

On these bases, Dr. Dobie opined none of claimant's hearing loss between 1976 and 2013 was attributable to his work at defendant. Dr. Dobie specifically opined none of the hearing loss was caused by noise exposure at defendant and claimant's hearing loss was attributable to non-work related factors. He also opined claimant's tinnitus was not caused by noise exposure at defendant or by use of the Peltor earmuff at work. (Ex. D, p. 44)

Dr. Dobie also expressed disagreement with opinions or statements authored by Dr. Tyler. Dr. Dobie opined one's need to raise his voice to communicate was insufficient to establish that the exposure was intense enough to result in noise induced hearing loss and tinnitus. Dr. Dobie reasoned people must raise their voices when ambient noise levels exceed 60 dBA, a level he opined was far below that which could be hazardous to hearing. (Ex. D, p. 44) Dr. Dobie opined claimant's questionnaire indicated no exposure to impulsive noise and there was no evidence suggesting the OSHA threshold of 140 dB peak was ever exceeded. He further indicated levels in excess of this threshold were uncommon in defendant's industry. Dr. Dobie also stated OSHA does not require employees to be fitted with dosimeters. Dr. Dobie opined it unlikely claimant's earmuffs transmitted damaging noise levels, given an output limit of 82 dBA. (Ex. D, p. 45)

Additionally, Dr. Dobie opined the progression of claimant's hearing loss was not consistent with noise induced hearing loss. Dr. Dobie opined Dr. Tyler's statement that

research demonstrates noise induced hearing loss continues to progress after the damaging noise ceases was incorrect with respect to human audiometric studies. Dr. Dobie also critiqued Dr. Tyler's opinions with respect to the role of heredity in claimant's hearing loss. Specifically, Dr. Dobie opined age related hearing loss is a complex genetic trait, which cannot be accurately predicted as it does not follow classical Mendelian inheritance patterns. Accordingly, Dr. Dobie opined a family history is unreliable in predicting the occurrence of age related hearing loss. He opined, however, that studies have shown that age related hearing loss is in large part, hereditary. (Ex. D, p. 45)

Dr. Dobie opined claimant did not display profound high-frequency hearing loss in either ear and claimant's high-frequency loss would not prevent claimant from hearing high frequency sounds. Dr. Dobie opined all speech sounds are broad-spectrum and not limited to a single high-frequency. He acknowledged claimant would have more difficulty than those with normal hearing in discriminating these sounds from one another. Dr. Dobie opined he did not agree with Dr. Tyler that frequencies above 3 kHz should be considered in determining impairment. He explained the AMA Guides method of estimating binaural hearing impairment is a reasonable method and no other method has been deemed superior. (Ex. D, pp. 45-46) He also critiqued Dr. Tyler's method of determining tinnitus-related impairment as inconsistent with the AMA method. He highlighted Dr. Tyler's reliance upon the proposition that tinnitus renders hearing more difficult and opined tinnitus was "rarely intense enough to mask speech." (Ex. D, p. 46)

Dr. Dobie opined he saw no need for the work restrictions recommended by Dr. Tyler. He also expressed surprise Dr. Tyler considered claimant a candidate for a short-electrode cochlear implant given claimant's relatively high word recognition scores. (Ex. D, p. 46)

On May 22, 2014, defendant's counsel forwarded claimant's deposition transcript and exhibits to Dr. Dobie for review and inquired if the content changed any of Dr. Dobie's opinions. (Ex. E, p. 48) Dr. Dobie opined he reviewed claimant's deposition and none of the included information changed the opinions he expressed in his report of April 29, 2014. (Ex. E, pp. 49-50)

Dr. Tyler was provided the opportunity to review Dr. Dobie's records of April and May 2014. Dr. Tyler critiqued Dr. Dobie's attempt to use the 2014 noise survey to infer noise exposure in 1997. Dr. Tyler opined this inappropriate as current machines produce less noise. (Ex. 6, p. 59) Dr. Tyler also took issue with Dr. Dobie's suggestion that no evidence demonstrated impulse noise levels at defendant exceeded the 140 dB peak. Dr. Tyler attributed the lack of evidence to defendant's failure to follow OSHA guidelines and verify the high levels were not present. (Ex. 6, p. 64) Dr. Tyler further highlighted the noise surveys were performed in fixed locations, but claimant was required to move between areas, resulting in the survey results potentially not representing claimant's exposures. Dr. Tyler indicated the surveys do not include measures of impulsive noise as required by OSHA. Accordingly, Dr. Tyler expressed

belief claimant should have been fitted with a dosimeter, but was not. (Ex. 6, p. 60) Dr. Tyler indicated dosimeters are required in order to record an accurate exposure for workers who move about the factory. (Ex. 6, p. 64)

Additionally, while Dr. Dobie suggested no difference between claimant's 1976 and 1981 audiograms, Dr. Tyler opined he observed significant changes at the 4000 Hz and 6000 Hz levels of the left ear which he opined could have been related to noise exposure. (Ex. 6, p. 63)

Dr. Tyler opined Dr. Dobie made inferences about claimant's time-weighted-average noise exposure and the effectiveness of hearing protection. Dr. Tyler opined the averages were not reported for each year of claimant's employment, were not reported for the jobs claimant held, and did not measure impulsive noise. Additionally, Dr. Tyler opined even with hearing protection, some individuals will develop noise induced hearing loss due to susceptibility. (Ex. 6, p. 60) Dr. Tyler also opined effectiveness of hearing protection is generally overrated by a factor of two. Furthermore, he opined it unclear how effective and accurate the circuit in claimant's earmuffs was in limiting output and believed it unlikely claimant's earmuffs were effective for impulsive noise due to the lack of constant sound. (Ex. 6, p. 61)

Dr. Tyler expressed agreement with Dr. Dobie's opinion that notching is suggestive of noise induced hearing loss. Dr. Tyler opined the presence of a notch on an audiogram is not proof of noise exposure; however, he opined if a notch is present and the person has a history of noise exposure, the noise exposure is the most probable cause of the notch. Dr. Tyler opined no other disease process results in a high-frequency notch. (Ex. 6, pp. 61-62) In response to Dr. Dobie's critique that raising one's voice is not sufficient evidence to indicate noise levels are sufficient to produce noise induced hearing loss, Dr. Tyler opined:

> It is widely accepted that if the noise is intense enough to prevent communication between two people 1 meter apart at conversation levels, then the noise is intense enough to produce noise induced hearing loss. It might not be 'sufficient evidence', but is certainly a strong indication that some works [sic] are likely to get noise induced hearing loss.
>
> I noted that Dr. Dobie published an article (noise-induced hearing loss: the family physician's role; AFP) in 1987. He states in the first paragraph "Hearing is jeopardized whenever people have difficulty communicating over ambient noise levels..." (page 141). [AFP, Volume 36, No. 6 (Dec. 1987)]

(Ex. 6, p. 64)

Dr. Tyler addressed Dr. Dobie's opinion that noise induced hearing loss appeared immediately and did not continue after the exposure ceased, at least in humans. Dr. Tyler opined new data indicated "hearing threshold shifts are not sufficient

to document damage to the auditory system." Dr. Tyler opined this proposition is now widely accepted. (Ex. 6, p. 63) Dr. Tyler also countered that experimental data gathered from animals indicates that noise induced hearing loss can progress after the exposure has ceased, and ethical considerations have prevented such experiments upon humans. (Ex. 6, pp. 65-66)

Dr. Tyler acknowledged the plausibility of Dr. Dobie's suggestion that claimant's hearing loss was primarily age-related; however, Dr. Tyler highlighted the age-related hearing loss had been subtracted in accordance with the Iowa Code. He agreed with Dr. Dobie's opinion one's hearing worsens after the age of 50, but again expressed belief the Iowa Code adjusts the percentage of hearing loss for this factor. (Ex. 6, pp. 62-63) While Dr. Dobie opined claimant's progressive hearing loss was inconsistent with noise induced hearing loss, Dr. Tyler disagreed indicating the progression of noise induced hearing loss varies widely from person to person and is dependent on multiple factors. (Ex. 6, p. 65)

Therefore, Dr. Tyler opined he "completely disagreed" with Dr. Dobie's opinion that none of claimant's hearing loss was related to his work at defendant. While some of claimant's hearing loss might be age related, Dr. Tyler believed claimant's greatest exposure was at defendant. (Ex. 6, p. 63)

Dr. Tyler also agreed it was possible claimant may have had a borderline hearing loss when he began employment at defendant, given the initial audiogram revealed a notch. Dr. Tyler expressed belief this fact should have alerted defendant to claimant's increased susceptibility to noise induced hearing loss and resulted in increased protection. (Ex. 6, p. 63)

With regard to Dr. Dobie's opinion that claimant's speech-frequency average was within normal limits until age 55, Dr. Tyler indicated claimant initially began to lose his hearing at higher frequencies. He explained noise exposure affects higher frequencies first and only later affects the speech frequencies. Dr. Tyler opined the fact that the speech frequencies are within normal limits does not mean a noise induced hearing loss had not already begun. (Ex. 6, p. 62)

Dr. Tyler critiqued Dr. Dobie's use of the AMA Guides to rate tinnitus as an addition to hearing loss, adding up to 5 percent whole person impairment and only in the event it accompanies hearing loss. Dr. Tyler opined it was widely accepted for tinnitus to occur without a hearing loss, which justifies a separate rating for tinnitus. Dr. Tyler expressed belief the maximum 5 percent rating allowed by the AMA Guides for tinnitus was inappropriate as the rating was the equivalent of losing one's little finger while tinnitus has led some individuals to commit suicide. (Ex. 6, p. 62) Similarly, Dr. Tyler disagreed with Dr. Dobie's assertion the AMA Guides provided a superior method for rating tinnitus than the method utilized by Dr. Tyler. Dr. Tyler opined the frequencies used by the AMA Guides were not the best frequencies to predict word recognition. (Ex. 6, p. 66)

Dr. Tyler opined tinnitus can affect concentration and understanding of speech which can cause difficulties as compared to a worker without tinnitus. He indicated jobs requiring good concentration and excellent hearing are particularly influenced by tinnitus. Dr. Tyler agreed with Dr. Dobie's opinion that tinnitus is rarely intense enough to mask speech insofar as many speech sounds will be heard in the presence of tinnitus. However, Dr. Tyler maintained some speech sounds will be masked and others may be distorted by the tinnitus. (Ex. 6, pp. 66-67)

Dr. Tyler maintained his opinion claimant's sensorineural hearing loss and tinnitus were probably a result of his work at defendant. (Ex. 6, p. 69)

Defendant's counsel forwarded Dr. Tyler's November 25, 2014, report to Dr. Dobie for his review. (Ex. G, pp. 51-52) After doing so, Dr. Dobie issued a responsive report dated December 22, 2014. Dr. Dobie expressed agreement that it would have been preferable to have multiple noise surveys to review as opposed to only the 2014 survey. He also expressed agreement that some machines are less noisy than prior machines, but indicated some workplaces have actually become noisier over time due to the addition of machines and/or activities or aging machines becoming noisier. Thus, given the current information available, Dr. Dobie opined the 2014 survey provided the best available estimate of claimant's exposures throughout his employment. (Ex. H, p. 54) Additionally, Dr. Dobie opined neither OSHA nor typical hearing conservation practice required every employee to wear a dosimeter. (Ex. H, p. 55) Dr. Dobie opined defendant was compliant with OSHA standards with regard to monitoring of noise. (Ex. H, p. 57)

Dr. Dobie also agreed that time weighted averages are based on readings in fixed locations. Dr. Dobie opined claimant's time weighted averages would be no greater than the averages of workers in the areas he visited and would actually be lower if he spent less than a full shift in that particular area. Dr. Dobie reiterated his opinion claimant's typical time weighted average exposure was less than 85 dBA. (Ex. H, p. 54) Dr. Dobie also opined Dr. Tyler's assertion that impulsive noise was not recorded was incorrect, as the meters used in constructing the sound survey incorporated all types of sounds, including impact noise, and the resulting report designated peak noise levels for over 50 departments. (Ex. H, pp. 54-55)

Dr. Dobie agreed with Dr. Tyler's statement that even with hearing protection, some workers will develop noise induced hearing loss. Dr. Dobie opined this can occur when a workers' net exposures over an extended period, exceeds a time weighted average of 85 dBA. Dr. Dobie indicated claimant's typical exposures were less than 85 dBA, even without hearing protection. (Ex. H, p. 55)

Dr. Dobie agreed with the general statement that attenuation provided by hearing protection devices was overrated by a factor of two. However, he indicated the earmuffs worn by claimant usually lost only 5 to 10 dB of attenuation. (Ex. H, p. 55) He further opined he was aware of no evidence supporting Dr. Tyler's assertion the earmuffs worn by claimant may have not possessed a properly functioning circuit or

were too slow to be effective for impulsive noise. He added that devices such as the earmuffs worn by claimant are routinely worn as protection by recreational shooters. (Ex. H, p. 55)

With respect to Dr. Tyler's statement regarding noise induced hearing loss, Dr. Dobie stated:

> Dr. Tyler asserts that "professionals would agree that when notching is present, and there is a history of noise exposure, noise is the most probable cause of the notch." That is true when there is a history of potentially hazardous noise exposure, no other causes of hearing loss, and when other clinical features are consistent with [noise induced hearing loss]. [Claimant's] unprotected noise exposure prior to his work at [defendant], combined with the notching on his pre-employment audiogram, led me to conclude that he had indeed suffered some [noise induced hearing loss] before coming to work at [defendant].
>
> His comment that no other disease causes audiometric notches is incorrect. Many other ear disorders, including cochlear concussion from closed head injury, are also associated with notching.

(Ex. H, p. 55)

Dr. Dobie also highlighted test-retest variability and the possibility for notches to occur in individuals without a positive noise history. (Ex. H, pp. 55-56)

Dr. Dobie opined the Iowa Code method of adjusting for age-related hearing loss was inadequate, as it assumes all people accrue age related hearing loss at the same rate. (Ex. H, p. 56) Dr. Dobie opined:

> [Claimant's] hearing loss progression has been much more rapid and extreme than the average person, and is also much more severe than would be expected for even the most extreme noise exposures found in industry. Its accelerating trajectory is more consistent with [age related hearing loss] than with [noise induced hearing loss], especially in a person whose noise exposures were much less than hazardous during the period of dramatic hearing loss progression.

(Ex. H, p. 56)

Dr. Dobie stated studies have analyzed human data on the progression of noise induced hearing loss and he opined the studies revealed noise induced hearing loss did not progress after the noise exposure ceased and only progress in a limited fashion after 20 years of exposure. (Ex. H, p. 57)

Dr. Dobie opined in his experience treating tinnitus, he believed most individuals are "only mildly bothered by it." In cases where sufferers develop anxiety or depression, Dr. Dobie indicated the AMA Guides allowed for combining a hearing impairment with a

psychiatric impairment. (Ex. H, p. 56) Dr. Dobie indicated Dr. Tyler provided no evidence that tinnitus is capable of masking or competing with speech. Dr. Dobie therefore maintained his prior opinion that the tinnitus is generally incapable of masking speech. (Ex. H, p. 57)

At the time of evidentiary hearing, claimant remained employed as an engineer at defendant. His office is located in the engineering department, where he generally denied exposure to loud noises. However, claimant testified he was recently assigned to a project which requires him to spend approximately 30 percent of his time in the factory or experimental shop and is therefore exposed to noise in these locations. Claimant testified his hearing loss and tinnitus have impacted his job performance at defendant. He explained he struggles with telephone calls which comprise a large portion of his work day. Claimant testified his microphone and streamer are helpful, but he continues to struggle, particularly in understanding those with accents. He also expressed difficulty hearing conversations in conference rooms where seven or eight people are participating. Claimant testified he feels as if he falls behind in the conversation and is constantly attempting to catch up. He also is unable to hear coworkers on the opposite side of the room. As a result of his difficulty comprehending speech in meetings, claimant testified he misses topics in meetings and there is no opportunity for him to interrupt and seek clarification. Additionally, claimant testified his use of hearing aids has caused him embarrassment at work; for example, he was unable to finish a presentation before the company president because his hearing aids ran out of battery. (Claimant's testimony)

Claimant testified he is unable to hear without use of his hearing aids. Additionally, claimant believes his tinnitus has worsened over the years. The condition began intermittently and sounded like crickets. Over time, claimant testified it gradually worsened. He described his tinnitus as a constant drone of multiple tones. The noise does not get louder or softer and is always present, although it does not interrupt his sleep. Claimant testified the tinnitus interferes with conversation, as he misses particular frequencies or tones of speech. Claimant testified the tinnitus also impairs his concentration, explaining the tones drifts in and out when he is attempting to concentrate. Claimant testified he is dyslexic and as a result, has always required silence in order to concentrate. Therefore, the sound caused by claimant's tinnitus interferes with his concentration. Claimant finds the tinnitus frustrating, as no solution is available and he is unable to ignore the presence of the sound. (Claimant's testimony)

As a result of his hearing loss and tinnitus, claimant testified he has altered his retirement plans. Originally, claimant intended to retire when his age neared 65, in approximately 2017 or 2018. However, as a result of his rapid loss of hearing, claimant testified he intended to retire during the year 2015. He testified to considering the summer 2015 timeframe. When he retires, claimant and his wife intend to move to property they own in Washington state. (Claimant's testimony)

Following retirement, claimant indicated he would consider performing part-time work. He indicated a John Deere facility is located near his property in Washington and

this facility could be the source of part-time employment. Claimant testified he originally anticipated performing some part-time work through defendant. However, as the work is performed off-site, a significant amount of telephone work is required. Claimant testified to limitations in his ability to use the telephone, as discussed *supra*. (Claimant's testimony)

Claimant testified in addition to work-related noise exposure, he has been exposed to a certain amount of noise outside of work at defendant. Claimant testified he performs projects around his 100-year old home and these projects require use of power tools. (Claimant's testimony)

Claimant admitted his mother had hearing difficulties, but claimant attributed her hearing loss to a middle ear condition. He explained her condition could be treated via surgery. Claimant testified his sensorineural hearing loss is nonsurgical in nature. Claimant testified his three younger siblings do not have hearing losses which require use of hearing aids, nor does any aunt, uncle, cousin, or grandparent. (Claimant's testimony)

Claimant's wife of 38 years, Joleen Schultz, testified at evidentiary hearing. Ms. Schultz testified she and claimant were married when he began work at defendant and at that time, claimant had no appreciable hearing problems. Ms. Schultz testified eventually, she began to notice claimant's hearing was not normal. At the time, Ms. Schultz testified she accused claimant of not listening, while he accused her of mumbling. Over time, Ms. Schultz testified his hearing became continually worse and claimant began missing conversations. At that time, Ms. Schultz testified she was adamant claimant have his hearing evaluated. She indicated the year 2005 seemed like the appropriate time period. (Ms. Schultz's testimony)

Since 2005, Ms. Schultz testified claimant's hearing has declined further. She testified claimant has worn hearing aids since 2007 and she is not often around claimant when he is not wearing these devices. When he is not wearing his hearing aids, Ms. Schultz testified claimant is unable to hear her from more than a couple feet away and he misses noises such as the timer on the microwave or oven, ring on the telephone, doorbell, or the sound of water running. Even with his hearing aids in, Ms. Schultz testified claimant is unable to hear whispers, cannot pick up on sounds to diagnose problems with cars, has difficulty comprehending the pitch of her voice, is unable to locate the direction and source of a sound, and his reactions to sounds and conversations is delayed as if it takes claimant longer to process the sounds he heard. Ms. Schultz testified at times claimant will provide contextually inappropriate responses to her in conversation; she realized claimant was guessing what she was saying, as if she were speaking a foreign language. (Ms. Schultz's testimony)

She testified the microphone and streamer assist with telephone conversation, but without the microphone, communication over the phone is very difficult. In order to communicate at home, she must turn the volume down on the television, even if the two are sitting beside one another. Ms. Schultz testified claimant no longer participates in

conversations with friends at restaurants, as he is often behind the conversation and he becomes withdrawn. Ms. Schultz also testified claimant chose to accelerate his retirement as he did not want to risk continued hearing loss at defendant. (Ms. Schultz's testimony)

Ms. Schultz's testimony was clear and consistent with that of claimant. Ms. Schultz was quite personable and charming during the course of her testimony. Her demeanor at the time of evidentiary hearing did nothing to lead the undersigned to doubt her veracity. Ms. Schultz is found credible.

Eric Hillary, current manager of skid-steer design engineering and former design engineer at defendant, testified at evidentiary hearing. Mr. Hillary testified the amount of time a design engineer is on the floor varies greatly, but he estimated an average duration of 30 minutes to 1 hour per day. He acknowledged there are occasions engineers are required to be on the floor for an entire shift, even for multiple days in a row. Mr. Hillary admitted one conference room in the skid-steer office is noisier than others due to its proximity to a repair area. He also admitted engineers are exposed to loud, impulsive noises in the factory. (Mr. Hillary's testimony)

Mr. Hillary's testimony was clear and consistent with that offered by claimant. He was professional during the course of evidentiary hearing and his demeanor gave the undersigned no reason to doubt Mr. Hillary's veracity. Mr. Hillary is found credible.

CONCLUSIONS OF LAW

In File No. 5046288 (Date of Injury: November 2, 2011, Tinnitus)

The threshold issue for consideration is whether claimant's claim is barred as an untimely claim under Iowa Code section 85.26.

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).

Iowa Code section 85.26(1) requires an employee to bring an original proceeding for benefits within two years from the date of the occurrence of the injury if the employer has paid the employee no weekly indemnity benefits for the claimed injury. If the employer has paid the employee weekly benefits on account of the claimed injury, however, the employee must bring an original proceeding within three years from the date of last payment of weekly compensation benefits.

That the employee failed to bring a proceeding within the required time period is an affirmative defense which the employer must plead and prove by a preponderance of the evidence. See Dart v. Sheller-Globe Corp., II Iowa Industrial Comm'r Rep. 99 (App. 1982).

When the injury develops gradually over time, the cumulative injury rule applies. The date of injury for cumulative injury purposes is the date on which the disability

manifests. Manifestation is best characterized as that date on which both the fact of injury and the causal relationship of the injury to the claimant's employment would be plainly apparent to a reasonable person. The date of manifestation inherently is a fact based determination. The fact-finder is entitled to substantial latitude in making this determination and may consider a variety of factors, none of which is necessarily dispositive in establishing a manifestation date. Among others, the factors may include missing work when the condition prevents performing the job, or receiving significant medical care for the condition. For time limitation purposes, the discovery rule then becomes pertinent so the statute of limitations does not begin to run until the employee, as a reasonable person, knows or should know, that the cumulative injury condition is serious enough to have a permanent, adverse impact on his or her employment. Herrera v. IBP, Inc., 633 N.W.2d 284 (Iowa 2001); Oscar Mayer Foods Corp. v. Tasler, 483 N.W.2d 824 (Iowa 1992); McKeever Custom Cabinets v. Smith, 379 N.W.2d 368 (Iowa 1985).

Claimant filed an original notice and petition on October 25, 2013, alleging claimant sustained tinnitus arising out of and in the course of his work duties, with a cumulative injury date of November 2, 2011. Defendant asserts claimant's petition is untimely pursuant to section 85.26, as claimant began considering the negative impact of his hearing loss and tinnitus upon his work performance in late 2010 or early 2011. Claimant asserts his petition is timely by virtue of the discovery rule. Claimant admits he had knowledge of the existence of extra noise in his ears at an early date, yet did not believe the tinnitus was problematic until the level of the noise increased. Claimant argues he sought care with Dr. Luke in November 2011, due to concerns about his declining hearing; however, he maintains he did not relate the tinnitus to his work at defendant until 2013 when completing Dr. Tyler's tinnitus questionnaire. By this rationale, claimant believes his petition is timely, as it was filed within two years of when he became aware of the seriousness and probable compensable character of the condition.

Claimant was diagnosed with slight tinnitus in August 2005, as well as sensorineural hearing loss with a configuration noise induced hearing loss. Claimant testified his tinnitus was not problematic at the time. Claimant continued to follow up with respect to his hearing loss and tinnitus. In late 2010, claimant's supervisors expressed concern regarding claimant's job performance. As a result, claimant began to consider the factors negatively impacting his performance and realized his hearing loss and tinnitus played a role. He, however, did not distinguish between the two conditions and was simply aware of the presence of a background noise and the inability to hear certain words. Although claimant began to question the cause of his deteriorating hearing, he testified he had not yet related the hearing loss and tinnitus to his work at defendant. Due to concerns regarding his hearing, claimant presented to defendant's medical office on October 31, 2011. He then saw Dr. Luke on November 2, 2011, to discuss hearing loss and compensatory strategies.

It is this date, November 2, 2011, which claimant has pleaded as his tinnitus date of injury. Claimant filed his petition for benefits on October 25, 2013, within two years of

the pleaded date of injury. Defendants argue claimant had a duty to investigate the work-relatedness of his claim at an earlier date, namely when he attributed his poor performance review to hearing loss and tinnitus. However, the fact claimant was aware of the negative impact of his hearing conditions upon his work in late 2010 or early 2011, does not mean claimant's claim is barred as untimely because it was not filed until October 2013.

Claimant has asserted a cumulative injury. Thus, one must first determine the manifestation date of the injury which is characterized as the date on which both the fact of the injury and the causal relationship of the injury to the claimant's employment would be plainly apparent to a reasonable person. Claimant pleaded a date of injury, a manifestation date, of November 2, 2011. By review of the evidence in the record, it appears, if there is any error in claimant's pleaded injury date, it is that the date pleaded is sooner than it appears the injury actually manifested. While claimant was clearly aware of the tinnitus diagnosis and its impact upon his work in late 2010 or early 2011, claimant himself testified he did not begin to relate his tinnitus to his work at defendant until his evaluation with Dr. Tyler in summer 2013. On Dr. Tyler's questionnaire, claimant indicated he did not know the cause of his tinnitus. However, it was Dr. Tyler's line of questioning which led claimant to consider work-relatedness. No provider suggested the possibility of work-relatedness prior to 2013. Therefore, as claimant filed his petition in October 2013 and could have conceivably pleaded a manifestation date in summer 2013, it is determined claimant's claim is not barred as untimely pursuant to section 85.26.

The next issue for determination is whether claimant sustained an injury on November 2, 2011, which arose out of and in the course of his employment.

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).

The fact claimant suffers with tinnitus is undisputed. The fighting issue with respect to claimant's tinnitus is whether the condition is causally related to his work at defendant, specifically to his noise exposure over time. The majority of records in evidence focus upon the causal relationship between claimant's hearing loss and his noise exposure, as opposed to addressing the tinnitus condition in great detail. Two physicians have offered opinions with respect to causation, Dr. Tyler and Dr. Dobie.

Dr. Tyler opined claimant's tinnitus was probably a result of his work at defendant and further, that it was "very unlikely" the tinnitus was due to aging, other job experiences, recreational noise, or hereditary factors. Dr. Tyler explained claimant first noted ear ringing after noise exposure and his progression with respect to the tinnitus was typical for noise induced tinnitus: to begin intermittently after work, progress in duration over time, and eventually become permanent. Dr. Dobie opined claimant's tinnitus was not caused by noise exposure at defendant or by use of the amplifier earmuffs. Dr. Dobie's opinion rests primarily in his opinion claimant's noise exposure was not significant enough to be hazardous to one's hearing.

Neither Dr. Tyler nor Dr. Dobie treated or personally evaluated claimant. Each opinion is based upon a records review and in the case of Dr. Tyler, a telephone interview with claimant. Dr. Dobie is a medical doctor, board certified in otolaryngology, while Dr. Tyler possesses a Ph.D. in psychoacoustics, the science of how individuals perceive and experience sound. Although I would generally find the opinion of a medical doctor entitled to greater weight on the issue of causation than that of a Ph.D., the undersigned is unable to do so on the facts of this case. The reason is the specificity of Dr. Tyler's opinion as opposed to that of Dr. Dobie. Dr. Tyler specifically opined claimant's tinnitus was consistent with noise induced tinnitus, progressing from intermittent ringing after work and gradually becoming permanent. Dr. Tyler's description of this progression is consistent with claimant's credible testimony on the

trajectory of his tinnitus. Dr. Dobie's opinion lacks such specificity and takes the form of a more general statement made as an ancillary opinion to the issue of occupational hearing loss.

As the undersigned provides greater weight to the opinion of Dr. Tyler on the issue of causation of claimant's tinnitus condition, it is determined claimant has proven by a preponderance of the evidence that his tinnitus condition arose out of and in the course of his employment with defendant.

The next issue for determination is the extent of claimant's industrial disability.

Under the Iowa Workers' Compensation Act, permanent partial disability is compensated either for a loss or loss of use of a scheduled member under Iowa Code section 85.34(2)(a)-(t) or for loss of earning capacity under section 85.34(2)(u). The parties have stipulated claimant's disability shall be evaluated industrially. Tinnitus is not a sensorineural loss of hearing in one or both ears, because tinnitus does not cause a person to be unable to hear; instead, tinnitus causes a person to perceive sounds that do not exist. Because tinnitus does not qualify under Iowa Code section 85B.4 (occupational hearing loss) nor under Iowa Code section 85.34(2)(r) (scheduled hearing loss), it is compensable under Iowa Code section 85.34(2)(u), the section for all other cases of permanent partial disability. Consequently, the undersigned must measure claimant's loss of earning capacity as a result of this impairment. Ehteshamfar v. UTA Engineered Systems, 555 N.W.2d 450 (Iowa 1996).

Since claimant has an impairment to the body as a whole, an industrial disability has been sustained. Industrial disability was defined in Diederich v. Tri-City R. Co., 219 Iowa 587, 258 N.W. 899 (1935) as follows: "It is therefore plain that the legislature intended the term 'disability' to mean 'industrial disability' or loss of earning capacity and not a mere 'functional disability' to be computed in the terms of percentages of the total physical and mental ability of a normal man."

Functional impairment is an element to be considered in determining industrial disability which is the reduction of earning capacity, but consideration must also be given to the injured employee's age, education, qualifications, experience, motivation, loss of earnings, severity and situs of the injury, work restrictions, inability to engage in employment for which the employee is fitted and the employer's offer of work or failure to so offer. McSpadden v. Big Ben Coal Co., 288 N.W.2d 181 (Iowa 1980); Olson v. Goodyear Service Stores, 255 Iowa 1112, 125 N.W.2d 251 (1963); Barton v. Nevada Poultry Co., 253 Iowa 285, 110 N.W.2d 660 (1961).

Compensation for permanent partial disability shall begin at the termination of the healing period. Compensation shall be paid in relation to 500 weeks as the disability bears to the body as a whole. Section 85.34.

Claimant was 61 years of age on the date of evidentiary hearing. He is an educated professional, having earned a high school diploma and a bachelor's degree in

agricultural engineering. Claimant has worked as an engineer for defendant for 38 years, the entirety of his post-college working career. Therefore, any negative impact upon claimant's ability to successfully perform such work detrimentally impacts claimant's earning capacity.

Two physicians opined claimant's tinnitus caused permanent functional impairment, Dr. Dobie and Dr. Tyler. Dr. Dobie opined claimant's condition warranted a 1 percent whole person impairment, as an add-on to hearing loss in accordance with the AMA Guides. Dr. Tyler opined claimant sustained a 5 percent impairment as a result of his tinnitus, by a methodology created by Dr. Tyler. Tinnitus is a stand-alone diagnosis; therefore, I find Dr. Tyler's attempt to quantify the permanent impairment resulting from this independent diagnosis useful in considering the extent of functional impairment caused by claimant's tinnitus. While Dr. Tyler's methodology is not in accordance with the AMA Guides, the undersigned notes that while our administrative rule 876 IAC 2.4 recognizes that the AMA Guides, Fifth Edition, is a useful tool in evaluating disability, it is only a guide and its use is not binding on this agency. Bisenius v. Mercy Medical Center, File No. 5036055 (Appeal April 1, 2013). Medical professionals are free to issue opinions based upon their expertise, as was done by Dr. Tyler.

Dr. Tyler also recommended permanent work restrictions due to claimant's hearing difficulties. However, these restrictions were not allotted to either the tinnitus or to the hearing loss specifically. As it is unclear which restrictions are attributable to claimant's tinnitus specifically, the undersigned is unable to consider the impact of such restrictions upon claimant's loss of earning capacity. Therefore, the undersigned finds Ms. Laughlin's vocational evaluation entitled to no weight, as it is based upon Dr. Tyler's recommended work restrictions.

At the time of evidentiary hearing, claimant remained employed at defendant as an engineer. Claimant lost his position as a supervising engineer and was moved back to an engineer position, a fact claimant attributes to hearing difficulties. He estimated this move would result in loss of bonus earnings. It is unclear however, if the performance issues which gave rise to the change in position were a result of the tinnitus or to the more severe hearing loss. Similarly, claimant testified he has elected to accelerate his retirement plans due to hearing difficulties; yet it is again unclear of the role of tinnitus in this decision as opposed to the significant hearing loss.

By electing to retire, claimant will voluntarily remove himself from the labor market with regard to full-time work. However, claimant testified he originally intended to pursue part-time work through defendant following retirement, in what amounts to a consulting role. Due to the need to utilize a telephone in performing such off-site work and claimant's difficulties with telephone conversations, this part-time work option may no longer be available to claimant. Again, however, it is unclear to what degree the tinnitus would interfere with such work as opposed to claimant's hearing loss.

Upon consideration of the above and all other relevant factors of industrial disability, it is determined claimant sustained a 10 percent industrial disability as a result of the work-related injury of November 2, 2011. Such an award entitles claimant to 50 weeks of permanent partial disability benefits (10 percent x 500 weeks = 50 weeks), commencing on the stipulated date of November 2, 2011.

The next issue for consideration is the proper rate of compensation. The parties agree to inclusion of claimant's base salary in computation of his gross earnings. The dispute arises from whether claimant's incentive payouts in 2011 should be included in claimant's gross average weekly wage on a pro rata basis. Claimant includes a pro rata portion of these incentive bonuses in his computation of rate; defendant excludes the incentive bonuses as irregular.

Section 85.36 states the basis of compensation is the weekly earnings of the employee at the time of the injury. The section defines weekly earnings as the gross salary, wages, or earnings to which an employee would have been entitled had the employee worked the customary hours for the full pay period in which the employee was injured as the employer regularly required for the work or employment. The various subsections of section 85.36 set forth methods of computing weekly earnings depending upon the type of earnings and employment.

The evidentiary record reveals claimant received both a short term and mid-term incentive in each year from 2009 to 2013. In 2014, claimant received a short term incentive, but not a mid-term incentive. The record lacks evidence regarding the frequency of payment of such incentives prior to 2009. Such incentives are paid based on a formula which requires goals to be met and the company to be profitable. Although the variables may vary from year to year, thus resulting in variability of the incentive amounts, the bonuses occur regularly. Claimant received both bonuses in the two years prior to his work injury, in the year of his work injury, and in the two years after the work injury. The only occasion when claimant did not earn both incentives was 2014; however, in that year, he continued to receive the short term incentive. These bonuses were not speculative and anticipatory, but were in fact, paid during each of these years.

Given that claimant received both bonuses in five of the six years for which records were provided and received one bonus in the sixth year, there is a plan governing distribution, and defendant continues to be profitable, it is found that claimant's bonuses were an annual expectation. As an annual expectation, the bonuses were regular in nature and a pro rata share shall be included in claimant's gross weekly earnings. See Mayfield v. Pella Corporation, File No. 5019317 (App. Dec. June 30, 2009). Having determined claimant's bonuses are properly includable in his gross earnings, it is determined claimant's computation of gross average weekly wage is adopted. The parties stipulated claimant was married and entitled to two exemptions. The proper rate of compensation for an individual with gross weekly earnings of $2,318.00, married with 2 exemptions, is $1,340.00 per week, the maximum weekly rate for permanent partial disability benefits in the year 2011.

The next issue for determination is whether claimant is entitled to payment of various medical expenses. Claimant submitted an itemization of medical expenses totaling $7,003.00 attached to the hearing report in this matter. This same itemization was attached to the hearing report in File No. 5046289, the occupational hearing loss claim. Claimant did not identify which costs were attributable to the tinnitus condition as opposed to the hearing loss claim. Claimant's summaries refer primarily to care and maintenance of hearing aids, audiogram reviews, or hearing protection evaluation. Each of these categories of care is more logically attributed to claimant's hearing loss claim, as each is designed to measure, enhance, or safeguard one's hearing. Absent further evidence, the undersigned is unable to causally relate the need for such care to the tinnitus claim. Therefore, defendant is not found responsible for claimant's medical expenses attached to the hearing report.

The next issue for determination is whether claimant is entitled to reimbursement of an independent medical evaluation pursuant to Iowa Code section 85.39.

Section 85.39 permits an employee to be reimbursed for subsequent examination by a physician of the employee's choice where an employer-retained physician has previously evaluated "permanent disability" and the employee believes that the initial evaluation is too low. The section also permits reimbursement for reasonably necessary transportation expenses incurred and for any wage loss occasioned by the employee attending the subsequent examination.

Defendants are responsible only for reasonable fees associated with claimant's independent medical examination. Claimant has the burden of proving the reasonableness of the expenses incurred for the examination. See Schintgen v. Economy Fire & Casualty Co., File No. 855298 (App. April 26, 1991). Claimant need not ultimately prove the injury arose out of and in the course of employment to qualify for reimbursement under section 85.39. See Dodd v. Fleetguard, Inc., 759 N.W.2d 133, 140 (Iowa App. 2008).

Claimant seeks reimbursement for Dr. Tyler's evaluation and report of September 1, 2013, in the amount of $1,376.00. At the time claimant sought evaluation by Dr. Tyler, no employer-retained physician had offered an opinion regarding the extent of claimant's permanent impairment as a result of his tinnitus, nor offered an opinion which would otherwise trigger claimant's right to a section 85.39 IME. Therefore, claimant has not met the prerequisite steps for reimbursement of an IME pursuant to section 85.39 and accordingly, is not entitled to reimbursement for Dr. Tyler's IME.

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; $229.00 court reporter fees for the deposition of Dr. Matos; $1,376.00 assessment of Dr. Tyler; $868.50 vocational report of Ms. Laughlin; and $1,376.00 rebuttal report of Dr. Tyler. (See Attachment to Hearing Report)

Iowa Code section 86.40 states:

Costs. All costs incurred in the hearing before the commissioner shall be taxed in the discretion of the commissioner.

Iowa Administrative Code Rule 876—4.33(86) states:

Costs. Costs taxed by the workers' compensation commissioner or a deputy commissioner shall be (1) attendance of a certified shorthand reporter or presence of mechanical means at hearings and evidential depositions, (2) transcription costs when appropriate, (3) costs of service of the original notice and subpoenas, (4) witness fees and expenses as provided by Iowa Code sections 622.69 and 622.72, (5) the costs of doctors' and practitioners' deposition testimony, provided that said costs do not exceed the amounts provided by Iowa Code sections 622.69 and 622.72, (6) the reasonable costs of obtaining no more than two doctors' or practitioners' reports, (7) filing fees when appropriate, (8) costs of persons reviewing health service disputes. Costs of service of notice and subpoenas shall be paid initially to the serving person or agency by the party utilizing the service. Expenses and fees of witnesses or of obtaining doctors' or practitioners' reports initially shall be paid to the witnesses, doctors or practitioners by the party on whose behalf the witness is called or by whom the report is requested. Witness fees shall be paid in accordance with Iowa Code section 622.74. Proof of payment of any cost shall be filed with the workers' compensation commissioner before it is taxed. The party initially paying the expense shall be reimbursed by the party taxed with the cost. If the expense is unpaid, it shall be paid by the party taxed with the cost. Costs are to be assessed at the discretion of the deputy commissioner or workers' compensation commissioner hearing the case unless otherwise required by the rules of civil procedure governing discovery. This rule is intended to implement Iowa Code section 86.40.

Iowa Administrative Code rule 876—4.17 includes as a practitioner, "persons engaged in physical or vocational rehabilitation or evaluation for rehabilitation." A report or evaluation from a vocational rehabilitation expert constitutes a practitioner report under our administrative rules. Bohr v. Donaldson Company, File No. 5028959 (Arb. Dec. November 23, 2010); Muller v. Crouse Transportation, File No. 5026809 (Arb. Dec. December 8, 2010) The entire reasonable costs of doctors' and practitioners' reports may be taxed as costs pursuant to 876 IAC 4.33. Caven v. John Deere Dubuque Works, File Nos. 5023051, 5023052 (App. Dec. July 21, 2009).

The transcription cost associated with Dr. Matos' deposition and the filing fee are allowable costs and are taxed to defendant. Claimant may also have the cost of two practitioner's reports taxed against defendant. The recent Iowa Supreme Court case of DART v. Young, makes it clear claimant may only successfully requests taxation of the

portion of IME expenses incurred in preparation of a written report. DART v. Young, 867 N.W.2d 839 (2015). As claimant sought reimbursement of Dr. Tyler's September 1, 2013, report as an IME pursuant to section 85.39, the associated costs may only be taxed in accordance with the Young case. Dr. Tyler's September 1, 2013, invoice does not itemize what portion of the cost is attributable to written report preparation. Therefore, none of the cost associated with Dr. Tyler's September 1, 2013, report is taxed to defendant. However, the vocational report of Ms. Laughlin and the rebuttal report of Dr. Tyler dated November 25, 2014, may both be taxed to defendant. However, the primary focus of each of these practitioners' reports was claimant's hearing loss claim and accordingly, the undersigned does not believe it reasonable to tax the entire cost of these reports to defendant. Rather, defendant is taxed with one-half of each of these expenses, for a total of $434.25 of Ms. Laughlin's report and $688.00 of Dr. Tyler's November 25, 2014, report.

Defendant is therefore taxed with the costs of: $100.00 filing fee; $229.00 court reporter fees for the deposition of Dr. Matos; $434.25 of the vocational report of Ms. Laughlin; and $688.00 of the rebuttal report of Dr. Tyler. Defendant is therefore taxed with costs in the amount of $1,451.25.

In File No. 5046289 (Date of Injury: December 15, 2011, Occupational Hearing Loss)

The first issue for determination is whether claimant sustained an injury on December 15, 2011, which arose out of and in the course of his employment. Claimant claimed an occupational hearing loss while still in the employ of defendant; however, the parties stipulated the claim was not prematurely filed pursuant to Iowa Code section 85B.8(1)(a). Determination of this issue is presented in the form of a quintessential battle of the experts.

While claimant testified Dr. Matos informed him his hearing loss was caused by his noise exposures at defendant, Dr. Matos declined to offer an opinion on causation in writing or at his deposition. Dr. Matos' limited recollection of his evaluation with claimant in December 2012 makes it clear Dr. Matos did not do any independent causation analysis and if any such opinion was offered at the time of claimant's evaluation, Dr. Matos was simply parroting the opinion of a plant nurse.

In August 2005, Dr. White opined claimant demonstrated a configuration noise induced hearing loss. In June 2013, Dr. White opined claimant's earmuffs resulted in amplification which was detrimental to claimant's hearing. On April 8, 2014, Dr. White authored an opinion letter stating claimant's audiograms revealed an audiometric or acoustic notch and opined such notches are typically associated with some type of acoustic trauma such as head trauma or exposure to loud sounds. Dr. White, however, never specifically opined claimant developed the hearing loss as a result of exposure to loud noises at defendant. He also never opined whether the amplification caused further worsening of claimant's hearing loss and to what extent; he simply stated the amplification was detrimental.

Accordingly, neither the opinion of Dr. Matos or of Dr. White is entitled to significant weight. Two experts, however, provided extensive opinions regarding the potential causal connection between claimant's hearing loss and his work at defendant. Dr. Tyler opined claimant's hearing loss was probably a result of his exposure at defendant, while Dr. Dobie opined the hearing loss was primarily attributable to age-related hearing loss and other non-work related factors, and not to noise exposure at defendant. The opinions of each expert are detailed in great length *supra* and will not be restated in this portion of the decision.

It is claimant who carries the burden of proof with respect to establishment of a work-related condition. Claimant has supplied an extensive and convincing opinion authored by Dr. Tyler in support of his claim. However, the undersigned ultimately finds the opinion of Dr. Tyler on this issue entitled to lesser weight than that of Dr. Dobie. Each expert provided an extensive opinion on this issue and neither treated or personally evaluated claimant, leaving each in a similar position with regard to the weight to be attributed to the opinions. The factor which ultimately leads the undersigned to provide greater weight to the opinion of Dr. Dobie is a matter of training and expertise. Dr. Dobie is a medical doctor, board certified in otolaryngology. Dr. Tyler possesses a Ph.D. in psychoacoustics, the study of how individuals perceive and experience sound. On the central issue of causation, the undersigned believes a physician with specialized training in evaluation and treatment of ear conditions is in a superior position with respect to the value to be assigned his opinion. Quite simply, I believe Dr. Dobie's training and education warrants his opinion entitlement to greater weight than the opinion of Dr. Tyler.

As the undersigned provides greater weight to the opinion of Dr. Dobie on the issue of causation of occupational hearing loss, it is determined claimant failed to prove by a preponderance of the evidence that he sustained an injury arising out of and in the course of his employment on December 15, 2011. As claimant failed to carry his burden, consideration of the issues of extent of permanent disability, rate of compensation, and payment of medical expenses, is unnecessary, as moot.

The next issue for determination is whether claimant is entitled to reimbursement of an independent medical evaluation pursuant to Iowa Code section 85.39.

As he did in connection with File No. 5046288 (Date of Injury: November 2, 2011, Tinnitus), claimant seeks reimbursement for Dr. Tyler's evaluation and report of September 1, 2013, in the amount of $1,376.00. At the time claimant sought evaluation by Dr. Tyler, no employer-retained physician had offered an opinion regarding the extent of claimant's hearing loss attributable to defendant, nor offered an opinion which would otherwise trigger claimant's right to a section 85.39 IME. Therefore, claimant has not met the prerequisite steps for reimbursement of an IME pursuant to section 85.39 and accordingly, is not entitled to reimbursement for Dr. Tyler's IME.

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; $229.00 court reporter fees for the deposition of Dr. Matos; $1,376.00 assessment of Dr. Tyler; $868.50 vocational report of Ms. Laughlin; and $1,376.00 rebuttal report of Dr. Tyler. (See Attachment to Hearing Report) As claimant has been unsuccessful on the merits of this case, none of the requested costs are taxed to defendant in File No. 5046289.

ORDER

THEREFORE, IT IS ORDERED:

In File No. 5046288 (Date of Injury: November 2, 2011, Tinnitus)

Defendant shall pay unto claimant fifty (50) weeks of permanent partial disability benefits commencing November 2, 2011, at the weekly rate of one thousand three hundred forty and no/100 dollars ($1,340.00).

Defendant shall pay accrued weekly benefits in a lump sum.

Defendant shall pay interest on unpaid weekly benefits awarded herein as set forth in Iowa Code section 85.30.

Defendant shall receive credit for benefits paid.

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

Costs are taxed to defendant pursuant to 876 IAC 4.33 as set forth in the decision in the amount of $1,451.25.

In File No. 5046289 (Date of Injury: December 15, 2011, Occupational Hearing Loss)

Claimant shall take nothing from these proceedings.

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

Costs are taxed to claimant pursuant to 876 IAC 4.33.

Signed and filed this 8th day of December, 2015.

Erica J. Fitch

ERICA J. FITCH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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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.