

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. F800185

GARY BEATTY, EMPLOYEE	CLAIMANT
POTLATCH FOREST PRODUCTS CORPORATION, A SELF INSURED EMPLOYER	RESPONDENT
MANAGEMENT CLAIM SOLUTIONS, TPA	RESPONDENT

OPINION FILED JUNE 9, 2009

Upon review before the FULL COMMISSION, Little Rock, Pulaski County, Arkansas.

Claimant is not represented by counsel, but appears *pro se*.

Respondent represented by HONORABLE MICHAEL J. DENNIS,
Attorney at Law, Pine Bluff, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

The claimant appeals from a decision of the
Administrative Law Judge filed December 10, 2008.

The Administrative Law Judge entered the following
findings of fact and conclusions of law:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The employer/employee relationship existed beginning August 14, 2006, during which time the claimant contends he suffered a compensable gradual onset injury to his hearing.
3. The claimant earned sufficient earnings to entitle him to the maximum compensation rates, if his claim is found compensable.

4. The claimant has failed to prove by a preponderance of the evidence that he has suffered a compensable hearing loss in both ears causally related to his employment with Potlatch.

The claimant alleges that he sustained a compensable injury that is governed by the Arkansas Workers' Compensation Act, A.C.A. § 11-9-101 et seq. The claimant's alleged injury is, indeed, an injury that is covered by the Act; however, the claimant has failed to establish the elements necessary to prove a compensable injury by a preponderance of the evidence.

We have carefully conducted a de novo review of the entire record herein and it is our opinion that the Administrative Law Judge's decision is supported by a preponderance of the credible evidence, correctly applies the law, and should be affirmed. Specifically, we find from a preponderance of the evidence that the findings of fact made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

Thus, we affirm and adopt the decision of the Administrative Law Judge, including all findings and conclusions therein, as the decision of the Full Commission on appeal.

IT IS SO ORDERED.

A. WATSON BELL, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Hood dissents.

DISSENTING OPINION

_____ I must respectfully dissent from the majority opinion. The majority, by affirming and adopting the findings of the Administrative Law Judge, finds that the claimant did not meet his burden of establishing an occupational hearing loss. I disagree. After a de novo review of the record, I find that the claimant has proved by a preponderance of the evidence that he sustained occupational hearing loss, and therefore, I must respectfully dissent.

The claimant went to work for the respondent on August 14, 2006. A base line hearing test given him on that date demonstrated his hearing was in the normal range. Information he provided at the time of the test reflected he occasionally suffered from ringing in the ears and had been around snowmobiles/motorcycles, loud music, heavy machinery

and equipment, flew in a plane, engaged in hunting and shooting, and occasionally used a power boat or water skis.

On March 22, 2007, the claimant underwent a second hearing exam administered by his employer. The test indicated he had sustained a severe hearing loss in the high frequency ranges in his left ear and a moderate high frequency hearing loss in his right ear. The claimant testified that after the results of this test were received, the company nurse directed him to seek medical treatment. That advice was documented in a letter prepared by Earla Hopper, the company nurse, dated October 18, 2007.

Acting on the nurse's advice, the claimant saw Dr. Edward Gardner, a Little Rock otolaryngologist. The claimant testified Dr. Gardner performed a full range of audiometric testing on him. In a letter dated October 23, 2007, Dr. Gardner noted the claimant had a sensorineural hearing loss bilaterally. Dr. Gardner stated, given the prior normal hearing exam, his belief was the claimant's loss was most likely noise induced. He recommended Mr. Beatty obtain fitted ear plugs to provide him additional hearing protection. He also recommended a repeat audiogram in four to six months and to continue monitoring the claimant's hearing.

When the claimant reported the results of

Dr. Gardner's findings to the respondent, they directed him to see Dr. John Dornhoffer of the UAMS Medical Center. Dr. Dornhoffer also conducted an exam of the claimant's hearing, which according to the claimant, was identical to that performed by Dr. Gardner. In a letter dated November 27, 2007, Dr. Dornhoffer stated his audiogram reflected the claimant had a high frequency sensorineural hearing loss which appeared to be noise induced. He recommended the claimant find alternate employment if his hearing continued to worsen.

In response to the opinions of Drs. Gardner and Dornhoffer, the respondent contacted Dr. Joseph Sataloff of Philadelphia, Pennsylvania, to conduct a review of the claimant's medical records. Dr. Sataloff set out his conclusions in a letter dated July 2, 2008. While Dr. Sataloff agreed the claimant's test results showed a severe high frequency bilateral hearing loss, he was firmly of the opinion the claimant's employment was unrelated to this effect. Dr. Sataloff stated it was "very clear that Mr. Beatty's noise exposure at this company could not possibly have reached the level of being harmful to hearing according to the OSHA noise regulation." Dr. Sataloff also stated he had reviewed the claimant's job and the noise level in the respondent's factory and concluded the

claimant's employment could not have caused his hearing loss. The doctor did not, however, state what he had been advised as to the claimant's job or the factory's noise level, nor did he indicate who provided this information to him.

Dr. Sataloff's deposition was also included as part of the record. In his deposition, the doctor reviewed his 60 years in the field of noise-induced hearing loss. After providing substantial background information about hearing loss, in general and occupational-induced hearing loss, in particular, he began to opine in regard to the claimant's case.

Dr. Sataloff stated he believed the noise level in the respondent's factory could not have caused the hearing loss the claimant sustained. According to the doctor, the claimant's job only involved intermittent exposure to high noise levels which, he stated, would not have caused the type of hearing loss demonstrated on the claimant's audiogram. The doctor also averred the respondent's factory did not have decibel levels high enough to cause hearing loss in any event. According to Dr. Sataloff, the noise level in the claimant's place of employment was below the 90 decibel threshold for causing hearing loss. Dr. Sataloff stated affirmatively that hearing loss from an occupational

source only arises with prolonged exposure at decibel levels high enough to cause injury. His firmly stated belief was the claimant did not have any hearing loss sustained from his employment. While the doctor admitted the claimant had suffered a measurable hearing loss, he also opined gun shooting would have been a more likely cause than any work place noise exposure.

In deciding this case, the Administrative Law Judge relied almost entirely on Dr. Sataloff's opinion. She accepted his conclusions regarding the noise levels at the respondent's factory, and the likely causes of the claimant's undisputed hearing loss. Accordingly, she found the claimant did not meet his burden of establishing a compensable injury. The majority has affirmed and adopted the Administrative Law Judge's findings.

In my opinion, the majority, by affirming and adopting the Administrative Law Judge, erred in placing so much reliance on Dr. Sataloff's opinion. In making that statement, I do not doubt Dr. Sataloff's professional expertise or knowledge in the area of occupational hearing loss. He is a nationally recognized expert and someone whose opinions this Commission has accepted before. However, I do question the facts upon which Dr. Sataloff drew his conclusions. In both his written report and his deposition,

he makes several statements regarding the noise level in the respondent's factory. He repeatedly states the noise level in the respondent's facility was not high enough to cause an occupational hearing loss. He also comments, on more than one occasion, that the claimant's exposure to high noises was of no more than a few minutes duration. Based upon the testimony developed not only by the claimant but a witness called by the respondent, both these facts appear to be in error.

The claimant testified that, while at work, he was frequently exposed to loud noises for long periods of time. The claimant's job in the respondent's maintenance department required him to be in all areas of the facility, both indoors and out. The claimant testified he also sometimes did special assignments to work on particular machinery for longer periods of time. The claimant also stated that there was some very loud equipment outdoors which he was required to work around for extended periods of time.

Another witness who testified was Judith Holt who stated she was the human resource and environmental health and safety manager for the respondent's factory. She testified she was familiar with the claimant's claim and was generally in charge of noise-related issues. She confirmed

the claimant's testimony regarding his job duties and stated she was aware there were some areas in the plant in which the noise level exceeded 100 decibels.

The testimony of both of these witnesses specifically contradicts facts upon which Dr. Sataloff relied. For example, Dr. Sataloff stated in his deposition there were no areas in the respondent's facility with a decibel level above 90. However, as Ms. Holt acknowledged, noise studies in the plant indicated there were areas that exceeded 100 decibels. Likewise, Dr. Sataloff stated the claimant was not exposed to any prolonged loud noise. However, Ms. Holt and the claimant's testimony demonstrates he was.

Dr. Sataloff also dismissed the opinions of Drs. Gardner and Dornhoffer because, according to him, they were unaware of the noise levels in the respondent's facility. However, as the testimony of Ms. Holt and the claimant established, neither was Dr. Sataloff. I also note, in spite of his frequent statements about having been furnished this information, he never stated where he obtained the information or who furnished it to him. Presumably, it was provided by the respondent or some similar source. In any event, the doctor was obviously making his opinion based upon erroneous information.

This Commission has, in the past, frequently discounted the opinions of doctors, when their opinion was based upon a faulty history given them by the claimant. I believe the respondent's expert should be held to the same standard. That is, when, an opinion, no matter how logical or well thought out, is based upon erroneous information, it cannot be given much weight. I believe Dr. Sataloff's testimony, regardless of his knowledge and expertise, simply cannot be relied upon to decide this case.

I also believe we cannot simply disregard the professional opinions of Drs. Gardner and Dornhoffer. While Dr. Sataloff dismissed their conclusions because of he what he thought was misinformation regarding the noise level in the respondent's facility, it may be that they were more aware of it than Dr. Sataloff suspected. I think this is especially true of Dr. Dornhoffer, a specialist who was specifically chosen by the respondent to evaluate the claimant. In fact, in his report, he states he is evaluating the claimant for workers' compensation purposes. Presumably, Dr. Dornhoffer was aware of the conditions in the respondent's facility or they would not have chosen him to evaluate and examine the claimant. Dr. Dornhoffer states in his report the claimant's hearing loss was noise induced and relates the loss to the claimant's employment. The doctor

even suggests the claimant find alternate work if his hearing loss continued.

When all of the evidence is considered, I find it preponderates in the favor of the claimant. Testimony provided by both the claimant and Ms. Holt establish the claimant had prolonged exposure to high noise levels, and Ms. Holt testified she was aware areas of the plant were well above 100 decibels. At that level, even Dr. Sataloff agreed a noise induced hearing loss is likely to occur. I also believe that Dr. Sataloff's opinion cannot be given great weight because of faulty information he was provided. I believe the opinions of Dr. Gardner, and most especially Dr. Dornhoffer, are significant in their belief the claimant's hearing loss was noise induced. I also note Dr. Dornhoffer's obvious connection between the claimant's noise induced hearing loss and his job duties. I, therefore, find the claimant has met his burden of establishing he sustained a noise induced hearing loss as a result of his job related noise exposure.

For the aforementioned reasons I must respectfully dissent.

PHILIP A. HOOD, Commissioner