



WSIB Report  
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## Primer on Work Related Deafness Claims

I receive many inquiries from members regarding registering deafness claims, which are called Occupational Noise Induced Hearing Loss claims (NIHL). Not everyone is eligible as there are rules in place to determine viable claims. First, there has to be sufficient noise exposure (usually not a problem). Second, there has to be sufficient hearing loss (minimum of 22.5 decibels averaged across 4 frequencies – 500, 1k, 2k, 3k hertz). Third, the slope of the audiogram (graph), must document a hearing loss at the higher frequencies (2k-4k hertz), with a characteristic notch at the higher frequencies. Finally, there is the presbycusis factor which is an offset of 0.5 decibels for each year a worker is over age 60. This is a deduction to

reflect *non-compensable aging*.

It is important for members to appreciate that just because an audiologist confirms a hearing loss, that doesn't mean you are automatically covered for work related deafness. It's never that easy, and before you start ordering hearing aids, I would encourage members to forward copies of your audiogram to my attention so I can conduct an assessment to determine the viability of the NIHL claim. A hiring hall work history will also be coordinated by my office to confirm a members' employment in the field to support WSIB inquiries.

### Hearing Devices Policy Change

My office has received many inquiries from members advising that the WSIB will not cover the full cost of replacement or new hearing aids. This is the result of WSIB revising their Hearing Devices policy in 2011 and introducing a new maximum allowable amount (\$1,000 per ear) for hearing aids purchased on or after February 2011. The change was introduced to reflect technological advances because more features/options are available on a larger variety of models at lower prices. For workers whose needs cannot be met within the

allowable limits, the hearing clinic can submit a Special Needs Request Form available on the WSIB website. The WSIB also changed its replacement interval to 5-years, up from 3-years for an in-the-ear hearing aid, and 4-years for a behind the ear device. If replacement is required before 5-years, there is a Hearing Aid Replacement Form that Health Care Practitioners can complete for special consideration. The change in policy reflects recent advances in hearing aid technology where sophisticated technology, once restricted to only a few devices is now available in lower-cost models. However, if a worker is identified as needing a hearing aid before the five-year replacement timeframe, the WSIB has put in place an exception policy to ensure workers receive health care they need.

### Life Cycle of a WSIB Appeal - Delays

My office files many appeals, and with the WSIB turning the screws down on every type of entitlement, this has led to more and more objections. Regarding the appeal delay, a WSIB Appeals Administrator advised me in September 2012 that the Appeals Branch is just now allocating

appeals that were registered in their office in Oct 2011. In other words, files received 1-year ago are now being allocated to an Appeals Resolution Officer. However, there is usually an additional delay, because once the file has been allocated, the ARO may also have a backlog, and I won't be contacted for several months. Unfortunately, I do not control that process, and we're all hostages to the system. However, a quick primer on the life-cycle of the appeal system:

1. A worker receives an adverse decision denying a claim.
2. Union files an objection in writing.
3. File will be sent to union with an **Objection Form**.
4. Objection Form is completed and submitted to the WSIB.
5. WSIB Case Manager reviews objection, and will seek manager's approval to uphold initial decision. (\*note a delay is often experienced at this step).
6. Once workers objection is referred to the Appeals Branch a **60-Day Decision Option** letter is issued at this time, which confirms the workers claim is now in the Appeals Branch. Since most disputes are complicated and require testimony, we may ignore the 60-Day option, so an ARO is assigned to a workers appeal.
7. We are then subjected to

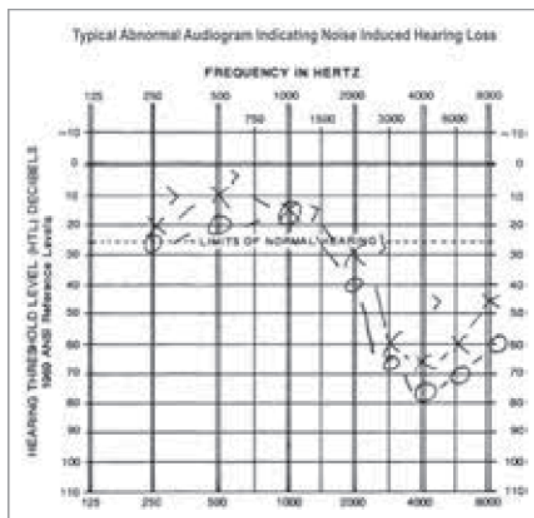
the 1-year delay described above (twiddling thumbs). Mind you, my fingers are usually working a keyboard in the interim.

8. Once a file is assigned to an ARO, we typically experience more delay until the ARO contacts me indicating they are ready to proceed.

As one can see, this whole process translates into a 12-18 month delay right off the top. In the meantime, members active with my office know that I have filed legal submissions regarding the issues in dispute, and ready to argue members' appeals at a moment's notice.

### WSIB Consultation Paper - Modernizing the Appeal System

In June 2012 the WSIB released its *Consultation Paper on the Modernization of the Appeal System* (48 pgs.), which I have reviewed and responded to. Many of the systemic problems identified relate to administrative procedures at the WSIB, but they also implicate the quality of representatives who are poorly prepared causing waste of precious appeal resources. This is befuddling because the Law Society and WSIB supposedly weeded out the incompetent representatives when mandatory licensing was introduced



in 2008. Mind you, we've all come across licensed professionals in different fields and shake our head wondering how they became certified. Although this sounds self-serving, I do consider myself to be well prepared, know my files, knowledgeable of the law and policy, and will wait to see if this new appeals process improves the system. Some past WSIB reforms which created a specialized team to implement appeals decisions has worked well. However, when senior management are telling WSIB staff to cut costs (e.g., deny claims) to reduce the Unfunded Liability (UFL), I'm less optimistic no matter what system is put in place.

Fraternally yours,

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