

Lovell, Ronald

OCCUPATIONAL DISEASE (RCW 51.08.140)

Schedule of benefits applicable

The date of manifestation for binaural hearing loss is the date the binaural hearing loss became partially disabling, not the date a unilateral loss component of the binaural loss became partially disabling.*In re Ronald Lovell, BIIA Dec., 03 16736 (2005)*

Scroll down for order.

1 The Board has reviewed the evidentiary rulings in the record of proceedings and finds that
2 no prejudicial error was committed. The rulings are affirmed.
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4 The issues raised in this appeal are the extent of permanent partial disability associated
5 with Mr. Lovell's binaural hearing loss and the date of manifestation of that hearing loss. The
6 evidence presented in this record is accurately set forth in the Proposed Decision and Order. We
7 have granted review because we disagree with our industrial appeals judge regarding the date of
8 manifestation of Mr. Lovell's occupational hearing loss. On this record, we find that the date
9 Mr. Lovell's hearing loss was first manifest is December 4, 2000.
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12 We agree with the analysis in the Proposed Decision and Order regarding the permanent
13 partial disability for occupational binaural hearing loss. The record establishes that Mr. Lovell
14 suffers from a permanent partial disability for binaural hearing loss, as a result of occupational
15 exposure, which is equal to 21.57 percent loss of hearing in both ears. This is based on the
16 audiogram dated May 8, 2002, which was conducted by Thomas Stackhouse, M.D. We also agree
17 with our industrial appeals judge regarding the disability rating for tinnitus. We believe an additional
18 3 percent of hearing disability is attributable to the tinnitus condition Mr. Lovell suffers as a result of
19 his occupational noise exposure. The 3 percent tinnitus rating is established by the opinions of
20 Alan Langman, M.D., and John P. Lynch, M.D. We accept their reasoned opinions.
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22 Our industrial appeals judge also determined that Mr. Lovell's hearing loss was first manifest
23 on March 8, 1990. Our industrial appeals judge reasoned that the audiograms prior to 1990 were
24 contradictory and should not be accepted to establish a first date of manifestation of the
25 occupationally induced hearing loss. Instead, our industrial appeals judge relied on an audiogram
26 dated March 8, 1990, which showed a ratable hearing loss in one ear. However, the record is clear
27 that the first audiogram to show a ratable hearing loss in **both** ears was done on December 4,
28 2000.
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30 We hold that the correct date of manifestation for **binaural** hearing loss is the date that
31 **binaural** hearing loss becomes partially disabling. See, also, *In re Vernon A. Hawkins*, Dckt.
32 No. 02 10174 & 02 12767 (September 14, 2004). To the extent these holdings are inconsistent
33 with our holding in *In re Larry Wass*, BIIA Dec., 01 11201 (2002), *Wass* is overruled. In Mr. Lovell's
34 case, although he had ratable hearing loss in **one** ear as early as 1990, it is clear from the record
35 that the first ratable **binaural** hearing loss was found by audiogram dated December 4, 2000.
36 December 4, 2000, is the date Mr. Lovell's binaural hearing loss first became partially disabling.
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FINDINGS OF FACT

1. The claimant, Ronald G. Lovell, filed an application for benefits with the self-insured employer on April 5, 2002, in which he alleged that he sustained an occupational disease during the course of his employment with Georgia Pacific, Corp. The first time he was informed by a physician, in writing, that he had occupational hearing loss, proximately caused by and arising out of his employment with Georgia Pacific, Corp., was the date Dr. Stackhouse assisted him in preparing his application in 2002. The claim was allowed on a temporary and interlocutory basis on April 29, 2002.

The Department issued an order on March 20, 2003, in which it allowed and closed the claim and ordered the self-insured employer to pay the claimant a permanent partial disability award equal to 35.62 percent complete loss of hearing in both ears, found the employer to be responsible for the purchase and maintenance of hearing aids, stated that it used the results of an August 14, 2002 audiogram, and that the condition of tinnitus was factored in to determine the award. The employer protested this order on April 22, 2003.

The Department issued an order on May 21, 2003, in which it corrected the March 20, 2003 order; ordered the employer to accept the claim for occupational hearing loss; found the medical condition stable; ordered the employer to pay the claimant a permanent partial disability award equal to 21.16 percent complete loss of hearing in both ears less prior awards; found the employer responsible for the purchase and maintenance of hearing aids; found that the decision was made using the results of the August 14, 2002 audiogram, the condition of tinnitus was factored in to determine the permanent partial disability award; and directed the employer to deny responsibility for the remaining 2.35 percent binaural hearing loss caused by exposure to non-occupational noise. The claimant filed a Notice of Appeal from this order with the Board of Industrial Insurance Appeals on July 8, 2003. On July 15, 2003, the Board issued an order in which it granted the appeal, assigned it Docket No. 03 16736, and ordered that further proceedings be held.

2. The claimant sustained occupational hearing loss and tinnitus that arose naturally and proximately from the distinctive conditions of his employment with Georgia Pacific, Corp.
3. The claimant was given on-site audiograms at Georgia Pacific, Corp., beginning in 1972 and continuing at least through September 19, 1996. The early tests were given in the Georgia Pacific building, but later they were moved to a van. Mr. Lovell was taken directly from work and sent to his test. Multiple employees took the test at the same time and one technician performed all the tests.

- 1 4. Mr. Lovell took two tests in January 1986. One of these tests showed a
2 small amount of ratable impairment for noise related hearing loss in his
3 left ear. Between this test and the test taken on March 8, 1990
4 Mr. Lovell had two tests that showed no ratable impairment for his noise
5 related hearing loss. He then took an on-site audiogram on March 8,
6 1990, that showed ratable impairment of noise related hearing loss in
7 one ear. Mr. Lovell first had ratable binaural hearing loss, related to
8 occupational noise exposure, on December 4, 2000.
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- 10 5. Mr. Lovell first tested positive for conductive hearing loss on August 14,
11 2002. This impairment was shown on an air induction test and was not
12 proximately caused by noise. The reason for this conductive hearing
13 loss is unknown and can be due to a variety of reasons.
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- 15 6. The May 8, 2002 audiogram, which showed that Mr. Lovell had a ratable
16 noise induced hearing loss equal to 21.57 percent complete hearing loss
17 in both ears is the test that most accurately reflects his occupational
18 hearing loss as of May 21, 2003. Mr. Lovell also sustained a permanent
19 partial impairment equal to 3 percent due to his occupationally related
20 tinnitus.
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- 22 7. As of May 21, 2003, Mr. Lovell's hearing loss and tinnitus were fixed and
23 stable and were not in need of further necessary and proper medical
24 treatment.
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CONCLUSIONS OF LAW

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- 27 1. The Board of Industrial Insurance Appeals has jurisdiction over the
28 parties to and the subject matter of this appeal.
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- 30 2. Mr. Lovell sustained an occupational disease diagnosed as bilateral
31 noise induced hearing loss and tinnitus, as defined in RCW 51.08.140.
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- 33 3. Mr. Lovell's occupational disease, diagnosed as bilateral noise induced
34 hearing loss, became partially disabling, within the meaning of
35 RCW 51.32.180, on December 4, 2000.
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- 37 4. The Department order dated May 21, 2003, is incorrect and is reversed.
38 This matter is remanded to the Department of Labor and Industries with
39 direction to issue an order in which it accepts the claim for occupational
40 hearing loss, directs the self-insured employer to pay the claimant a
41 permanent partial disability award equal to 21.57 percent of the
42 complete loss of hearing in both ears, plus an additional 3 percent loss
43 of hearing for tinnitus to be paid pursuant to the schedule of benefits in
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1 effect on December 4, 2000, find the employer responsible for the
2 purchase and maintenance of hearing aids, and thereupon to close the
3 claim.
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5 It is so **ORDERED**.

6 Dated this 23rd day of February, 2005.
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8 BOARD OF INDUSTRIAL INSURANCE APPEALS
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12 /s/ _____
13 THOMAS E. EGAN Chairperson
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17 /s/ _____
18 FRANK E. FENNERTY, JR. Member
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22 /s/ _____
23 CALHOUN DICKINSON Member
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