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In the Matter of the Compensation of  
**DONALD V. HOGG, Claimant**  
WCB Case No. 01-03891  
ORDER ON REVIEW  
Welch Bruun & Green, Claimant Attorneys  
Bruce A Bornholdt, SAIF Legal, Defense Attorneys

Reviewing Panel: Members Bock, Phillips Polich, and Langer. Member Langer dissents.

Claimant requests review of Administrative Law Judge (ALJ) Menashe's order that: (1) declined to admit a report from audiologist Raap into evidence; and (2) upheld the SAIF Corporation's denial of his occupational disease claim for a bilateral hearing loss condition. On review, the issues are the ALJ's evidentiary ruling and compensability. We reverse.

FINDINGS OF FACT

We adopt the ALJ's Findings of Fact.

CONCLUSIONS OF LAW AND OPINION

Claimant, age 71 at the time of hearing, worked for most of his career (1964-1994) as a stationary engineer for the employer. He was exposed to loud noises from mechanical equipment at work.<sup>1</sup> Claimant also had some exposure to loud noises in the military and while hunting with rifles, although he has not fired a gun in 20 years. (Tr. 32).

The ALJ upheld SAIF's denial based on the opinion of Dr. Hodgson. On review, claimant first contends that the ALJ erred in excluding proposed Exhibit 8, a report by audiologist Raap. We need not resolve this issue, however, as we agree with claimant that SAIF's denial should be set aside based on the opinion of his treating physician Dr. Lindgren.

Claimant's bilateral hearing loss claim is based on exposure to loud noises over several years. Accordingly, the claim is for an occupational disease under ORS 656.802. Claimant must prove that his work exposure is the major

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<sup>1</sup> As the ALJ noted, there was no dispute that claimant's work exposure was capable of causing his hearing loss condition.

contributing cause of his hearing loss condition. ORS 656.802(2)(a). To satisfy the major contributing cause standard, claimant must establish that his work activities contributed more to his condition than all other factors combined. *See McGarrah v. SAIF*, 296 Or 145, 146 (1983).

The determination of major contributing cause involves the evaluation of the relative contribution of the different causes of claimant's disease, and a decision as to which is the primary cause. *See Dietz v. Ramuda*, 130 Or App 397, 401 (1994) *rev dismissed* 321 Or 416 (1995). Because of the possible alternative causes for claimant's bilateral hearing loss condition, this matter involves a complex medical question that must be resolved by expert medical opinion. *Uris v. Compensation Department*, 247 Or 420 (1967).

When, as here, there is a dispute between medical experts as to causation, more weight is given to those medical opinions that are well reasoned and based on complete information. *Somers v. SAIF*, 77 Or App 259, 263 (1986). Absent persuasive reasons to the contrary, we give greater weight to the opinion of claimant's treating physician. *Weiland v. SAIF*, 64 Or App 810 (1983); *Darwin B. Lederer*, 53 Van Natta 974 n2 (2001). Here, we find no persuasive reasons not to give greater weight to the opinion of Dr. Lindgren.

Dr. Lindgren concluded that claimant's hearing loss condition was related in major part to his more than 30 years of work exposure to loud noises. (Ex. 9-3). Dr. Lindgren considered all other factors, including claimant's hearing loss due to presbycusis. (*Id.*) Dr. Lindgren also based his opinion in part on a detailed analysis comparing claimant's various audiograms. (Ex. 9-2) Dr. Lindgren was aware of and considered the statistical studies related to presbycusis cited by Dr. Hodgson, but relied instead on claimant's work history of exposure to loud noises and pattern of audiograms. (*Id.*) We find Dr. Lindgren's opinion well-reasoned and based on claimant's specific circumstances, and therefore persuasive.

In contrast, Dr. Hodgson, who examined claimant at the request of SAIF, concluded that claimant's age-related hearing loss (presbycusis) was the major contributing cause of the total hearing loss condition. (Ex. 6). Dr. Hodgson relied on statistical presbycusis tables from the American National Standard Institute (ANSI) studies. Claimant contends that Dr. Hodgson's opinion is not sufficiently tailored to his individual circumstances and is therefore unpersuasive. *See Charles D. Cochran*, 53 Van Natta 1514 (2001); *Daniel A. Holte*, 52 Van Natta 1661 (2000); *Sueyen A. Yang*, 48 Van Natta 1626 (1996). We agree.

Although application of the ANSI report, or other statistical studies, can be appropriate in evaluating causation,<sup>2</sup> here, Dr. Hodgson's opinion was based purely on predictions from a generalized statistical study and failed to incorporate claimant's particular circumstances. For instance, in finding that presbycusis was the major contributing cause of claimant's hearing loss, Dr. Hodgson reasoned that claimant "would be expected" to have 162 decibels of hearing loss due to his age. (Ex. 5-4). However, Dr. Hodgson did not reduce the statistical "predictions" to a specific statement as to the amount of age-related hearing loss *claimant* had experienced. Dr. Hodgson admitted that "in any particular case the amounts assessed to age are only based on statistical probability, and not necessarily that individual specifically." (Ex. 6-3).

In these circumstances, we do not find Dr. Hodgson's opinion a persuasive reason not to give greater weight to Dr. Lindgren. Accordingly, we reverse the ALJ's order and set aside SAIF's denial.

Claimant's attorney is entitled to an assessed fee for services at hearing and on review. ORS 656.386(1). After considering the factors set forth in OAR 438-015-0010(4) and applying them to this case, we find that a reasonable fee for claimant's attorney's services at hearing and on review is \$5,500, payable by SAIF. In reaching this conclusion, we have particularly considered the time devoted to the case (as represented by the record and claimant's appellate briefs), the complexity of the issue, the value of the interest involved, and the risk that counsel may go uncompensated.

### ORDER

The ALJ's order dated March 6, 2002 is reversed. SAIF's denial is set aside and the claim is remanded to SAIF for processing according to law. For services at hearing and on review, claimant's attorney is awarded \$5,500, payable by SAIF.

Entered at Salem, Oregon on December 27, 2002

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<sup>2</sup> See, e.g., *Seeley v. Sisters of Providence*, 179 Or App 723, 730 (2002) (although statistical evidence alone is insufficient to prove a claim, it may permit an inference to a causal link with work); *Donald V. Ball*, 52 Van Natta 1819 (2000) (physician's opinion based in part on statistical studies was not discounted because it also considered particular facts of the injury).

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Board Member Langer, dissenting.

Because I agree with the ALJ's reliance on Dr. Hodgson's opinion in upholding SAIF's denial, I respectfully dissent.

To begin, Dr. Lindgren's report in Exhibit 9 is based almost entirely on an excluded report from audiologist Raap. Although the majority does not address the evidentiary issue, as the record stands now, we cannot consider the report from audiologist Raap. Dr. Lindgren's concurrence opinion paraphrases large portions of Raap's excluded report. (Ex. 9). In my view, the degree to which Dr. Lindgren's opinion relies on the audiologist's report renders it unpersuasive, because it lacks an adequate foundation.

Moreover, I find Dr. Lindgren's opinion supporting compensability conclusory and poorly explained. For example, Dr. Lindgren relies on the "Gates" study conclusion that work-related hearing loss can continue after retirement, yet never reconciles that theory with the empirical evidence in this case. In other words, the audiograms performed on claimant do not, in fact, reveal such an additional hearing loss after *his* retirement. (Exs. 1A, C, 3-5, 9-2).

In addition, although the majority criticizes Dr. Hodgson for relying on statistical studies, Dr. Lindgren's reliance on the "Gates" study is susceptible to the same criticism. Dr. Lindgren acknowledged that it is impossible to determine the amount of hearing loss due to aging in any given individual. (Exs. 9-3, 10-25). Finally, as Dr. Hodgson accurately points out, the value of the "Gates" study is questionable, in that it does not contain data as to the length and type of occupational exposure of tested individuals. (*See* Ex. 10, Lindgren Depo. Ex. 3).

In my view, it is inequitable to discount Dr. Hodgson's opinion for reliance on statistical studies, but fail to similarly discredit Dr. Lindgren's statistically-based opinion. It is claimant's burden of proof. ORS 656.266. Without a persuasive, supportive medical opinion, the denial should be upheld.

For these reasons, I respectfully dissent.