BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MICAH McMORRIS, Claimant, vs. SEABEE CORP. CYLINDERS, Employer, and TRAVELERS INDEMNITY CO. OF CT., Insurance Carrier, Defendants.	File No. 1659134.01 ARBITRATION DECISION Head Note Nos.: 1801, 1801.1, 1802, 1803

STATEMENT OF THE CASE

Claimant, Micah McMorris, has filed a petition for arbitration seeking workers' compensation benefits against Seabee Corp Cylinders, employer, Travelers Indemnity Co. of CT, insurer both as defendants.

In accordance with agency scheduling procedures and pursuant to the Order of the Commissioner in the matter of the Coronavirus/COVID-19 Impact on Hearings, the hearing was held on Thursday, November 10, 2020, via Court Call. The case was considered fully submitted on December 14, 2020, upon the simultaneous filing of briefs.

The record consists of Joint Exhibits 1-5, claimant's exhibits 1-5, Defendants exhibits A-E, and the testimony of claimant.

ISSUES

1. Whether claimant is entitled to temporary total disability, temporary partial disability, or healing period benefits from March 23, 2019, to June 19, 2019;
2. The extent of permanent disability;
3. Whether defendant is entitled to a credit for overpayment of temporary benefits.

STIPULATIONS

The parties filed a hearing report at the commencement of the arbitration hearing. On the hearing report, the parties entered into various stipulations. All of

those stipulations were accepted and are hereby incorporated into this arbitration decision and no factual or legal issues relative to the parties' stipulations will be raised or discussed in this decision. The parties are now bound by their stipulations.

The parties stipulate the claimant sustained an injury that gave rise to both temporary and permanent disability. They agree the disability is industrial in nature and the commencement date for permanent disability benefits is June 20, 2019.

At the time of the injury the claimant's gross earnings were $686.00 per week. The claimant was single and entitled to five exemptions. Based on the foregoing the weekly benefit rate is $467.92.

Defendants waive all affirmative defenses.

Prior to the hearing the claimant was paid 25.143 weeks of compensation at the rate of $467.92. The parties agree that the defendant is entitled to a credit of that amount against any award of permanent disability.

FINDINGS OF FACT

Claimant, Micah McMorris, was a 37-year-old person at the time of the hearing. His educational background includes a high school diploma, an associate's degree in liberal arts, and courses at Wartburg in Iowa. He is a semester and a half short of a bachelor's degree.

He did some detassling during the summer hours but his first full time job was working for a family grocery store. He did many tasks for the grocery store including stocking, ordering, cashiering. He worked approximately 40 hours per week at $10.00 per hour. He often worked at the grocery store while he was employed full time elsewhere.

At some point, he worked for Tyson's in Waterloo, for four to six months, on the belly line where he would split the bellies of hogs. From 2008 -2014, he worked for Allen Industrial working his way up to being a painter/powder coater. He made approximately $45-48K per year and when he left, he was earning approximately 60K. In 2014, the corporation moved many jobs to Mexico and laid off employees. He then moved on to work at CDI painting campers. After a couple of years, he was laid off again.

He also served as the head coach of a school soccer team. The earnings were very modest in the range of $3000.00-$4000.00 per season.

He worked as a painter at another assembly plant. Before starting work with defendant employer, claimant worked as an assistant coach at NIACC for two or three seasons. The income was again modest at $800.00 a month. While working as an assistant coach, he worked for Casey's as a cook, making donuts early in the morning and then as a cook after the morning shift ended.

On June 2018, claimant began working for defendant employer as an assembler, earning $15.00 per hour. Defendant employer manufactures hydraulic cylinders. He worked his way up to a tester.

On or about January 13, 2019, claimant was near an explosion of hydraulic cylinders. There was an intense impulsive noise and was hit in the forehead with a large bolt. This was the second explosion he experienced.

The defendant employer facilitated claimant's visit to the hospital. (JE 1) On January 18, 2019, claimant was seen by Timothy M. Dettmer, M.D., who took claimant off work. (JE 2:3) Dr. Dettmer diagnosed claimant with tinnitus.

> IMPRESSION
> 1. Sudden sensorineural hearing loss in both ears related to a work-related injury from noise exposure.
> 2. Tinnitus, due to sensorineural hearing loss.
>
> RECOMMENDATIONS
> Unfortunately, he has had a significant threshold shift from trauma from noise. Hopefully, it is a temporary threshold shift, and the hearing may improve spontaneously like it did before. I did put him on Prednisone 60 mg a day for a week as the only thing that might be somewhat helpful. Otherwise, it is going to take watchful waiting. I also recommended noise avoidance currently while his ears are healing. I gave him a work excuse for a couple of weeks. I am going to see him back in a couple of weeks with a repeat audiogram to see if his hearing has improved. Otherwise, he may eventually require amplification with hearing aids.

(JE 2:3)

Initially, claimant denied sleepiness, fatigue, dizziness, depression or anxiety. (JE 2:1)

Claimant believed he was going to be placed in an office job for defendant employer until he healed but that did not come to fruition. He would check with them frequently but as time went on, they were less communicative and eventually he was terminated by defendant employer on February 4, 2019. In December 14, 2018, claimant received a warning regarding attendance. (DE B:6) Defendants assert claimant was terminated for workplace violations. There is no documentation to support this and claimant denies this allegation. It is found that claimant was terminated for reasons unknown but not for employee misconduct.

On March 22, 2019, claimant returned to Dr. Dettmer for a follow up regarding continued ringing in his ears. (JE 2:11)

RECOMMENDATIONS

> He continues to have improvement with the hearing, as his inner ear has healed from the noise exposure. It was a temporary threshold shift. Hopefully, it will continue to improve back to baseline. Before the injury, he had normal hearing on both sides, except for the right side had just a mild high-frequency loss. I will see him back in 3 months at this point with an audiogram. I recommended continued aggressive noise precautions, and avoidance of noise as we do not want to have more noise exposure injury to his ears while he is continuing to heal.

(JE 2:12)

From March 22, 2019 to June 20, 2019, claimant was not paid benefits. He was ordered to avoid jobs with decibel levels of a certain level and claimant was not able to locate new employment during this period of time. (JE 2:13) On June 20, 2019, claimant was released to full duty with restrictions of limiting noise exposure at work with the following recommendations:

> His hearing has stabilized now over the last 3 months and most likely is his new baseline. He does have some residual deficits especially on the right side at high frequency due to noise exposure. I recommend he continue noise precautions. He is very susceptible to loud noise and he has had 2 different episodes documented with temporary threshold shifts and now he has some permanent deficit after his recent noise exposure. His hearing luckily has improved significantly though. Because of his history though he is very susceptible to noise exposure and may eventually develop more permanent loss. For that reason, he is being restricted to noise exposure at work, less than 85 decibels which is the OSHA cutoff for noise exposure that can cause permanent damage. I will see him back if he notes some hearing changes in the future.
> 1. For the tinnitus, he will continue with the masking techniques and life style changes to allow him to cope with that.

(JE 2:15)

On July 1, 2020, claimant was seen by Philip Lee, M.D., who ordered additional testing due to inconsistencies in claimant's audiology testing. (JE 2:10) At this time, claimant was reporting tinnitus, dizziness, and loss of sleep. The MRI of the brain was normal. (JE 2:21A) The audiology test showed mild sensorineural loss on the left, normal on the right through 1000 and moderate loss centered at 6000 Hz. (JE 2:24) VNG test showed some abnormal eye movements suggesting central nervous system pathology. (JE 2:24) Dr. Lee concluded:

IMPRESSION and RECOMMENDATIONS

1. Sensorineural hearing loss. It would be nice to have a hearing test from prior to this explosion, to see what this was before and what it is now.
2. Tinnitus. Both for the hearing loss and tinnitus I do not think it is going to improve at this point. It would just be nice to know where it was before.
3. Dizziness. Does not appear to be of inner ear origin but asked for a neurologic consultation in regard to the abnormal findings on the videonystagmogram (VNG).

(JE 2:25)

Claimant's last appointment was with Dr. Lee on October 9, 2020. At that time, claimant was informed that his hearing loss and tinnitus was permanent as there was no surgery that could repair the damage.

Dr. Dettmer issued an opinion letter on September 10, 2019, and concluded that in the mid-frequencies, claimant's hearing shifted down from normal hearing to mild hearing loss on the right side after trauma in January 2019, and that hearing loss is likely permanent. (JE 4:1) Dr. Dettmer opined claimant reached MMI in June 2019, after the second audiogram showed hearing stabilized. (JE 4:1) He assessed a 0.6 percent impairment for the mild hearing loss on the right and 3 percent disability for tinnitus. (JE 4:1-2) Claimant's hearing on the left resulted in in no impairment. Id. Dr. Dettmer explained claimant's tinnitus allowed for a range of impairment from 0 to 5 percent. (JE 4:2)

Richard Tyler, Ph.D., also provided opinions on causation and impairment. (CE 1:1) Dr. Tyler wrote that claimant's hearing loss is in the higher frequencies. (CE 1:3) As a result, he could miss details in conversations, have challenges communicating in high noise situations, experience difficulty in knowing the direction of an oncoming car or a warning alarm. (CE 1:4) Based on Tyler's own methodology, he would assign a 39 percent whole body impairment. (CE 1:7)

Tim Simplot, M.D. wrote a letter in response to Dr. Tyler's opinions. (Ex. A) First, Dr. Simplot did not agree claimant sustained a measurable occupational hearing loss based on pre-employment audiogram, which demonstrated a notch hearing loss at 4000 Hz on the right and a low frequency symmetric loss on both sides. (Ex. A:2) Nonetheless, Dr. Simplot ascribed a pre injury exposure as a possible cause for claimant's hearing loss rather than the work exposure of January 13, 2019. (Ex A:2) This is not consistent with Dr. Dettmer's findings. See JE 4:1 Even after the review of claimant's pre-employment audiograms, Dr. Dettmer saw a mid-frequency hearing loss on the right side after the trauma of January 2019 which he believed was permanent. (JE 4:1)

Dr. Simplot accepted claimant's report of tinnitus but noted that tinnitus suffering is subjective. Based on the claimant's report and the AMA Guides, Dr. Simplot assigned a 5 percent impairment rating and adopted the recommendations of Dr. Dettmer that claimant limit his noise exposure to less than 85 db. (Ex A:3)

Currently claimant maintains he suffers from constant ringing in his ears and muffled sound. Exposure to loud noises such as at a basketball game will worsen the ringing. This increased ringing will continue for 24-48 hours before subsiding to a 6 on a 10 scale.

The sound affects his sleep. On a good day, he gets 5-6 hours while on a bad day, he will only be able to sleep 1-2 hours. He testified he feels unsure of himself and sometimes stupid because he is not certain if he has heard others correctly. He testified that he suffers from depression and anxiety. He testified he wants more treatment for his anxiety and depression but the health pandemic was interfering with his ability to do so.

He returned to work as an assistant coach in August 2019. He is currently a head soccer coach at NIACC. It is a one-year contract. He earns $24,000.00, which is a decline from what he was making for defendant employer. However, claimant does not appear to be motivated to find different work. He loves his current job and wants to find further employment pathways within the soccer field.

There was a press clipping of claimant with a girls' soccer team from July 2019. Claimant maintains that he was assisting but not the main coach. The photograph identifies claimant as the head coach.

CONCLUSIONS OF LAW

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. 6.904(3).

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 Elec. 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).

In Ehteshamfar v. UTA Engineered Systems Div., 555 N.W.2d 450, 453 (Iowa 1996) the Iowa Supreme Court held that tinnitus should be compensated as an injury to the body as a whole, rather than as a hearing loss, because the condition arises, not from an inability to hear, but from the perception of sounds that do not exist.

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 Ry. Co. of Iowa, 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.

Dr. Dettmer's opinions are the most reliable in this case. He treated claimant for the traumatic sound exposure and reviewed the pre-employment audiograms as well as the post-employment audiograms. Dr. Tyler's impairment ratings are not consistent with the AMA Guides, but based on his own impairment system. Dr. Simplot opined claimant sustained no hearing loss but did suffer from tinnitus.

Dr. Dettmer opined claimant sustained a mild mid-frequency hearing loss on the right but no measurable hearing loss on the left. All experts agree claimant suffers from some level of tinnitus which affects his ability to hear and communicate.

Claimant has some post-secondary education and currently serves as a head soccer coach for NIACC. He is not currently looking for other work. His past jobs include grocery store work, industrial work, meat processing work, and painting, and line cook.

Of the previous jobs he has held, his work restrictions likely prevent him from doing manufacturing and production work. Claimant testified credibly that he has some difficulty communicating with people and has low confidence that he is communicating fully. It is likely that some office jobs that require significant interaction either with the public or on the telephone would be challenging for claimant.

Based on all of the foregoing, it is determined that claimant has suffered an 8 percent industrial loss.

The other issue was whether claimant is entitled to additional temporary benefits from March 23, 2019, and June 19, 2019. An injured worker is entitled to temporary benefits until the worker has returned to work, the worker is medically capable of returning to substantially similar employment, or when the worker has achieved MMI.

Section 85.34(1) provides that healing period benefits are payable to an injured worker who has suffered permanent partial disability until (1) the worker has returned to work; (2) the worker is medically capable of returning to substantially similar employment; or (3) the worker has achieved maximum medical recovery. The healing period can be considered the period during which there is a reasonable expectation of improvement of the disabling condition. See Armstrong Tire & Rubber Co. v. Kubli, 312N.W.2d 60 (Iowa App. 1981). Healing period benefits can be interrupted or intermittent. Teel v. McCord, 394 N.W.2d 405 (Iowa 1986).

Claimant did not return to work nor was he medically capable of returning to substantially similar employment until his release on June 20, 2019. Dr. Dettmer wrote a work note which restricted claimant from working in places with loud noises so as not to impede claimant's healing process. Thus, claimant was entitled to healing period or temporary total benefits from March 23, 2019, through June 19, 2019.

ORDER

THEREFORE, it is ordered:

That defendants employer and insurer are to pay unto claimant forty (40) weeks of permanent partial disability benefits at the rate of four hundred sixty-seven and 92/100 dollars ($467.92) per week from June 20, 2019.

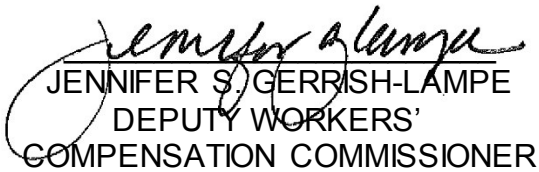
That defendants are to pay unto claimant temporary total benefits from March 23, 2019, through June 19, 2019, at the rate of four hundred sixty-seven and 92/100 dollars ($467.92) per week.

That defendants shall pay accrued weekly benefits in a lump sum.

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

That defendants are entitled to a credit of any overpayment of temporary total or healing period benefits;

Signed and filed this 13th day of April, 2021.



JENNIFER S. GERRISH-LAMPE
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Nicholas Pothitakis (via WCES)

James Ballard (via WCES)

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 filed via Workers' Compensation Electronic System (WCES) unless the filing party has been granted permission by the Division of Workers' Compensation to file documents in paper form. If such permission has been granted, the notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 150 Des Moines Street, Des Moines, Iowa 50309-1836. The notice of appeal must be received by the Division of Workers' Compensation 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 legal holiday.