

Binaural Bickering? Two Perspectives on Hearing Loss

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Two classes of hearing loss

- Traumatic injury
- Occupational disease

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Acute hearing loss

- Single noisy event
- Head injury with resulting loss

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Occupational hearing loss

- Permanent loss of hearing
- due to prolonged noise
- in the course of employment

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Harmful noise factors

- Overall intensity
- Daily exposure
- Frequency of exposure
- Total lifetime exposure

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Noise levels

- 90 dB of exposure over 8 hours
 - Not a prerequisite
 - Creates rebuttable presumption that noise is harmful

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Prerequisites for claim

- Minimum of 90 days of noisy employment
- 90 calendar days from start of employment, not 90 days of actual noisy work
- Wait seven days after removal from noise to assert claim

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Date of injury

- Transfer to non-noisy employment
- Last day of actual work before retirement
- Termination of employer-employee relationship
- Layoff, complete and continuous for six months

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Statute of limitations and notice of injury

- 6 years for single traumatic event
- 12 years for occupational disease claim

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Statute of limitations and notice of injury

- After 12 years, liability converts to Work Injury Supplemental Benefit Fund
- Fund pays PPD and for hearing aids if loss is greater than 20%

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Statute of limitations and notice of injury

- Two year notice requirement
- Provision does not apply when employer knew or should have known of injury

11

12

Available compensation – occupational loss

- No temporary disability
- PPD up to 216 weeks for bilateral loss
- Medical expenses
- No tinnitus
- Up to \$7,000 in TPD for actual wage loss after transfer to non-noisy employment

12

Available compensation – traumatic injury

- Temporary disability not excluded
- PPD up to 330 weeks for bilateral loss
- 5% PPD for tinnitus
- Medical expenses

13

13

Available compensation – presbycusis

- No deduction for presbycusis
- Employment must be material contributory causative factor in onset or progression of hearing loss
- Length of time from DOI to post-employment test increases risk of presbycusis

14

14

Calculating PPD

- Audiogram measures frequencies between 500 and 8000 Hz
- PPD award is based on reading at 500, 1000, 2000, and 3000 Hz
- Each ear is calculated separately
- Average dB loss determines percentage of impairment

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Calculating PPD

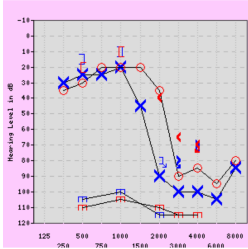
- Average loss in an ear must exceed 30 dB to be compensable
- Percentage of PPD is 1.6% for each dB over 30 – see table in DWD §80.25
- Bilateral loss = ((lesser ear % impairment x 5) + greater ear % impairment) / 6
- Maximum loss is average of 93 dB

16

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Calculating PPD



	500	1000	2000	3000	dB	%
X - Left	25	20	90	100	59	46
O - Right	30	20	35	90	44	22

$((22 \times 5) + 46) / 6 = 26\%$ binaural PPD

17

18

Pre-existing disability and apportionment

- Employer responsible for entirety of deafness to which employment contributed
- Employer not responsible for prior level of compensable loss

18

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Pre-existing disability and apportionment

- Apportionment permitted between successive employers
- No apportionment between successive insurers of common employer

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Medical expenses

- No known medical or surgical treatment for hearing loss per DWD §80.25(6) – no cochlear implants
- Hearing aids
- Prescription versus OTC hearing aids

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Medical expenses

- Expenses include exam, cost of hearing aid, maintenance, repairs, batteries
- Typical lifespan of 3-7 years
- Reasonable expense of \$4,000 per pair considered reasonable

21

22

Medical expenses

- Hearing aids fitted prior to date of injury are compensable
- Prospective order for cost of future hearing aids
- No liability of hearing aids without compensable permanency

22

23

Binaural bickering

- Noise levels in the employment

23

24

Binaural bickering

- Pre- and post-employment hearing loss and non-occupational factors

24

25

Binaural bickering

- Extent of disability and cost of hearing aids

25

26

Binaural bickering

- Questions

26
