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In the Matter of the Compensation of  
**JAMES C. BONNICHSEN, Claimant**  
WCB Case No. 02-00570  
ORDER ON REVIEW  
Cary et al, Claimant Attorneys  
Johnson Nyburg & Andersen, Defense Attorneys

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

The insurer requests review of Administrative Law Judge (ALJ) Peterson's order that set aside its denial of claimant's occupational disease claim for bilateral hearing loss. On review, the issue is compensability. We reverse.

FINDINGS OF FACT

We adopt the ALJ's findings of fact. We do not adopt his ultimate findings of fact.

CONCLUSIONS OF LAW AND OPINION

Claimant, age 71 at the time of hearing, worked at a lumber mill from 1952 until his retirement in 1991. He worked in the sawmill out in the yard and also in the planing division. He became foreman in 1963. Claimant was exposed to loud noises from the equipment at work. He did not wear any ear protection until about 1985, when earplugs became available. Claimant also had some exposure to loud noises while hunting with a rifle from 1953 to 1974. In 1989 or 1990, he began to hunt with a bow. In 1998, claimant occasionally shot a muzzle-loading rifle. In 2001, claimant was diagnosed with elevated cholesterol and blood pressure. He was prescribed medication and his cholesterol and blood pressure returned to normal limits.

The ALJ set aside the insurer's denial based on the opinion of Dr. Urben, claimant's treating otolaryngologist. On review, the insurer contends that Dr. Urben's opinion is insufficient to establish compensability. We agree.

Claimant's bilateral hearing loss claim is based on exposure to loud noises over a period of years. Accordingly, the claim is for an occupational disease under ORS 656.802. Claimant must prove that his work exposure is the major contributing cause of his hearing loss condition, without extracting portions of it due to presbycusis (age-related loss) or off-the-job exposures. ORS 656.802(2)(a);

*Lecangdam v. SAIF*, 185 Or App 276 (2002); *Henry F. Downs*, 48 Van Natta 2094, 2096 (1996). 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). Factors potentially affecting claimant's hearing loss include noise exposure at work, aging, medical problems, and recreational gun use. 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 (1983). 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 n.2 (2001).

In this case, opinions regarding the cause of claimant's bilateral hearing loss were provided by Dr. Hodgson, who evaluated claimant at the insurer's request, and Dr. Urben. For the following reasons, we find Dr. Hodgson's opinion to be the most persuasive.

Dr. Hodgson's report contains a history of claimant's work exposure, his rifle shooting, and his elevated cholesterol and high blood pressure, both risk factors in sensorineural hearing loss. Dr. Hodgson also reviewed hearing loss tests given to claimant over the years. Dr. Hodgson further relied on statistical presbycusis tables from the American National Standard Institute (ANSI) studies in assessing the contribution between aging and noise induced hearing loss. He concluded that 50 percent of claimant's hearing loss was due to presbycusis alone. In making this attribution, Dr. Hodgson explained that, based on the configuration of claimant's hearing loss tests, he would expect claimant to have a median amount of hearing loss due to presbycusis. (Ex. 11-12).<sup>1</sup> Because Dr. Hodgson relied on

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<sup>1</sup> Later in his deposition, Dr. Hodgson stated that it would be possible that claimant was at the lower level of the expected loss of hearing due to presbycusis. (Ex. 11-30, 31). Dr. Hodgson, however, did not express that opinion in terms of medical probability and, therefore, we do not rely upon it. *Gormley v. SAIF*, 52 Or App 1055, 1060 (1981).

analysis of hearing loss tests, as well as on statistical data, we do not discount Dr. Hodgson's opinion based on his use of statistical evidence in this case. *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).

In attributing only 40 percent of claimant's hearing loss to noise exposure in the workplace, Dr. Hodgson considered the information available to him regarding claimant's noise exposure. He based his calculations of the work-related portion of claimant's hearing loss on an assumption that claimant had been exposed to 95 decibels for 8 hours a day during his working life, an arbitrarily high figure.<sup>2</sup> Because claimant shot right handed, Hodgson opined that the greater hearing loss in the left ear was attributable to his shooting. (Ex. 11-35, -36). Dr. Hodgson also noted that claimant had been diagnosed with elevated cholesterol and elevated blood pressure, and estimated that an additional 10 percent of claimant's hearing loss was likely due to gun use and medical causes. Given that Dr. Hodgson weighed the various causal factors, we find his opinion well-reasoned and persuasive.

In contrast, Dr. Urben concluded that the major cause of claimant's hearing loss was his occupational exposure. She agreed with Dr. Hodgson that claimant's off-work noise exposure, medical conditions and presbycusis were possible contributors to his hearing loss, but merely stated that, although "there is a possibility these conditions might enter into the hearing loss picture, one cannot say, based on reasonable medical probability, that they do in fact actually contribute." (Ex. 13). She offered no explanation for her conclusion.

She also agreed that claimant's loss of hearing in the right ear as of 2001 may have been a combination of presbycusis and noise exposure, and that the left ear would likely be exposed to more gunfire noise, but concluded, again without explanation, that it was not probable. Having reviewed Dr. Urben's opinion, we find that it is conclusory. (Exs. 3, 13). For that reason, it is unpersuasive. Consequently, claimant has not carried his burden to prove that the major contributing cause of his bilateral hearing loss was his work exposure.

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<sup>2</sup> Although claimant was exposed to possibly more than 95 decibels when he was near the planer, he also worked outside in the yard and in an office, where noise was less.

ORDER

The ALJ's order dated November 26, 2002 is reversed. The insurer's denial of claimant's bilateral hearing loss condition is reinstated and upheld. The ALJ's attorney fee award is reversed.

Member Phillips Polich dissenting.

The majority concludes that Dr. Hodgson's opinion is more persuasive than that of Dr. Urben, claimant's treating physician. As discussed by the ALJ, Dr. Hodgson attributes 10 percent of claimant's hearing loss to a combination of his rifle shooting over the years together with his medical condition, diagnosed as elevated cholesterol and elevated blood pressure. The ALJ points out that claimant's elevated blood pressure and elevated cholesterol did not occur until 2001, many years after he had already developed bilateral hearing loss. For the reasons stated by the ALJ, I do not find it medically probable that 10 percent of causation is due to conditions diagnosed in 2001. For that reason, and others discussed by the ALJ, I do not find Dr. Hodgson's opinion persuasive and would affirm the ALJ's opinion in this case.