



Understanding the Nuts & Bolts Whether You have a Viable Occupational Noise Induced Hearing Loss claim (deafness), and the Steps to Follow in Registering a NIHL Claim

By: Gary Majesky, *WSIB Consultant & Executive Board Member*



Deafness claims are a frequent health issue I deal with, because members need guidance and assistance in submitting claims to the WSIB.

Members come into my orbit after an audiologist tests your hearing (audiogram) and advises you have suffered hearing loss, and recommends submitting a claim to the WSIB.

When members contact me, I tell them it is my practice before an Occupational Noise Induced Hearing Loss claim is submitted to the WSIB, that my first step is to review the audiogram to determine whether you have a viable NIHL claim pursuant to WSIB Operational Policy 16-01-04 and section 2(1) and 15 of the *Workplace Safety and Insurance Act*.

When members enter the WSIB system without first allowing me an opportunity to review their hearing test, including any potential anomalies in their audiogram, legal problems invariably arise. You may be unaware, but deafness claims are classified as an Occupational Disease by the WSIB.

WSIB Policy When Adjudicating Work Related Deafness Claim

Please note that there are four key factors the WSIB considers when adjudicating Occupational Noise Induced Hearing Loss claims:

1. Whether there is sufficient hearing loss averaged across 4 frequencies (500, 1k, 2k, and 3 k hertz) with a minimum of 22.5 dB in each ear. There is a higher threshold for a permanent impairment.
2. Is the audiometric profile (slope of graph) consistent with Noise Induced Hearing Loss (characteristic notch at higher frequencies)?
3. Applying the Presbycusis factor, which is an age related off-set for workers age 60 and over, the WSIB subtracts 0.5 dB for each year a worker is over age 60.
4. Whether the hearing loss is symmetrical or asymmetrical (one ear worse than other)?

WSIB Operation Policy 16-01-04 states

Hearing loss in workers occupationally exposed to hazardous noise is an occupational disease (under s. 2(1) and s. 15 of the *Workplace Safety and Insurance Act*) which is peculiar to and characteristic of a process, trade or occupation involving exposure to hazardous noise in Ontario.

Guidelines - Description of the condition

Noise-induced hearing loss (NIHL) is a permanent loss of hearing in both ears resulting from sensorineural (inner ear) damage due to prolonged, continuous, hazardous noise exposure.

Entitlement

Workers with occupational NIHL that is sufficient to cause a hearing impairment may be entitled to benefits. Entitlement to health care and rehabilitation benefits begins with a hearing loss of 22.5 dB in each ear when the hearing loss in the 4 speech frequencies (500, 1000, 2000, and 3000 Hertz) are averaged.

The following is persuasive evidence of work-relatedness in claims for sensorineural hearing loss:

- **continuous exposure to 90 dB(A) of noise for 8 hours per day, for a minimum of 5 years, or the equivalent, and**
- **a pattern of hearing loss consistent with noise-induced sensorineural hearing loss.**

A presbycusis (aging) factor of 0.5 dB is deducted from the measured hearing loss (averaged over the 500, 1000, 2000, and 3000 Hz frequencies) for every year the worker is over the age of 60 at the time of the audiogram. The hearing loss that remains after the presbycusis adjustment is then used to determine entitlement to benefits.

Entitlement to health care and rehabilitation benefits is available when the adjusted hearing loss is at least 22.5 dB in each ear.

Typical Noise Exposure that Electricians Experience

Most electricians age-50 and older were exposed to hazardous noise when working with ramset guns in the early part of their working career, or working in proximity of others that did. Hazardous noise was ubiquitous in most construction environments, including industrial plants, and the sources of acoustic trauma include exposure to high velocity drills, saws, diamond core drilling, compressor rooms, generators, heavy equipment, miscellaneous power tools, working next to other noisy trades (tin knockers and labourers), fire alarm testing, general construction, and noise from manufacturing plants and related manufacturing processes, etc.

Another consideration is that members in the early part of their working career did not wear hearing protection, and in later years, used inadequate PPE, such as foam ear plugs.



Members Should Document Noise Exposure

One of the challenges in submitting a deafness claim is documenting your work history and noise exposure. This is a daunting task trying to recollect 35-50 years of historical noise exposure. In fact, in most instances it is impossible.

To assist, the union will generate your work history based on our hiring hall records of contractors you were dispatched to over the years. However, I instruct members to jot down on a separate piece of paper any jobs that were particularly noisy. For instance, some members worked in bottling, car or stamping plants, and these were noisy places to work, particularly if the plants were operational. We've had members work in cement factories where large steel balls the size of bowling balls turned inside a long cylindrical steel tube that rotated and crushed and pulverized the limestone aggregate. Or members who worked at the airport near the jets.

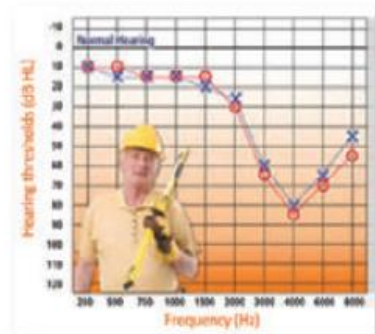
In my experience, most members experienced workplace noise over their working career, and since deafness is a gradual process, they are unaware they have a problem, until the wife, or kids pester dad that he can't hear, and the TV volume is on high. Then the light goes off to get a hearing test, which confirms a hearing loss, and then I start receiving calls for advice.

If Hearing Loss Severe, an ENT Assessment Is Required

For a worker to have a viable NIHL claim they must have a minimum of 22 dB in each ear to qualify for hearing aids and batteries. In my opinion, that's the prize in a deafness claim.

Often time's members have significant hearing loss. For instance, if the hearing loss is greater than 25 dB in one ear, and 35 dB in the other,

you may be eligible for a permanent impairment award, which attracts a small payment. I'll also recommend the member be referred to an Ear Nose and Throat (ENT) specialist because the WSIB will require an assessment by a specialist.



Necessary Documents to Submit NIHL Claim

When submitting a NIHL claim to WSIB, you need to complete a NIHL application (2 pages). You'll also need to attached a copy of your audiogram (hearing test), which is typically 1-page. And the union will prepare a work history. All these documents should be submitted together when registering a deafness claim with WSIB.

Please note that the WSIB is tasked with making adjudicative decisions, and you'll have to let the process unfold to see what they ultimately decide. Unfortunately, there is a 6-month delay due to a backlog of deafness claims before your file is reviewed and a decision made.

Remember, be sure to send me a copy of your hearing test (audiogram) by fax or email attachment (PDF file), and I'll provide you with my opinion whether you have a viable Occupational NIHL claim, and we'll get things rolling from there.

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353 Retirees' Computer Club

The Retirees are pleased to announce the formation of a computer club that will be focusing on Apple products. The monthly sessions will be of a casual drop-in nature, far removed from the typical classroom format and will be conducted in an environment of open discussions, workgroups and presentations.

Topics will cover the use of iPhones, iPads, MacBooks, iMacs and Apple TV. Learning

how these devices interact with each other will result in a more enjoyable experience for our members.

No registration is required at this time; just bring your own personal Apple devices with you. For those who currently do not have an Apple product, there will be devices available for sharing.

When: First Wednesday of every month

Time: 10:30 am to 12:30 pm

Where: West End Training Centre, 3185 Orlando Drive, Mississauga, ON.

Looking forward to you joining our friendly group and enjoying a coffee with us. All 353's retired members, members' spouses/partner and unemployed members are welcome!

In Brotherhood,

William O'Halloran & Len Zawaski