

In the Matter of the Compensation of  
**SCOTT F. HOFFMAN, Claimant**

WCB Case No. 15-05194

ORDER ON REVIEW

Bennett Hartman Morris & Kaplan, Claimant Attorneys  
Sather Byerly & Holloway, Defense Attorneys

Reviewing Panel: Members Lanning and Johnson.

Claimant requests review of Administrative Law Judge (ALJ) Spangler's order that upheld the self-insured employer's denial of claimant's occupational disease claim for bilateral hearing loss. On review, the issue is compensability.

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

In upholding the employer's denial, the ALJ reasoned that the opinion of Dr. Hodgson, who examined claimant at the employer's request, was more persuasive than the opinion of Dr. Rydlund, the treating physician. On review, claimant contends that Dr. Rydlund's opinion was more persuasive and supports the compensability of his hearing loss. For the following reasons, we disagree with claimant's contentions.

To establish that his hearing loss is a compensable occupational disease, claimant must prove that employment conditions were the major contributing cause of his condition. ORS 656.266(1); ORS 656.802(2)(a). Determining the major contributing cause of claimant's condition is a complex medical question that must be resolved by expert medical opinion. *Barnett v. SAIF*, 122 Or App 279, 282 (1992). For claimant to prevail, that opinion must be persuasive. *See Moe v. Ceiling Sys., Inc.*, 44 Or App 429, 433 (1980) (rejecting unexplained or conclusory opinion).

Claimant asserts that Dr. Hodgson's opinion is not persuasive. Yet, claimant has the burden of proving compensability. Therefore, Dr. Rydlund's opinion must be sufficient to satisfy claimant's burden of proof. Based on the following reasoning, we conclude that Dr. Rydlund's opinion does not persuasively satisfy the requisite legal standard.

Claimant had worked for the employer continuously since 2005. (Ex. 2; Tr. 6). Between 2006 and 2015, he had seven audiograms.<sup>1</sup> (Exs. 1, 6, 10). He filed the hearing loss claim on August 19, 2015. (Ex. 2).

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<sup>1</sup> Audiograms were performed at the employer's request in 2006, 2009, and 2014. (Ex. 10). Additional audiograms were performed at Dr. Rydlund's request on December 6, 2010 and September 14, 2015. (Exs. 1, 6). An audiogram was performed at Dr. Hodgson's request on September 28, 2015. (Ex. 8). An audiogram was performed at claimant's request on October 23, 2015. (Ex. 13).

In January 2016, Dr. Rydlund opined that “some recent audiograms showed approximately equal hearing loss at all frequencies[,]” and “were not indicative of any particular cause.” (Ex. 15-2). He also stated that “some audiograms showed hearing loss primarily at higher frequencies.” (*Id.*) With regard to those audiograms, he concluded that occupational noise exposure was “a major contributing cause (*i.e.*, 50 percent or greater) of [the] hearing loss.” (*Id.*) He also stated that the December 6, 2010 audiogram had the “classic notch seen with noise exposure.” (*Id.*)

Yet, Dr. Rydlund did not identify which audiograms showed equal hearing loss at all frequencies or which audiograms showed hearing loss primarily at higher frequencies. Claimant had four audiograms after December 6, 2010. Dr. Rydlund did not indicate that these more recent audiograms showed hearing loss primarily at higher frequencies or the “classic notch seen with noise exposure.” (*Id.*) More significantly, he did not exclude the four audiograms from the “recent audiograms [that] showed approximately equal hearing loss at all frequencies[,]” and “were not indicative of any particular cause.” (*Id.*)

Under these circumstances, we conclude that Dr. Rydlund’s opinion lacks sufficient explanation, rendering it unpersuasive. *Moe*, 44 Or App at 433. Consequently, the record does not persuasively establish that claimant’s work exposure was the major contributing cause of his hearing loss. *See Benz v. SAIF*, 170 Or App 22, 25 (2000) (although the Board may draw reasonable inferences from the medical evidence, it is not free to reach its own medical conclusions); *SAIF v. Calder*, 157 Or App 224 (1998) (the Board is not an agency with specialized medical expertise and must base its findings on medical evidence in the record). Therefore, we affirm.

### ORDER

The ALJ’s order dated April 11, 2016 is affirmed.

Entered at Salem, Oregon on September 20, 2016