

FINAL AWARD ALLOWING COMPENSATION

Injury No.: 10-019275

Employee: David Clevenger
Employer: Ford Motor Company
Insurer: Self-Insured
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund (Open)

This workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480 RSMo. We have reviewed the evidence, read the parties' briefs, heard the parties' arguments, and considered the whole record. Pursuant to § 286.090 RSMo, we affirm in part and reverse in part the award and decision of the administrative law judge.

Introduction

The parties asked the administrative law judge to determine the following issues: (1) whether employee's claim is barred by the statute of limitations; (2) whether employee suffered an occupational disease; (3) the need for future medical care; and (4) the nature and extent of permanent disability.

The administrative law judge rendered the following findings and conclusions: (1) employee's claim for compensation referable to the claimed occupational disease of hearing loss is denied because employee failed to file his claim for compensation in a timely manner; (2) employee's claim for compensation referable to the claimed occupational disease of tinnitus is denied because employee failed to file his claim for compensation in a timely manner; and (3) all other issues are moot.

Employee filed a timely application for review with the Commission alleging the administrative law judge erred: (1) in failing to apply the version of Chapter 287 in effect at the time employee sustained his injuries; and (2) in finding that employee's claims for hearing loss and tinnitus were reasonably discoverable a month after he ceased working for employer.

Although employee's application for review alleges error on the part of the administrative law judge with respect to the issue whether employee timely filed his claim for compensation referable to the claimed occupational disease of hearing loss, employee did not address issues referable to hearing loss in his brief filed with the Commission. At oral argument in this matter, employee's counsel confirmed that employee wished to abandon his claim referable to hearing loss. For this reason, we hereby affirm, without further comment, the administrative law judge's award and decision denying compensation for the claimed occupational disease of hearing loss. However, for the reasons stated below, we reverse the administrative law judge's award and decision denying compensation for the claimed occupational disease of tinnitus.

Employee: David Clevenger

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Findings of Fact

Employee's date of birth is August 21, 1958. He was 55 years of age as of the date of the hearing before the administrative law judge. Employee began working for employer on August 8, 1977. Employee worked full-time on employer's assembly line.

When employee began working for employer, he did not have any problems with his hearing. Employee's daily work for employer exposed him to numerous machines, tools, and processes that produced loud noises. Employer provided earplugs, but these were impractical and even unsafe to use, as they hindered the ability of employees to communicate with one another on the busy factory floor.

As part of an agreement between employer and the union to which employee belonged, employee submitted to annual hearing tests at employer's facility. Those tests were performed by doctors employed by employer. As early as 1996, those tests revealed that employee was suffering hearing loss accompanied by severe ringing in his ears. Employer's doctors told employee that his hearing problems and the ringing in his ears were the effects of aging, and advised him to see his personal physician for treatment. Employer's doctors never suggested to employee there was a possibility his hearing problems were connected to noisy working conditions with employer.

Employee took advantage of an early retirement program, and his last day of work for employer was September 3, 2006. Employee's hearing problems and the ringing in his ears continued after September 3, 2006, although they did not worsen after that date. On March 4, 2010, employee saw Dr. Gregory Mulcahy for complaints of hearing loss and ringing in his ears. Dr. Mulcahy told employee that these problems had been caused by his exposure to loud noises during the course of his work for employer.

There is no indication on this record that employee is a doctor, or an audiologist, or that he is otherwise versed in the scientific literature regarding the potential causes of the medical conditions of hearing loss or tinnitus. Especially when we consider that employer's doctors continually assured employee that his hearing loss and the ringing in his ears were merely the effects of aging, we are persuaded (and we so find) that it was not apparent or reasonably discoverable to employee that he'd suffered a work-related injury in the form of hearing loss or tinnitus until his March 4, 2010, visit with Dr. Mulcahy. On March 18, 2010, employee filed a claim for compensation alleging he suffered hearing loss and tinnitus as a result of exposure to occupational noise in the course of his work for employer.

Employee suffers from a continuous buzzing or ringing sound in his ears, which he describes as akin to the sound of locusts. This sensation makes it difficult for employee to concentrate, causes irritation and frustration, and affects his sleep. Employee presented an expert medical opinion from Dr. Peter Bieri, who opined that employee's 30 years of exposure to noisy work with employer is the prevailing factor causing him to suffer hearing loss and tinnitus. Dr. Bieri rated employee's disability referable to tinnitus at 15% permanent partial disability of the body as a whole.

With regard to the question of future medical care, Dr. Bieri opined that employee's tinnitus is irreversible and will not improve. Dr. Bieri acknowledged the existence of

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various remedies for tinnitus, such as antioxidant supplements and tranquilizers to make the constant buzzing or ringing of tinnitus less distressing. But Dr. Bieri also indicated that he personally did not believe such treatments were effective and opined that they “certainly [don’t] meet the scientific criteria by which it would be beneficial.” *Transcript*, page 60. We infer from this testimony that Dr. Bieri cannot state, with a reasonable degree of medical certainty, that there exist any treatments that will provide any cure or relief from employee’s tinnitus.

Employer did not provide any contrary expert medical opinion evidence. After careful consideration, we find Dr. Bieri’s opinions in this matter to be persuasive.

Conclusions of Law

Statute of Limitations

Section 287.430 RSMo provides, as follows:

Except for a claim for recovery filed against the second injury fund, no proceedings for compensation under this chapter shall be maintained unless a claim therefor is filed with the division within two years after the date of injury or death, or the last payment made under this chapter on account of the injury or death, except that if the report of the injury or the death is not filed by the employer as required by section 287.380, the claim for compensation may be filed within three years after the date of injury, death, or last payment made under this chapter on account of the injury or death.

Section 287.063.3 RSMo additionally provides, as follows:

The statute of limitation referred to in section 287.430 shall not begin to run in cases of occupational disease until it becomes reasonably discoverable and apparent that an injury has been sustained related to such exposure, except that in cases of loss of hearing due to industrial noise said limitation shall not begin to run until the employee is eligible to file a claim as hereinafter provided in section 287.197.

The plain language, of the foregoing sections, makes clear that the statute of limitations does not begin to run in cases of occupational disease until it becomes reasonably discoverable and apparent that an “injury” has been sustained related to the exposure. Section 287.020.3(1) RSMo provides that “[i]n this chapter, the term ‘injury’ is hereby defined to be an injury which has arisen out of and in the course of employment.” It follows that the 2-year statute of limitations period did not begin to run for employee until it was reasonably discoverable and apparent to him that his tinnitus amounted to an injury arising out of and in the course of employment related to his exposure to occupational noise while working for employer.

Employer suggests that, here, the statute of limitations should begin running as of September 3, 2006, employee’s last day of work for employer. Employer argues that, owing to the 2005 legislative changes to § 287.063.3, the 2-year statute of limitations

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period begins to run whenever it is reasonably discoverable and apparent that an employee has suffered an injury, regardless whether it is reasonably discoverable and apparent to the employee that the injury is related to work.¹ Employer suggests that in amending § 287.063.3 by deleting the word “compensable” in 2005, the legislature intended to abrogate cases such as *Sellers v. Trans World Airlines, Inc.*, 752 S.W.2d 413, 416-17 (Mo. App. 1988), which held that an employee is entitled to rely on a physician’s diagnosis of a work-related occupational disease, rather than his own lay impressions whether such a condition is work-related.

We are not persuaded. Employer’s argument asks us to ignore both the definition of “injury” under § 287.020.3(1) as well as the legislative addition, in 2005, of the qualifier “related to such exposure” in § 287.063.3. We presume that the legislature was aware of the pre-2005 case law indicating that an occupational disease does not become “compensable” until an employee suffers some loss in earning capacity, e.g., *Garrone v. Treasurer of State*, 157 S.W.3d 237 (Mo. App. 2004). It appears to us that by removing the term “compensable” and adding the qualifier “related to such exposure,” the legislature intended to shift the focus of our inquiry from the apparent *compensability* of an injury to the apparent *work-relatedness* of an injury.

In doing so, the legislature recognized that the “compensability” of any particular injury does not always turn on whether an employee has medical grounds for bringing a claim, but may involve a number of other factors which are not relevant to the determination of when it becomes apparent an employee has suffered a work injury.² Thus, far from abrogating or weakening the rationale in cases such as *Sellers*, the legislature in 2005 made clear that the apparent work-relatedness of an injury must be our paramount concern in answering the question when the statute of limitations begins to run in occupational disease cases.

The determination of when it became reasonably discoverable and apparent to employee that he’d suffered tinnitus related to his exposure to noisy work with employer is a factual one. *Lawrence v. Anheuser Busch Cos.*, 310 S.W.3d 248, 252 (Mo. App. 2010). We have found that this first occurred during Dr. Mulcahy’s evaluation on March 4, 2010; employee filed his claim for compensation on March 18, 2010. We conclude that employee’s claim is not barred by the statute of limitations.

Occupational disease

Section 287.067 RSMo provides, in relevant part, as follows:

1. In this chapter the term 'occupational disease' is hereby defined to mean, unless a different meaning is clearly indicated by the context, an

¹ Employer does not explain why employee’s last day of work should be seen as the date upon which his injury of tinnitus became reasonably discoverable or apparent; elsewhere in its brief, it acknowledges that employee suffered ringing in his ears referable to tinnitus as early as the mid-1990s.

² An employee may suffer an injury by occupational disease that is apparently work-related but not compensable. Examples include cases wherein the work exposure is ultimately deemed not to be the prevailing causative factor and/or when there is a failure to satisfy some other requisite to an award of benefits, such as compliance with the notice provisions of § 287.420 RSMo.

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identifiable disease arising with or without human fault out of and in the course of the employment. Ordinary diseases of life to which the general public is exposed outside of the employment shall not be compensable, except where the diseases follow as an incident of an occupational disease as defined in this section. The disease need not to have been foreseen or expected but after its contraction it must appear to have had its origin in a risk connected with the employment and to have flowed from that source as a rational consequence.

2. An injury or death by occupational disease is compensable only if the occupational exposure was the prevailing factor in causing both the resulting medical condition and disability. The 'prevailing factor' is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability. Ordinary, gradual deterioration, or progressive degeneration of the body caused by aging or by the normal activities of day-to-day living shall not be compensable.

We have found persuasive the opinions from employee's medical expert Dr. Bieri. We conclude that employee's 30 years of occupational exposure to loud noises in his work for employer is the prevailing factor causing him to suffer the resulting medical condition of tinnitus, and permanent partial disability to the extent of 15% of the body as a whole.

Future medical care

Section 287.140.1 RSMo provides for an award of future medical treatment where the employee can prove a reasonable probability that he has a need for future medical treatment that flows from the work injury. *Conrad v. Jack Cooper Transp. Co.*, 273 S.W.3d 49, 51-4 (Mo. App. 2008). Employee's medical expert, Dr. Bieri, testified that tinnitus is irreversible, and did not identify any future medical care or treatment that would provide any relief from employee's injury. Employee has not, in his brief or at oral argument, identified any other evidence that would support a conclusion that he is entitled to future medical care from employer for his tinnitus. We conclude, therefore, that employee has failed to meet his burden of proof with respect to this issue. We conclude that employer is not liable under § 287.140.1 for future medical care.

Nature and extent of permanent disability

Section 287.190 RSMo provides for the payment of permanent partial disability benefits in connection with employee's compensable work injury. We have found persuasive Dr. Bieri's opinion that employee suffered a 15% permanent partial disability of the body as a whole referable to tinnitus. The administrative law judge's award suggests the parties stipulated that employee is entitled to the maximum weekly permanent partial disability compensation rate of \$376.55, and the parties have not challenged this determination. We conclude that employer is liable for \$22,593.00 in permanent partial disability benefits.

Conclusion

Employee suffered a compensable injury by occupational disease in the form of tinnitus.

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Employer is liable for \$22,593.00 in permanent partial disability benefits. Employer is not liable for future medical care referable to employee's tinnitus.

The award and decision of Administrative Law Judge Mark S. Siedlik, issued January 7, 2014, is attached hereto and incorporated herein to the extent not inconsistent with this decision and award.

This award is subject to a lien in favor of John B. Boyd, Attorney at Law, in the amount of 25% for necessary legal services rendered.

Any past due compensation shall bear interest as provided by law.

Given at Jefferson City, State of Missouri, this 19th day of September 2014.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

John J. Larsen, Jr., Chairman

James G. Avery, Jr., Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

**FINAL AWARD
DENIED**

Employee: David Clevenger

Employer: Ford Motor Company

Injury No. 10-019275

Insurer: Ford Motor Company

Hearing Date: October 29, 2013

FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? No.
2. Was the injury or occupational disease compensable under Chapter 287? No.
3. Was there an accident or incident of occupational disease under the Law? Yes.
4. Date of accident or onset of occupational disease: September 3, 2006.
5. State location where accident occurred or occupational disease was contracted: Clay County, Missouri.
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes
7. Did employer receive proper notice? Yes.
8. Did accident or occupational disease arise out of and in the course of the employment?
Yes
9. Was claim for compensation filed within time required by Law? No.
10. Was employer insured by above insurer? Yes
11. Describe work employee was doing and how accident occurred or occupational disease contracted: Employee was exposed to a noisy work environment.

12. Did accident or occupational disease cause death? No
13. Parts of body injured by accident or occupational disease: Binaural hearing loss and tinnitus.
14. Nature and extent of any permanent disability: N/A
15. Compensation paid to-date for temporary disability: \$0.00
16. Value necessary medical aid paid to date by employer/insurer? \$0.00
17. Value necessary medical aid not furnished by employer/insurer? \$0.00
18. Employee's average weekly wages: \$1,188.19
19. Weekly compensation rate: 718.87/376.55.
20. Method wages computation: The Average Weekly wage calculation was arrived upon by agreement of the parties.
21. Amount of compensation payable: No compensation awarded.

FINDINGS OF FACT and RULINGS OF LAW:

Employee: David Clevenger

Employer: Ford Motor Company

Injury No. 10-019275

Insurer: Ford Motor Company

Hearing Date: October 29, 2013

On October 29, 2013, the Employee and Employer appeared for a final hearing. The Employee was represented by Mr. John B. Boyd. The Employer was represented at the hearing by Mr. John R. Emerson. The Second Injury Fund was not a party to the proceedings. The primary issue the Division has been asked to determine timeliness of the filing of the Claim for Compensation and nature and extent of disabilities.

STIPULATIONS

- 1) On or about September 3, 2006, Ford Motor Company was an employer operating subject to the Missouri Workers' Compensation Act, and was self-insured.
- 2) Mr. David Clevenger was its employee working in Clay County, Missouri.
- 3) No medical compensation has been paid on this matter.
- 4) No Temporary Benefits have been paid on this matter.
- 5) The Employee last worked for Ford Motor Company on September 3, 2006.
- 6) The Employee filed a Claim for Compensation on March 18, 2010.

ISSUES

The parties asked the Division to determine the following issues in the case:

- 1) Did the Employee file his Claim for Compensation within the statute of limitations?
- 2) Did the Employee suffer any permanent disability?
- 3) Whether an employee-employer relationship existed on March 4, 2010

FINDINGS

At Hearing, Mr. David Clevenger (hereinafter referred to as Employee) alleged that he sustained a work-related injury which caused binaural hearing loss and tinnitus due to noise

exposure from his work at Ford. The Employee testified that he was exposed to loud noises while he was working in the production area of the Employer's assembly plant. The Employee testified that he last physically worked on September 3, 2006 and that he did not return to the production area of the plant at any time thereafter. The Employee admitted he performed no work for pay at Ford after September 3, 2006.

The Employee returned to the Ford Assembly Plant one time after he stopped working. He picked up a check at the guard shack and was not in an area that was loud or near the production area of the plant.

The Employee filed a Claim for Compensation on March 18, 2010 alleging work-related hearing loss and tinnitus due to his employment at Ford.

The Employee began working at the Ford Assembly Plant in the late 1970s. The Employee testified that he underwent annual hearing exams while he worked at Ford. He testified that he noticed his hearing loss and the sound of locusts in his ears while he was working at Ford. He could not recall exactly when he first noticed having difficulty hearing or when he started hearing locusts. The medical records provided to the Court reflect that the Employee suffered from ringing in his ears since the 1990s. The Employee discussed the issues he had with his hearing with employees of Ford while he was still physically working at the assembly plant.

Medical Evidence

Dr. Peter Bieri's evidentiary testimony was presented into evidence. Dr. Bieri testified that the Employee suffered hearing loss due to his exposure to noise at Ford. Further, the Employee's tinnitus was caused by the hearing loss.

Tinnitus is static caused by hearing loss. The more loss of hearing an individual suffers, the greater the symptoms of tinnitus. There are no objective measurements for tinnitus so the history taken of the Employee is critical as are the audiograms. Because tinnitus is tied to hearing loss, the objective measurement supporting tinnitus are the hearing tests.

Dr. Bieri assigned a 4.5% disability to the left ear and a 0% disability to the right ear based on the three audiograms taken after the Employee had been separated from his work at Ford. Dr. Bieri assigned a 15% Whole Body disability for the tinnitus. His opinion was "based on two court decisions" that he was provided and not based on any other criteria. According to Dr. Bieri, the maximum award for tinnitus is 15% to the body. Dr. Bieri admitted he did not examine either of the patients specified in the two cases he read.

The three audiograms taken after the Employee had retired from Ford were introduced into evidence. Also the Employer introduced prior hearing tests into evidence. The hearing tests were received over the objection of the Employee. The Employee objected to the admissibility

of the hearing tests under 287.215 R.S.Mo 2005. The court finds that the tests are not statements as defined by the statute.

The audiograms placed into evidence show that the Employee's lowest recorded level of hearing for the left ear was 15dB for the 500 MHz level, 15 dB for the 1000 MHz level and 65 dB for the 2000 MHz level. For the right ear the Employee's lowest recorded level of hearing was 22 dB for the 500 MHz level; 20 dB for the 1000 MHz level and 35 dB for the 2000 MHz level. At the time of the Employee's last of work at Ford, he was 48 years of age. Pursuant to 8 CSR 50-5.060 the Employee has a 1.5% disability to the left ear and a 0% disability to the right.

LAW

After considering the applicable statutes and regulations and all the evidence, including the testimony at the hearing, the testimony of Dr. Bieri, the medical reports, and after observing the Employee's appearance and demeanor, I find and believe that the limitation period had expired prior to the Employee's filing of his claim for compensation. Therefore, compensation must be denied and all other issues raised at the hearing were rendered moot.

The Employee had the burden of proving all material elements of his claim. Fisher v. Arch Diocese of St. Louis – Carnial Richter Inst., 703 S.W. 2^d 196 (Mo.App. E.D. 1990); overruled on other grounds by Hampton vs. Big Boy Steel Erections, 121 S.W. 3^d 220 (Mo. Banc. 2003); Hall v. Country Kitchen Restaurant, 935 S.W. 2d (Mo. App. S.D. 1997); overruled on other grounds by Hampton; 287.808 R.S.Mo 2005. The Employee's employer met its burden of proof on the affirmative defense that the limitation period had expired prior to the filing of the claim.

Hearing Loss

The applicable statutes pertaining to the limitation period for occupational hearing loss provides as follows:

The statute of limitations referred to in section 287.430 shall not begin to run in cases of occupational disease until it becomes reasonably discoverable and apparent that an injury has been sustained related to such exposure, except that in cases of loss of hearing due to industrial noise said limitation shall not begin to run until the employee is eligible to file a claim as hereinafter provided in section 287.197.

287.063.3 R.S.Mo 2005

No claim for compensation for occupational deafness may be filed until after one month's separation from the type of noisy work for the last employer in whose employment the employee was at any time during such employment exposed to

harmful noise, and the last day of such period of separation from the type of noisy work shall be the date of disability.

287.197 R.S.Mo 2005

Except for a claim for recovery filed against the second injury fund, no proceedings for compensation under this chapter shall be maintained unless a claim therefor is filed with the division within two years after the date of injury or death, or the last payment made under this chapter on account of the injury or death, except that if the report of the injury or the death is not filed by the employer as required by section 287.380, the claim for compensation may be filed within three years after the date of injury, death, or last payment made under this chapter on account of the injury or death. The filing of any form, report, receipt, or agreement, other than a claim for compensation, shall not toll the running of the periods of limitation provided in this section. The filing of the report of injury or death three years or more after the date of injury, death, or last payment made under this chapter on account of the injury or death, shall not toll the running of the periods of limitation provided in this section, nor shall such filing reactivate or revive the period of time in which a claim may be filed. A claim against the second injury fund shall be filed within two years after the date of the injury or within one year after a claim is filed against an employer or insurer pursuant to this chapter, whichever is later. In all other respects the limitations shall be governed by the law of civil actions other than for the recovery of real property, but the appointment of a conservator shall be deemed the termination of the legal disability from minority or disability as defined in chapter 475, RSMo. The statute of limitations contained in this section is one of extinction and not of repose.

287.430 RSMo. 2005.

The Employee testified that the last day he physically worked at the Employer was on September 3, 2006. He was never exposed to the noise from the assembly plant at any time thereafter. Thus, September 3, 2006 was the last day his employment exposed him to any harmful noise as set out in the statute and regulations. His date of disability pursuant to the hearing loss statute was therefore October 3, 2006, or one month after his separation from the harmful noise at work.

The Employee did not file his claim for compensation with the Division of Workers' Compensation until March 18, 2010. The Employee had until October 3, 2008 to file his claim for compensation. He did not file it in a timely manner. Compensation on the Hearing loss claim is hereby denied.

Tinnitus Claim

The case law in Missouri has found that tinnitus is a separate injury from a hearing loss claim even though the medical evidence in this matter clearly states that the Employee's tinnitus is caused by the hearing loss. Poehlein v. Trans World Airlines, Inc. 891 S.W. 2d 505 (Mo.App.E.D. 1994). Lawrence v. Anheuser Busch, 310 S.W. 3d 248 (2010). The relevant statutes concerning the statute of limitations for the tinnitus claim are 287.063.3 R.S.Mo 2005 and 287.430 R.S.Mo 2005 and are provided in the prior section of this award.

Under the law that existed prior to August 28, 2005, the statute of limitations did not begin to run in cases of occupational disease until there was: (1) a disability or injury and (2) that the disability or injury was compensable. The prior law did not require the Employee to file a claim for compensation until both elements were met. In order for the second element to have been met, the courts typically required a physician's diagnosis of the condition rather than the employee's own impressions. Lawrence v. Anheuser Busch.

Both Lawrence and Poehlein involved the law in effect prior to the amendments of Section 287.063 R.S.Mo. The prior version of §287.063 R.S.Mo., provided that the statute of limitations as referred to in §287.430, R.S.Mo., "shall not begin in cases of occupational disease until it becomes reasonably discoverable and apparent that a compensable injury has been sustained related to such exposure. . . ." §287.063 R.S.Mo. 1993. Missouri courts define "compensable" as requiring an injury to become disabling, affect one's ability to perform their job or harm their earning capacity. See Garrone v. Treasurer of the State of Missouri, 157 S.W.3d 237, 242-244 (Mo.App. 2004).

On August 28, 2005, the amended version of §287.063 R.S.Mo., took effect and eliminated the term "compensable." This amendment to the statute changed the mechanism for determining when an occupational injury "accrued."

It is presumed that the legislature was aware of holdings by the court and definitions of "a compensable injury" when it removed the word compensable from the current statute. See, Cook v. Newman, 142 SD.W.3d 880, 888 (Mo.App. 2004). By removing the word "compensable," they changed the date an injury accrued as well as a different mechanism to trigger the statute of limitations.

As the law currently exists, the Employee is required to file a claim for compensation within two years of when it becomes reasonably discoverable and apparent that he suffered an injury. No longer is there a requirement that the injury be compensable.

Determining when an injury became reasonably discoverable and apparent is a question of fact. See, Lawrence. In turning to the facts of the case, the Employee testified that he could not recall specifically when he started hearing "locusts," which is how he described the symptoms of tinnitus. He testified that both the hearing loss and the sound of "locusts" began

Issued by DIVISION OF WORKERS' COMPENSATION

Employee: David Clevenger

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while he worked for Ford. His hearing became worse and the "locusts" grew louder the longer he worked at Ford. After he retired from Ford, he testified that his hearing has not worsened and the sound of locusts in his ears has not intensified.

During his employment with Ford, the Employee had annual hearing tests. The hearing tests demonstrate that he began experiencing ringing in his ears, or tinnitus, as early as September 6, 1990. According to the Employee's testimony he told the people at Ford that his hearing loss and the ringing in his ears was work related, and these conversations occurred while he worked at Ford.

The Court finds that the tinnitus was present while the Employee was working at the Ford Assembly Plant. The Employee was aware that the tinnitus was present and he discussed the issue with people at Ford. The tinnitus was not a latent issue that came on after he left Ford's employment. It was reasonably apparent while he physically worked at the plant. The Court finds that his date of injury is the last day he was exposed to the noise inside the assembly plant, September 3, 2006. The Employee had two years in which to file a claim for compensation.

The Employee did not file his claim for compensation with the Division of Workers' Compensation until March 18, 2010. The Employee had until September 3, 2008 to file his claim for compensation. He did not file it in a timely manner. Compensation on the tinnitus claim is hereby denied.

The Employee's request for benefits is denied. The Employee did not file a Claim for Compensation within the time prescribed by statute.

Made by: _____

Mark S. Siedlik
Administrative Law Judge
Division of Workers' Compensation