



# WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL

## DECISION NO. 1343/06

**BEFORE:** S. Martel : Vice-Chair

**HEARING:** June 27, 2006 at Toronto  
Written

**DATE OF DECISION:** July 28, 2006

**NEUTRAL CITATION:** 2006 ONWSIAT 1679

**DECISION(S) UNDER APPEAL:** WSIB ARO decision dated October 18, 2005

**APPEARANCES:**

**For the worker:** Mr. R. Séguin, Office of the Worker Adviser

**For the employer:** Not participating

**Interpreter:** N/A

## REASONS

### (i) Issue

- [1] The worker appeals the decision of the Appeals Resolution Officer, dated October 18, 2005. That decision concluded that the worker was not entitled to a permanent impairment award for his hearing loss.

### (ii) Background

- [2] The worker was born in March 1940. He was employed as an electrician from 1962 until March 2002 when he retired. The Board accepted that he was exposed to noise levels sufficient to meet the threshold for entitlement of a claim. The worker's current claim was established based on an audiogram of July 9, 2002. The Board had previously denied the worker entitlement for noise induced hearing loss in a prior claim based on audiograms done in 2000 and 2001 because the worker had insufficient bilateral hearing loss. The worker did not meet the minimum threshold of 22.5 dB bilaterally until the June 9, 2002 audiogram.

- [3] The July 9, 2002 audiogram demonstrated an average hearing loss<sup>1</sup> of 51.5 dB in the right ear and 22.75 dB in the left ear. Based on this audiogram, the Board accepted the claim for health care benefits and only recognized a bilateral hearing loss of 22.75 dB noting the unexplained asymmetry.

- [4] The worker has explained that there were occasions during his employment that his right ear had greater exposure to noise and that he at times had to remove his hearing protection during his employment to fine-tune machines resulting in greater noise exposure to the right ear. The worker's specialists have conducted additional testing such as an MRI and there is no identifiable explanation for the worker's asymmetrical hearing loss.

- [5] The ARO noted that even if he recognized the asymmetrical hearing loss, the worker still did not meet the minimum requirement of the Board's policy and the American Medical Association's *Guides to the Evaluation of Permanent Impairment*, 3<sup>rd</sup> edition (revised) (AMA Guides) for eligibility for a non-economic loss (NEL) award because the 22.75 dB in the better ear did not meet the minimum requirement for a permanent impairment.

- [6] The worker now appeals this decision.

### (iii) Law and Policy

- [7] Pursuant to section 126(2) of the *Workplace Safety and Insurance Act, 1997*, the Board advised that *Operational Policy Manual (OPM)*, Document No. 16-01-04 applied to the subject matter of this appeal.

- [8] That policy states the following with respect to permanent impairment:

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<sup>1</sup> The hearing loss at 500, 1000, 2000 and 3000 Hertz averaged minus a 1.0 presbycusis factor to account for the worker's age of 62 at the time of the July 2002 audiogram.

Permanent impairment from sensorineural hearing loss is assessed using the rating schedule prescribed in section 18(1), O.Reg 175/98. This rating schedule is the American Medical Association Guides to the Evaluation of Permanent Impairment. Those claimants whose hearing loss is sufficient to result in a permanent impairment benefit as recognized by the AMA Guides (at or above 26.25/26.25 dB or 25/32.5 dB in the better/worse ear, respectively) are referred for a NEL assessment. Average hearing losses are never rounded for permanent impairment calculations using the AMA Guides.

[9] The policy also provides a table regarding the pre and post 1990 guidelines for adjudicating noise-induced hearing loss:

Decision Making Issue	Accident Date: The earlier of 1) the date of the claim, or 2) the date of documented evidence for the hearing loss	
	Before January 2, 1990	On or after January 2, 1990
Entitlement to health care and rehabilitation benefits	Entitlement provisions stated in 1988 NIHL policy apply.  A worker is entitled to health care and rehabilitation benefits when the minimum level of bilateral hearing loss is 25 dB in each ear (readings as low as 22.5 dB are accepted as 25 dB).	A worker is entitled to health care and rehabilitation benefits when the minimum level of bilateral hearing loss is 25 dB in each ear (readings as low as 22.5 dB are accepted as 25 dB)
Presbycusis factor for entitlement	0.5 dB is deducted for each year a worker's age exceed 60 years (at the time of the audiological test).	0.5 dB is deducted for each year a worker's age exceeds 60 years (at the time of the audiological test). Entitlement to benefits is determined after the measured hearing loss in each ear has been adjusted by a presbycusis factor.
Percent Permanent Disability	Evaluated according to the permanent disability rating schedule in 1988. (See 16-01-03, Occupational Noise-Induced Hearing Loss).	Not Applicable.
Assessment of permanent Impairment for a NEL benefit	Not applicable	Workers with a minimum bilateral hearing loss of 26.25/26.25 dB or 32.5/25 dB (when the hearing loss at 500, 1000, 2000, and 3000 Hz is averaged) are entitled to a NEL medical assessment.
Forwarding claims to NEL assessments	Not applicable	Only those claimants whose hearing loss is sufficient to result in a permanent impairment benefit as recognized by the AMA Guides (at or above 26.25/26.25 or 32.5/25 dB), should be forwarded for a NEL assessment.

**(iv) Submissions**

[10] Mr. Séguin relies on *Decision Nos. 1074/02* and *499/03* for the proposition that asymmetrical hearing loss may be compatible with greater noise exposure to one ear than the other. He submits that readings as low as 22.5 are accepted as 25 dB and that as a result, the worker should be entitled to a NEL assessment. Mr. Séguin submits that there is no other explanation for the worker's hearing loss other than noise exposure.

**(v) Conclusion**

[11] I agree that asymmetrical hearing loss may at times be compatible with greater noise exposure to one ear than the other. As found by the ARO, however, even if the worker's entire hearing loss was accepted as noise-related (with the exception of a minor presbycusis factor in this case), the worker still does not meet the minimum requirements of OPM Document No. 16-01-04 and the AMA Guides. In my view, OPM Document No. 16-01-04 is quite clear in stating that average hearing losses are never rounded for permanent impairment calculations using the AMA Guides. While OPM Document No. 16-01-04 allows for rounding 22.5 dB to 25 dB for entitlement to health care and rehabilitation benefits, it does not permit rounding up for a permanent impairment assessment.

[12] Furthermore, the AMA Guides do not accord any value for a binaural hearing impairment where the worker's hearing loss in the better ear is less than 100 dB of the total hearing loss at 500, 1000, 2000 and 3000 Hz. A worker's binaural hearing impairment in the AMA Guides is calculated using Table 3, page 176 "Computation of Binaural Hearing Impairment" and Table 4, page 178 "The Relationship of Binaural Hearing Impairment to Impairment of the Whole Person". Table 3, the first step, does not include any values for a hearing loss of less than 100 dB (the sum of the worker's loss at 500, 1000, 2000 and 3000Hz) in the better ear. In the worker's case, the sum of his hearing loss at these four frequencies is 95 dB without the presbycusis factor and 91 dB with the presbycusis factor. The reason therefore why the worker does not qualify for a permanent impairment assessment is that the AMA Guides do not ascribe any value for a binaural hearing loss where the loss in the better ear is less than 100 dB total (or 25 dB averaged over the four frequencies).

[13] Mr. Séguin relies on *Decision Nos. 1074/02* and *499/03*. Both of these decisions were decided in accordance with OPM Document No. 04-03-10. That policy also only provided for a permanent impairment benefit as recognized by the AMA Guides at or above 26.25/26.25 dB or 25/32.5 dB in the better/worse ear and also indicated that average hearing losses are never rounded for permanent impairment calculations using the AMA Guides. In the decision *Decision No. 1074/02*, the Vice-Chair accepted an "Agreement by the Parties" that the worker's asymmetrical hearing loss was noise-related and that the worker was entitled to a NEL assessment. I note, however, that the worker in that decision had an average loss of 25.75 dB in the right ear and 35.75 dB in the left ear. The worker therefore met the minimum policy requirement for a permanent impairment of 25/32.5 dB in the better/worse ear.

[14] In *Decision No. 499/03*, the Vice-Chair accepted the worker's explanation regarding the cause of his asymmetrical hearing loss. The worker underwent five different audiograms

between 1995 and January 1998. The Vice-Chair decided to average the results of these five tests and arrived at a hearing loss of 50 dB in the right ear and 24.3 dB in the left ear averaged out over the 4 frequencies. The decision then states: “The 24.3 dB hearing loss in the left ear is automatically upgraded to a 25 dB hearing loss and the worker fulfils the criteria of the Board’s policy for the purpose of a NEL assessment.” The Vice-Chair, however, did not provide the authority for the statement that the 24.3 dB was “automatically upgraded to 25 dB”. Given that the Vice-Chair was averaging the results from 5 different audiograms, it is possible that she decided to average up the total obtained from 5 different audiograms. In any event, given the lack of discussion regarding the statement that 24.3 was automatically upgraded to 25, I do not find that decision persuasive.

[15] I conclude that the worker does not meet the minimum requirements for a NEL assessment and deny his appeal for a permanent impairment award.

**DISPOSITION**

[16]           The appeal is denied.

DATED: July 28, 2006

SIGNED: S. Martel