



## **CONTENTIONS OF THE PARTIES**

Claimant contends he suffered hearing loss from working near a noisy piece of equipment.

Defendants contend Claimants hearing loss, if any, was not caused by his work. Claimant failed to present a *prima facie* case for benefits.

## **EVIDENCE CONSIDERED**

The record in the instant case consists of the following:

1. Hearing testimony of Claimant, coworker Mark Pittz, supervisor Victor Hernandez, and supervisor Rodney Hall; and
2. Defendants' Exhibits 3, 6, and 7.

Having examined the evidence, the Referee submits the following findings of fact, conclusions of law, and recommendation for review by the Commission.

## **FINDINGS OF FACT**

1. Claimant worked for Employer. A major part of his job, about four hours each day, is filling propane tanks. He was required to fill 125 tanks per day, which tanks of propane would be sold for use in barbecue grills and camper-trailers, etc. The pump motor which transferred the propane from the main tank to the smaller tanks was noisy.

2. Claimant complained about his hearing in June 2008. At some later point in time, Employer supplied Claimant with earplugs.

3. Earplugs are not required protective equipment when an employee is near this motor. Since Claimant's allegations, Employer has considered whether requiring earplugs should be policy. No new policy has been issued.

4. On June 25, 2008, Claimant visited Jacob Kammer, M.D. Upon examination, Dr. Kammer opined Claimant's audiogram pattern is not consistent with high tone hearing loss.

5. On February 20, 2009, Claimant visited Arthur C. Jones III, M.D., at Defendants' request. He opined Claimant has mild to moderate hearing loss in his right ear and profound hearing loss in his left ear. Neither loss is consistent with exposure to noise. He opined "I think this man's hearing loss has little or nothing to do with his exposure to noise in the workplace."

6. On June 1, 2009, Dr. Kammer deferred to Dr. Jones' judgment and report.

### **DISCUSSION AND FURTHER FINDINGS OF FACT**

7. Claimant is an honest and forthright witness.

8. **Causation.** A claimant must provide medical testimony that supports a claim for compensation to a reasonable degree of medical probability. *Langley v. State, Industrial Special Indemnity Fund*, 126 Idaho 781, 785, 890 P.2d 732, 736 (1995). Magic words are not required. *Jensen v. City of Pocatello*, 135 Idaho 406, 18 P.3d 211 (2000). "Probable" is defined as "having more evidence for than against." *Fisher v. Bunker Hill Company*, 96 Idaho 341, 344, 528 P.2d 903, 906 (1974).

9. The medical records do not present a *prima facie* case for a causal relationship between Claimant's hearing loss and his work. The medical opinion in this matter is that Claimant's hearing loss is not caused by noise at work. The hearing loss is of an entirely different character from noise-induced hearing loss.

10. Claimant's hearing loss was not caused by noise at work.

11. All other issues are moot.

### **CONCLUSIONS OF LAW**

1. Claimant failed to show by medical evidence that his hearing loss, more likely than not, was caused by noise at work.

2. All other issues are moot.

**RECOMMENDATION**

The Referee recommends that the Commission adopt the foregoing Findings of Fact and Conclusions of Law as its own and issue an appropriate final order.

DATED this 17<sup>TH</sup> day of December, 2010.

INDUSTRIAL COMMISSION

/S/ \_\_\_\_\_  
Douglas A. Donohue, Referee

ATTEST:

/S/ \_\_\_\_\_  
Assistant Commission Secretary

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3. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all matters adjudicated.

DATED this 23<sup>RD</sup> day of DECEMBER, 2010.

INDUSTRIAL COMMISSION

/S/ \_\_\_\_\_  
R. D. Maynard, Chairman

/S/ \_\_\_\_\_  
Thomas E. Limbaugh, Commissioner

/S/ \_\_\_\_\_  
Thomas P. Baskin, Commissioner

ATTEST:

/S/ \_\_\_\_\_  
Assistant Commission Secretary

**CERTIFICATE OF SERVICE**

I hereby certify that on the 23<sup>RD</sup> day of DECEMBER, 2010, a true and correct copy of **FINDINGS, CONCLUSIONS, AND ORDER** were served by regular United States Mail upon each of the following:

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/S/ \_\_\_\_\_