

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

**FILED**  
JUL - 3 2019  
WORKERS' COMPENSATION

JEFFREY J. SPAHN,

Claimant,

vs.

DEERE & COMPANY,

Employer,  
Self-Insured,  
Defendant.

File No. 5057512

A P P E A L

D E C I S I O N

Headnotes: 1402.30; 1803; 1803.1;  
2208; 2209; 2401;  
2501; 2907; 5-9999

Defendant Deere & Company, self-insured employer, appeals from an arbitration decision, filed on January 29, 2018, and an order accepting parties' stipulations and amending arbitration decision, filed on February 27, 2018. Claimant Jeffrey J. Spahn responds to the appeal. The case was heard on September 28, 2017, and it was considered fully submitted in front of the deputy workers' compensation commissioner on October 31, 2017.

In the arbitration decision, the deputy commissioner found claimant sustained both hearing loss and tinnitus as a result of noise exposures experienced at defendant-employer's plant. In doing so, the deputy commissioner found the causation opinion of Richard Tyler, Ph.D., to be more convincing than the causation opinion of Robert Dobie, M.D. The deputy commissioner found claimant's hearing loss and tinnitus were permanent conditions. The deputy commissioner found claimant sustained a two percent binaural hearing loss, which entitles claimant to receive 3.5 weeks of permanent partial disability (PPD) benefits. The deputy commissioner also found claimant sustained ten percent industrial disability due to his tinnitus. The deputy commissioner ordered defendant to provide future medical care for claimant's hearing loss and tinnitus.

Defendant raised two affirmative defenses with respect to claimant's tinnitus claim: the Iowa Code section 85.23 notice defense and the section 85.26 statute of limitations defense. With respect to notice, the deputy commissioner found claimant noted ringing in his ears on numerous audiograms commissioned by defendant. As such, the deputy commissioner determined the defendant's notice defense failed.

Regarding the statute of limitations, the deputy commissioner found the proper injury date for the tinnitus claim was February 25, 2009. Claimant's petition was not until October 18, 2016. However, the deputy commissioner found credible claimant's testimony that he believed the ringing in his ears would go away once he ended his

employment with defendant. As such, the deputy commissioner found claimant did not know, and reasonably should not have known, prior to last working for defendant in November of 2014 that the ringing in his ears was permanent. Thus, the deputy commissioner found claimant did not know until after his employment ended that his tinnitus was a serious condition and would have a permanent adverse impact on his employment or future employability. In light of this finding, the deputy commissioner determined defendant failed to satisfy its statute of limitations defense.

Because the deputy commissioner found a different injury date for claimant's tinnitus than that alleged by the parties, the deputy commissioner determined the stipulations regarding the commencement date and the weekly benefit rate for permanent partial disability (PPD) benefits entered by the parties at the start of the hearing were no longer accurate. The deputy commissioner ordered the parties to report within 30 days of the entry of the arbitration decision whether legally appropriate stipulations could be reached.

The parties provided updated stipulations for claimant's tinnitus claim on February 26, 2018. The deputy commissioner accepted and memorialized those stipulations in an order accepting parties' stipulations and amending arbitration decision. The parties stipulated claimant's weekly benefit rate is \$647.79 and the commencement date for PPD benefits is February 26, 2009.

On appeal, defendant asserts the deputy commissioner erred in finding claimant's hearing loss and tinnitus arose out of and in the course of his employment. Defendant alternatively asserts claimant's tinnitus claim is barred by the statute of limitations and that claimant is entitled to no, or minimal, PPD benefits.

Those portions of the proposed agency decision and ruling pertaining to issues not raised on appeal are adopted as a part of this appeal decision.

I have performed a de novo review of the evidentiary record and the detailed arguments of the parties, and I reach the same analysis, findings, and conclusions as those reached by the deputy commissioner.

Pursuant to Iowa Code sections 17A.5 and 86.24, I affirm and adopt as the final agency decision those portions of the proposed arbitration decision filed on January 29, 2018, and the order accepting parties' stipulations and amending arbitration decision filed on February 27, 2018, that relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided a well-reasoned analysis of all the issues raised in the arbitration proceeding. I affirm the deputy commissioner's findings of fact and conclusions of law pertaining to those issues.

I affirm the deputy commissioner's finding that claimant sustained both hearing loss and tinnitus as a result of noise exposures experienced at defendant-employer's

plant. I affirm the deputy commissioner's finding that Dr. Tyler's causation opinion was more convincing than that of Dr. Dobie. I affirm the deputy commissioner's findings that claimant's hearing loss and tinnitus were permanent conditions which resulted in a two percent binaural hearing loss and ten percent industrial disability. With respect to the statute of limitations defense, I affirm the deputy commissioner's finding claimant did not know until after his employment ended that his tinnitus was a serious condition and would have a permanent adverse impact on his employment or future employability. I therefore affirm the deputy commissioner's determination that defendant failed to prove their statute of limitations defense.

I affirm the deputy commissioner's findings, conclusions, and analysis regarding all of the above issues.

### ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on January 29, 2018, and the order accepting parties' stipulations and amending arbitration decision filed on February 27, 2018, are affirmed in their entirety.

As a result of claimant's occupational hearing loss, with an injury date of November 28, 2014, defendant shall pay claimant three point five (3.5) weeks of permanent partial disability benefits commencing on November 29, 2014, at the weekly rate of seven hundred eleven and 15/100 dollars (\$711.15).

As a result of the claimant's tinnitus, defendant shall pay claimant fifty (50) weeks of permanent partial disability benefits commencing on February 26, 2009, at the weekly rate of six hundred forty-seven and 79/100 dollars (\$647.79).

Defendant shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be payable at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent. See Gamble v. AG Leader Technology, File No. 5054686 (App. Apr. 24, 2018).

Defendant shall be responsible for claimant's future medical treatment related to both his occupational hearing loss and his tinnitus.

Pursuant to rule 876 IAC 4.33, defendant shall pay claimant's costs of the arbitration proceeding in the amount of \$100.00, and defendant shall pay the costs of the appeal, including the cost of the hearing transcript.

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

Signed and filed on this 3<sup>rd</sup> day of July, 2019.

*Joseph S. Cortese II*

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JOSEPH S. CORTESE II  
WORKERS' COMPENSATION  
COMMISSIONER

Copies to:

Matthew D. Dake  
Attorney at Law  
PO Box 849  
Cedar Rapids, IA 52406-0849  
[mdake@wertzlaw.com](mailto:mdake@wertzlaw.com)

Dirk Hamel  
Attorney at Law  
770 Main St.  
Dubuque, IA 52001-6820  
[dhamel@dbqlaw.com](mailto:dhamel@dbqlaw.com)