Injury No.: 14-105155

Employee: Jimmy Holifield
Employer: Mississippi Lime Company
Insurer: Ace American Insurance Company

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission for review as provided by § 287.480 RSMo. Having reviewed the evidence and considered the whole record, the Commission finds that the award of the administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Law. Pursuant to § 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated August 24, 2017. The award and decision of Administrative Law Judge Carl Strange, issued August 24, 2017, is attached and incorporated by this reference.

The Commission further approves and affirms the administrative law judge's allowance of attorney's fee herein as being fair and reasonable.

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

Given at Jefferson City, State of Missouri, this 18th day of January 2018.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

John J. Larsen, Jr., Chairman

VACANT
Member

Curtis E. Chick, Jr., Member

Attest:

Secretary
ISSUED BY DIVISION OF WORKERS’ COMPENSATION

FINAL AWARD

Employee: Jimmy Holifield  Injury No. 14-105155

Dependents: N/A.

Employer: Mississippi Lime Company

Additional Party: N/A.

Insurer: Ace American Insurance Company  TPA: ESIS, Inc.

Hearing Date: May 22, 2017  Checked by: CS/kg

SUMMARY OF FINDINGS

1. Are any benefits awarded herein? Yes.

2. Was the injury or occupational disease compensable under Chapter 287? Yes.

3. Was there an accident or incident of occupational disease under the Law? Yes.

4. Date of accident or onset of occupational disease? June 1, 2014.

5. State location where accident occurred or occupational disease contracted: Ste. Genevieve County, Missouri.

6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes.

7. Did the 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? Yes.

10. Was the employer insured by above insurer? Yes.

11. Describe work the employee was doing and how accident happened or occupational disease contracted: Employee alleged tinnitus due to occupational noise exposure while at Employer.

12. Did accident or occupational disease cause death? N/A.
13. Parts of body injured by accident or occupational disease: Body as a whole.


15. Compensation paid to date for temporary total disability: $0.00

16. Value necessary medical aid paid to date by the employer-insurer: $0.00

17. Value necessary medical aid not furnished by the employer-insurer: N/A.

18. Employee's average weekly wage: $931.57.

19. Weekly compensation rate:

   $621.00 for temporary total disability and permanent total disability; and
   $464.58 for permanent partial disability.

20. Method wages computation: By Agreement.

21. Amount of compensation payable: Employee awarded permanent partial disability from Employer in the amount of $9,291.60 (See findings).

22. Second Injury Fund liability: N/A.

23. Future requirements awarded: N/A.

Said payments shall be payable as provided in the findings of fact and rulings of law, and shall be subject to modification and review as provided by law.

The compensation awarded to the employee shall be subject to a lien in the amount of costs plus 15% of all payments hereunder in favor of the following attorney for necessary legal services rendered to the employee: Robert Meyers
FINDINGS OF FACT AND RULINGS OF LAW

On May 22, 2017, the employee, Jimmy Holifield, appeared in person and by his attorney, Robert Meyers, for a hearing for a final award. The employer-insurer was represented at the hearing by its attorney, Matthew Mocherman. At the time of the hearing, the parties agreed on certain undisputed facts and identified the issues that were in dispute. These undisputed facts and issues, together with the findings of fact and rulings of law, are set forth below as follows.

UNDISPUTED FACTS:

1. On or about June 1, 2014, Mississippi Lime Company was operating under and subject to the provisions of the Missouri Workers’ Compensation Act and its liability was insured by Ace American Insurance Company with a third party administrator of ESIS, Inc.
2. On or about June 1, 2014, the employee was an employee of Mississippi Lime Company and was working under and subject to the provisions of the Missouri Workers’ Compensation Act.
3. The employee’s average weekly wage was $931.57, his rate for temporary total disability and permanent total disability is $621.00, and his rate for permanent partial disability is $464.58.
4. The employer has furnished no medical aid to the employee.
5. The employer has paid no temporary total disability benefits to the employee.

ISSUES:

1. Occupational Disease.
2. Notice.
4. Medical Causation.

EXHIBITS:

The following exhibits were offered and admitted into evidence:

Employee’s Exhibits:

1. Audiology records from Mississippi Lime Company provided by Employer-Insurer;
2. Medical Records from the Department of Veterans Affairs of St. Louis provided by Employer-Insurer;
3. Medical Records from the Department of Veterans Affairs of Poplar Bluff provided by Employer-Insurer;
4. Deposition, C.V., and report of David Mason, Ph.D.; and
5. Hearing test at time of hire.
Employer-Insurer’s Exhibits:

A. Deposition of Dr. Anthony Mikulec;
B. VA Clinic Records, July 15, 2015;
C. VA Clinic Records, July 25, 2005;
D. VA Clinic Records, August 9, 2013; and

**Issue 1. Occupational Disease. and Issue 4. Medical Causation.**

Jimmy Holifield (“Employee”) has been working for the Mississippi Lime Company (“Employer”) since 1984. As a result of his employment, Employee has alleged that he suffered tinnitus due to occupational exposure of loud noise. In support of his position, Employee offered the opinions of an audiologist, David Mason, Ph.D. that the prevailing factor of his tinnitus was the noise exposure at his employment with Employer (Employee's Exhibit 4). Employer-Insurer has offered the opinion of Dr. Anthony Mikulec that Employee’s tinnitus was not related to his work for Employer. It is important to note that nothing in Chapter 287 of the Revised Missouri Statutes or in Title 8 of the Missouri Code of State Regulations requires the opinions concerning tinnitus to be verified by an expert rather than an audiologist or medical doctor. Accordingly, Employer-Insurer’s objections are overruled.

At the time of the hearing, Employee testified that during his employment with Employer he worked in very loud areas. On June 30, 2004, Employee reported that he “began experiencing mild, bilateral, constant, tonal tinnitus of unknown etiology about one year ago” (Employer-Insurer’s Exhibit E). On July 25, 2005, Employee reported “bilateral intermittent tinnitus which has existed since 1979 (Employer-Insurer’s Exhibit C). Although Employee’s first indication of tinnitus occurred in approximately 1979, the records indicate that it became constant around 2003. Due to this constant tinnitus, Employee testified that it bothers him on a daily basis which makes it hard to understand kids, communicate with wife, and interferes with other activities. In accordance with 287.063.2 RSMo., “the employer liable for the compensation in this section provided shall be the employer in whose employment the employee was last exposed to the hazard of the occupational disease prior to evidence of disability, regardless of the length of time of such last exposure, subject to the notice provision of section 287.420”. As a result, I find that Employer was the last to expose Employee to the hazard of the occupational disease prior to the evidence of disability.

Based on the evidence submitted at trial, I find the testimony of Employee to be credible and further find that Employer-Insurer failed to offer sufficient credible evidence to discredit the testimony of Employee. Consequently, I find the opinions of David Mason, Ph.D. to be more credible than the opinions of Dr. Anthony Mikulec in this matter since he fully considers all the limitations and information provided by Employee.

Consequently, I find that Employee has satisfied his burden of proof on the issues of occupational disease and medical causation for tinnitus. I therefore find that Employee has sustained an occupational disease on or about June 1, 2014, arising out of and in the course of his employment and that his employment was the prevailing factor in causing the resulting medical condition and disability.

In accordance with 287.420 RSMo., “no proceedings for compensation for any occupational disease or repetitive trauma under this chapter shall be maintained unless written notice of the time, place, and nature of the injury, and the name and address of the person injured, has been given to the employer no later than thirty days after the diagnosis of the condition unless the employee can prove the employer was not prejudiced by failure to receive the notice”. Section 287.063.3 RSMo. states “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”. Section 287.430 RSMo. states “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”.

Dr. Mason prepared his report in November of 2015 which diagnosed tinnitus as an occupational disease as a result of Employee’s employment with Employer (Employee’s Exhibit 4). Consequently, I find it became reasonably discoverable and apparent in November 2015 that Employee’s tinnitus had been sustained related to such exposure. Employee’s claim was filed on September 08, 2015. Based on the evidence and my above findings, I find that Employee has satisfied his burden of proof on the issues of notice and statute of limitations. I further find that Employee provided proper notice to Employer of his occupational disease of tinnitus and that Employee’s claim for occupational disease was filed within the statute of limitations.

**Issue 5. Nature and Extent of Disability.**

Based on the evidence and my above findings, I find that Employee, as a direct result of his June 1, 2014 work-related occupational disease, has suffered a 5% permanent partial disability of his body as a whole at the 400 week level (20 weeks). As a result of Employee’s June 1, 2014 work-related occupational disease, I order Employer to pay to Employee the sum of $464.58 per week for 20 weeks for a grand total of $9,291.60.

**ATTORNEY’S FEE:**

Robert Meyers, attorney at law, is allowed a fee of costs plus 15% of all sums awarded under the provisions of this award for necessary legal services rendered to the employee. The amount of this attorney’s fee shall constitute a lien on the compensation awarded herein.
INTEREST:

Interest on all sums awarded hereunder shall be paid as provided by law.

Made by:

[Signature]

Carl Strange
Administrative Law Judge
Division of Workers’ Compensation