



Employer and Surety argue that Claimant's hearing condition was known prior to hearing and that the evidence clearly supports a finding that Claimant's hearing loss was a subjective hindrance. Employer and Surety also aver that ISIF is incorrect in trying to interpret the prior lump sum settlement agreement as precluding Claimant from arguing against being totally and permanently disabled as a result of his 1997 industrial accident with a prior employer.

First, ISIF requests the Commission to reconsider its determination of preexisting hearing impairment and the Commission's application of Claimant's hearing impairment. Claimant admitted significant hearing loss and there is documentation from audiology testing of significant hearing loss while Claimant was employed with a prior employer. There was adequate medical documentation and substantial evidence in the record to discern that many of Claimant's activities of daily living, including difficulty with communication at home, in restaurants, and in public places, are impacted by his hearing loss.

Those facts were then applied to the *AMA Guides*, 5<sup>th</sup> ed., resulting in a finding of 8% whole person impairment rating. Claimant's hearing loss was a long-standing condition, which was supported by substantial evidence but not specifically rated. The Commission, as a matter of practice, takes judicial notice of the *AMA Guides*, as they are the recognized authority in the area of impairment rating.

Additionally, the Commission found the opinion of vocational expert Barbara Nelson most persuasive. Nelson commented on Claimant's placement difficulties due to his hearing loss, stating that there were some sedentary to light occupations that Claimant would have been able to do but for his hearing loss. The Commission found that Claimant's hearing loss was a subjective hindrance to his obtaining employment.

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Next, ISIF argues that the Commission should reconsider the application of law regarding collateral estoppel in relation to Claimant's previous lump sum settlement agreement entered into with a previous employer. ISIF requests that the Commission review the same facts and the same arguments that were before it at hearing and when the decision was signed.

The lump sum settlement agreement that Claimant entered into with a prior employer merely acknowledged that in exchange for valuable consideration Claimant relinquished all future benefits to which he might otherwise be entitled as a result of the 1997 injury. The phrase "totally and permanently disability" appears in the lump sum agreement, but the language can hardly be characterized as an assertion that Claimant was totally and permanently disabled as a result of his 1997 accident with a prior employer. There was no binding assertion that Claimant was totally and permanently disabled at the time he entered into the settlement agreement with his prior employer.

Although ISIF disagrees with the Commission's findings and conclusions, the decision of April 25, 2006, in the above referenced case, is supported by substantial evidence in the record and ISIF has presented no persuasive argument to disturb the decision.

Based upon the foregoing reasons, ISIF's Motion to Reconsider is DENIED.

IT IS SO ORDERED.

DATED this 24<sup>th</sup> day of \_August\_\_\_\_\_, 2006.

INDUSTRIAL COMMISSION

/s/ \_\_\_\_\_  
Thomas E. Limbaugh, Chairman

/s/ \_\_\_\_\_  
James F. Kile, Commissioner

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/s/ R. D. Maynard, Commissioner

ATTEST:

\_\_\_\_\_  
/s/ Assistant Commission Secretary

**CERTIFICATE OF SERVICE**

I hereby certify that on 24 day of August, 2006, a true and correct copy of the foregoing ORDER DENYING RECONSIDERATION was served by regular United States Mail upon each of the following:

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/s/