

MEMORANDUM

84/90

DATE: July 24, 1990

TYPE: A

TO: ALL WCAT STAFF

SUBJECT: DECISION NO. 84/90

Hearing loss.

The worker's widow appealed a decision of the Hearings Officer granting health care benefits for hearing loss but denying a pension. The Hearings Officer relied on results of an audiogram performed after the worker stopped working to find that the worker had hearing loss of 35 decibels in one ear and 30 decibels in the other ear and that, therefore, the worker did not have sufficient hearing loss to qualify for a pension under the old Board policy.

The Panel took the average of a number of audiograms taken up to the time the worker stopped working. Using this average (reduced for a presbycusis factor for age exceeding 60, the worker had bilateral hearing loss of 35 decibels, which was the amount required by the Board's old policy. The Panel also noted a background paper on hearing loss which stated that audiogram results have a margin of error of plus or minus 5 decibels.

The appeal was allowed. [4 pages]

PANEL: Kenny McCombie Preston

DATE: 24/07/90

WCAT Decisions Considered: 55/87

WORKERS' COMPENSATION APPEALS TRIBUNAL

DECISION NO. 84/90

This appeal was heard in Windsor on February 6, 1990, by a Tribunal Panel consisting of:

M. Kenny : Vice-Chairman,
K.W. Preston: Tribunal Member representative of employers,
N. McCombie : Tribunal Member representative of workers.

Post-hearing procedures were completed May 18, 1990.

THE APPEAL PROCEEDINGS

The worker's widow appeals the April 14, 1989, decision of WCB Hearings Officer, M.C. Turner. The Hearings Officer found that the worker had a 30 db. hearing loss in the right ear and a 35 db. hearing loss in the left ear and that was not sufficient for the worker to be granted a permanent disability pension.

The worker's widow attended the hearing. She was represented by J. West of the Office of the Worker Adviser. The 1968 to 1985 employer was notified of the hearing but decided not to participate. The Panel was assisted by Tribunal counsel Karen Koch.

THE EVIDENCE

The Panel considered the Case Description, a May 19, 1987, background paper from Dr. Alberti regarding the effect on hearing loss of removal from noise, and background materials regarding the retroactivity of the Board's June 3, 1988, hearing loss policy. At the hearing, the Panel indicated that it wanted to know the source of one of the audiograms on file. It therefore asked Tribunal counsel to get that information. The information was received by the Panel on May 18, 1990.

THE NATURE OF THE CASE

The Board accepted that the worker had industrial noise induced hearing loss and it granted the worker entitlement for health care benefits. It did not, however, grant entitlement to a permanent disability award. It concluded that the worker had an employment-related hearing loss of 30 db. in the right ear and 35 db. in the left ear. Since the Board hearing loss policy in effect before June 3, 1988, required a hearing loss of 35 db. bilaterally, the Board concluded that the worker's hearing loss was not sufficient to entitle him to a pension.

The Panel had to decide:

1. What was the extent of the worker's employment-related hearing loss?
2. If it was less than 35 db. bilaterally, was the worker nonetheless entitled to a permanent disability pension?

THE PANEL'S REASONS

(i) The audiograms

There are a number of audiograms on file. A number of them appear to have measured hearing loss using frequencies other than those used by the Board. For example, a January 1985 report by an ear specialist, Dr. Lan, stated that the worker had a bilateral hearing loss of 35 db. in one ear and 30 db. in the other ear. However, it appears that this calculation may well have been based on readings taken at 500, 1000, and 2000 Hertz. The Board assesses hearing loss using a different combination of frequencies. It uses four frequencies (500, 1000, 2000, and 3000 Hertz). The Panel therefore looked at the hearing loss test results using the audiometric results shown for those frequencies. The results were as follows:

Date	Right Ear	Left Ear
July 19, 1984 (Dr. Oswald)	40 db.	40 db.
July 26, 1984 (Dr. Rossi)	30 db.	31 db.
January 14, 1985 (Dr. Lan)	36 db.	39 db.
September 11, 1985 (Dr. Haight)	32.5 db.	36 db.
April 7, 1986 (Dr. Lan)	40 db.	40 db.

NOTE: The above calculations are not reduced for aging. Also, since a number of the audiograms did not take measurements at 3000 Hertz, some of the 3000 Hertz values were estimated by extrapolating from the measurements taken at 2000 and 4000 Hertz.

(ii) The extent of the worker's compensable hearing loss

The Hearings Officer used the September 11, 1985, audiogram results and concluded that there was a 30 db. right ear and 35 db. left ear hearing loss. That was based on applying a presbycusis factor of 1.5 db. to the audiogram results--then rounding off the right ear results from 31 to 30 and the left ear results from 34.5 to 35 db.

However, when all the audiograms are considered, it is clear that it is difficult to be that precise about the extent of the worker's hearing loss. The audiogram results have varied--and higher results than those used by the Hearings Officer were obtained on two audiograms performed before September 11, 1985.

The Hearings Officer appears to have chosen the September 1985 audiogram results because the worker stopped working in April 1985. However, if the results from audiograms taken before that date are averaged, the hearing loss is 35.3 db. in the right ear and 36.7 db. in the left ear. Applying the Board's presbycusis factor of 0.5 db. for each year the worker's age exceeded 60, the hearing loss would be 34.3 db. and 35.7 db. Thus, if the values taken by averaging the pre-April 1985 audiograms are used, the worker had the bilateral 35 db. hearing loss required by the Board's old hearing loss policy.

In our view, there is no reason to disregard the results of pre-September 1985 audiograms. According to a background paper prepared by Dr. Alberti, audiogram results have a margin of error of plus or minus 5 db. at each frequency (Appendix #2, Decision No. 55/87) Given that, plus the fact that the earlier audiograms are relatively consistent with the September 1985 audiogram and later audiograms, we find that the worker had noise induced hearing loss of at least 35 db. bilaterally. He was therefore entitled to a permanent disability award for his hearing loss.

We leave the calculation of the amount which was owing at the time of his death to the Board.

THE DECISION

The worker's appeal is allowed.

DATED at Toronto, this 24th day of July, 1990.

SIGNED: M. Kenny, K.W. Preston, N. McCombie.