In the Matter of the Compensation of
LAWRENCE J. HANSEN, Claimant
WCB Case No. 14-05419, 14-05343, 14-04876, 14-03313
ORDER ON REVIEW
Alana C DiCicco Law, Claimant Attorneys
Thaddeus J Hettle & Assoc, Defense Attorneys
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Reviewing Panel: Members Weddell, Curey and Somers. Member Weddell dissents.

Claimant requests review of Administrative Law Judge (ALJ) Bethlahmy's order that upheld denials of claimant's occupational disease claims for a bilateral hearing loss condition issued by the SAIF Corporation (on behalf of Glass Magnum – Magnum Manufacturing, Kittridge & Fredrickson Ltd. (K & F), Grow Construction, and Income Property Management (IPM)). On review, the issues are compensability and, potentially, responsibility.

We adopt and affirm the ALJ's order with the following supplementation.

In upholding the compensability and responsibility denials of claimant's claimed bilateral hearing loss condition, the ALJ found the opinion of Dr. Hodgson, an examining otolaryngologist, more persuasive than those of Dr. Lindgren, claimant's attending physician and otolaryngologist, and Dr. Kim, an otolaryngologist who performed a Worker Requested Medical Examination (WRME).

On review, claimant contends that Dr. Hodgson's opinion is unpersuasive. Nevertheless, claimant bears the burden of proving the compensability of his bilateral hearing loss condition as an occupational disease by establishing that workplace exposure was the major contributing cause of the claimed disease. ORS 656.266(1); ORS 656.802(2)(a); *Lecangdam v. SAIF*, 185 Or App 276, 282 (2000); *William B. Schulte*, 60 Van Natta 1130, 1131 (2008). Drs. Lindgren and Kim support a conclusion that claimant's work activities were the major contributing cause of his bilateral hearing loss condition. (Exs. 5-2, 17-3). For the following reasons, those opinions do not persuasively establish the compensability of the claimed condition.

Drs. Lindgren and Kim opined that claimant's vocational noise exposure was the major contributing cause of his hearing loss condition. However, they did not consider claimant's avocational use of a chainsaw. (Tr. 21-22, 31-34; Exs. 17,

22, 23, 25). Dr. Hodgson opined that claimant's personal chainsaw use, cutting up to five cords per year, contributed to his hearing loss condition, which had a noise level of 110 decibels. (Ex. 24-21-22). Because Drs. Lindgren and Kim neither considered this history nor responded to Dr. Hodgson's opinion, we consider their opinions to be unpersuasive. *See Jackson County v. Wehren*, 186 Or App 555, 561 (2003) (a history is complete if it includes sufficient information on which to base the physician's opinion and does not exclude information that would make the opinion less credible); *Miller v. Granite Constr. Co.*, 28 Or App 473, 476 (1977) (medical opinion that is based on an incomplete or inaccurate history is not persuasive); *Nancy C. Prater*, 60 Van Natta 1552, 1556 (2008) (failure to rebut contrary opinion rendered physician's opinion unpersuasive); *Louise Richards*, 57 Van Natta 80, 81 (2005) (physician's opinion unpersuasive when it did not rebut or respond to contrary opinion).

In addition, Dr. Kim did not address claimant's 2004 noise survey at K & F where he worked as a coffee roaster. (Ex. 1). Rather, Dr. Kim took a history that claimant worked with very loud coffee roasting machines, and that he did not wear hearing protection. (Ex. 17-1-2). However, the 2004 survey showed a low level of noise exposure at 85 decibels, which is below OSHA requirements for hearing protection.[1] (Ex. 1). Because Dr. Kim did not have a sufficiently complete and accurate history, we consider his opinion to be unpersuasive. *See Wehren*, 186 Or App at 561; *Miller*, 28 Or App at 476.

With respect to Dr. Hodgson, claimant contends that his opinion is unpersuasive because he relied on general information (American National Standard Institute (ANSI) standard tables for presbycusis) instead of claimant's particular circumstances. We disagree with his contention. Dr. Hodgson explained that he based his opinion not only on the presbycusis tables, but also on claimant's particular audiogram pattern, which was indicative of a significant contribution from presbycusis. (Ex. 24-15-16). Because Dr. Hodgson included claimant's individual circumstances as well as statistical data, we do not discount his opinion. *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); *James L. Bonnichsen*, 55 Van Natta 1632

[1] We acknowledge that the testing performed at K & F was done before that employer installed an additional roaster. (Tr. 12). However, Dr. Hodgson considered that information and explained that the dosimeter test results most likely would have provided a time-weighted average less than an injurious level with the additional roaster. (Ex. 24-25, -58-59). Because Dr. Kim did not respond to Dr. Hodgson's opinion, we further discount his opinion. *See Prater*, 60 Van Natta at 1556; *Richards*, 57 Van Natta at 81.

(2003) (because the physician relied on individualized hearing loss tests as well as ANSI standards, the Board did not discount his causation opinion); *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 sum, based on the aforementioned reasoning, as well as that expressed in the ALJ's order, the record does not persuasively establish compensability of the claimed bilateral hearing loss condition. Accordingly, we affirm.

ORDER

The ALJ's order dated December 3, 2015 is affirmed.

Entered at Salem, Oregon on July 25, 2016

Member Weddell dissenting.

The majority concludes that the medical opinion of Dr. Hodgson is more persuasive than those of Drs. Lindgren and Kim. Because I disagree with that conclusion, I respectfully dissent.

Claimant, who was 60 years old at the time of hearing, has held a variety of jobs during the course of his life. (Ex. 13). Prior to beginning work with Glass Magnum, he had worked in several lumber mills, and as an HVAC tech, machine operator, and green chain puller. (Exs. 5A-46, 13).

From 1995 through 2000, claimant worked for Glass Magnum, assembling RV chasses. (Ex. 15-3). He used both air and hand tools and wore foam ear plug hearing protection. (Ex. 5A-44-45).

From July 2003 through August 2007, claimant worked for K & F as a coffee roaster. (Exs. 5A-10, 6-3). He did not wear hearing protection. In 2004, the employer requested a noise exposure test, which evaluated the noise exposure for employees engaged in roasting coffee. (Ex. 1). The average dosimetry tests revealed that the sound exposure was below 85 decibels. (Ex. 1-2-3).

From August 2007 through September 2009, claimant worked for IPM performing apartment maintenance. (Exs. 5-2, 5A-9).

From September 2009 through April 2013, claimant worked as an apartment manager for Grow Construction. (Exs. 5-2, 5A-7, -10).

In addition, he occasionally used guns to hunt for deer and elk and went to a shooting range. (Ex. 5A-40-41).

Claimant also rode motorcycles (with the use of a helmet) for approximately 30 years. (Ex. 5A-41).

In July 2013, claimant had an audiological evaluation post-retirement. (Exs. 1A, 5A). He was diagnosed with bilateral frequency sensor neural hearing loss (mild to moderate). (*Id*.)

In April 2014, Dr. Lindgren performed a hearing evaluation. (Ex. 5). Claimant subsequently filed a claim for bilateral hearing loss with K & F. (Exs. 3, 4).

In June 2014, Dr. Hodgson performed an evaluation at the employer's request. (Ex. 7). He concluded that 40 percent of claimant's hearing loss was due to occupational noise exposure. (Ex. 7-5-6).

In July 2014, K & F denied compensability of claimant's bilateral hearing loss condition. (Ex. 8). In August 2014, that denial was amended to include responsibility. (Ex. 9).

In September 2014, claimant filed a claim against Glass Magnum, which was denied on compensability and responsibility grounds in October 2014. (Exs. 11, 16).

In October 2014, Dr. Kim performed a WRME. (Ex. 17). He concluded that claimant's occupational noise exposure was the major contributing cause to his hearing loss condition. (Ex. 17-3).

Claimant filed a claim against Grow Construction, which was ultimately denied on compensability and responsibility grounds. (Exs. 18A, 19).

Claimant also filed a claim against IPM, which was denied in November 2014 on compensability and responsibility grounds. (Ex. 18B). At hearing, IPM amended its denial to only include responsibility. (Tr. 1-2).

In February 2015, Dr. Lindgren opined that sound became injurious at 85 decibels. (Ex. 20-1). Based on claimant's description of his work at Grow Construction, Dr. Lindgren opined that it was not injurious. (*Id*.) He concluded that it was likely that claimant's occupational noise exposure became the major contributing cause of claimant's bilateral hearing loss sometime between 2002 and 2007. (*Id*.) Dr. Kim agreed that claimant's work with Grow Construction could not have contributed to his hearing loss condition. (Ex. 21-1).

In March 2015, the parties deposed Dr. Lindgren. (Ex. 22). After weighing different potential contributors, he continued to opine that claimant's occupational noise exposure was the major contributing cause of claimant's hearing loss condition. (*Id*.)

In April 2015, Dr. Kim opined that claimant's work with IPM was very similar to his work with Grow Construction. (Ex. 23-1). Consequently, he opined that claimant's work with IPM did not contribute to his hearing loss condition. (Ex. 23-2).

Subsequently, the parties deposed Dr. Hodgson. (Ex. 24). He concluded that it was improbable that claimant's maintenance work with IPM and Grow Construction contributed to his hearing loss condition. (Ex. 24-14).

In May 2015, Dr. Kim stated that claimant recreational gun use and motorcycle riding were not significant contributors to his hearing loss condition. (Ex. 25-1-2). He also reasoned that claimant's report that his work with K & F required yelling indicated that it was likely an injurious environment. (Ex. 25-2).

There are three causation opinions. Drs. Kim and Lindgren attributed claimant's hearing loss condition, in major part, to work activities, while Dr. Hodgson did not. (Exs. 5, 7, 17, 24). However, all of the physicians agreed that claimant's work exposure was at least 40 percent of the cause of his bilateral hearing loss condition. (Exs. 5-2, 7-5, 17-3). Ultimately, I find the opinions of Drs. Kim and Lindgren more persuasive.

Dr. Lindgren attributed 10 percent of claimant's noise induced hearing loss to gun usage and the remainder to industrial noise exposure. (Ex. 5). After reviewing the 2004 K & F noise survey, claimant's vocational and avocational noise exposures, and the presbycusis tables referenced by Dr. Hodgson, he continued to opine that claimant's work exposure was the major contributing cause of his hearing loss condition. (Ex. 22-24, -26-27, -43-44). He explained that the

2004 study took place before the additional roaster was added. (Exs. 5A-20-21, 22). He based his opinion on an accurate understanding of claimant's history, some additional research, and his 50 years of experience and practice.

Dr. Kim performed an independent WRME. (Ex 17). He considered claimant's avocational noise exposure and presbycusis to be minor contributors. (Ex. 17-2). Based on claimant's examination, audiogram, family history, medical history, medical records, occupational factors, avocational factors, and preexisting conditions, Dr. Kim concluded that his hearing loss condition was most consistent with noise exposure, and that workplace noise was the major contributing cause of his condition. (Exs. 17-2, 25-3).

I find the opinion of Dr. Lindgren, as supported by Dr. Kim, to be well explained and based on a sufficiently complete and accurate history particular to claimant's circumstances. *See Jackson County v. Wehren*, 186 Or App 555, 561 (2003) (a history is complete if it includes sufficient information on which to base the physician's opinion and does not exclude information that would make the opinion less credible). Consequently, I consider their opinions to be persuasive.

In contrast, Dr. Hodgson opined that only 40 percent of claimant's hearing loss was due to occupational causes, with the other 10 percent due to recreational guns/motorcycles and 50 percent due to presbycusis. (Ex. 7). He attributed some of claimant's hearing loss to claimant's longtime use of his personal lawn mower and his chainsaw, which had a noise level of 110 decibels. (Exs. 11A-6, 24-21-22).

In forming his opinion, Dr. Hodgson relied heavily on general ANSI presbycusis tables and the 2004 noise exposure test with K & F, which was performed without an additional coffee roaster that the employer later installed. (Exs. 1, 5A-20-21, 7, 24). Consistent with Dr. Lindgren's opinion, I find Dr. Hodgson's reliance on the 2004 noise exposure study to be misplaced. Specifically, that study did not include an assessment of all of the coffee roasting machines at K & F. Moreover, to the extent Dr. Hodgson's opinion relies on the ANSI tables and does not take into consideration claimant's particular circumstances, I find his opinion further undermined. *See Albert A. Ahlberg*, 57 Van Natta 2840, 2843 (2005) (doctor's opinion relying solely on presbycusis tables found unpersuasive); *Donald V. Hogg*, 54 Van Natta 2698, 2700 (2002) (sole reliance on ANSI statistics inadequate); *see also Sherman v. Western Employer's Ins.*, 87 Or App 602 (1987) (physician's general comments that were not addressed to the claimant's particular situation were not persuasive).

In conclusion, based on the aforementioned reasoning, I am persuaded that claimant established that his work activities were the major contributing cause of his hearing loss condition. Consequently, I would conclude that claimant's condition is compensable. Therefore, I respectfully dissent.