

**FINAL AWARD DENYING COMPENSATION**  
(Affirming Award and Decision of Administrative Law Judge)

Injury No.: 04-146397

Employee: Sharon Lawrence  
Employer: Anheuser-Busch Companies, Inc.  
Insurer: Self c/o Helmsman Management

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by section 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 section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated April 7, 2009, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Kathleen M. Hart, issued April 7, 2009, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 29<sup>th</sup> day of September 2009.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

\_\_\_\_\_  
William F. Ringer, Chairman

\_\_\_\_\_  
Alice A. Bartlett, Member

\_\_\_\_\_  
John J. Hickey, Member

Attest:

\_\_\_\_\_  
Secretary

## AWARD

Employee: Sharon Lawrence

Injury No.: 04-146397

Dependents: n/a

Before the  
**Division of Workers'  
Compensation**

Employer: Anheuser-Busch Companies, Inc.

Department of Labor and Industrial  
Relations of Missouri  
Jefferson City, Missouri

Additional Party: n/a

Insurer: Self c/o Helmsman Management

Hearing Date: February 17, 2009

Checked by: KMH

### 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? n/a
4. Date of accident or onset of occupational disease: n/a
5. State location where accident occurred or occupational disease was contracted: alleged St. Louis
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes
7. Did employer receive proper notice? n/a
8. Did accident or occupational disease arise out of and in the course of the employment? n/a
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: Claimant alleged hearing loss and tinnitus as a result of working in a noisy environment.
12. Did accident or occupational disease cause death? No Date of death? n/a
13. Part(s) of body injured by accident or occupational disease: alleged ears and body as a whole
14. Nature and extent of any permanent disability: n/a
15. Compensation paid to-date for temporary disability: None
16. Value necessary medical aid paid to date by employer/insurer? None

Employee: Sharon Lawrence

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- 17. Value necessary medical aid not furnished by employer/insurer? None
- 18. Employee's average weekly wages: n/a
- 19. Weekly compensation rate: n/a
- 20. Method wages computation: n/a

**COMPENSATION PAYABLE**

21. Amount of compensation payable:

weeks of permanent partial disability from Employer None

22. Second Injury Fund liability: No

**TOTAL: NONE**

23. Future requirements awarded: n/a

Said payments to begin immediately and to be payable and be subject to modification and review as provided by law.

The compensation awarded to the claimant shall be subject to a lien in the amount of n/a of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant:

## **FINDINGS OF FACT and RULINGS OF LAW:**

Employee: Sharon Lawrence

Injury No.: 04-146397

Dependents: n/a

Before the  
**Division of Workers'  
Compensation**

Employer: Anheuser Busch Companies, Inc.

Department of Labor and Industrial  
Relations of Missouri  
Jefferson City, Missouri

Additional Party: n/a

Insurer: Self c/o Helmsman Management

Checked by: KMH

A hearing was held on the above captioned matter February 17, 2009. Sharon Lawrence (Claimant) was represented by attorney Jeffrey Damerall. Anheuser-Busch Companies, Inc. (Employer) was represented by attorney Todd Hilliker.

All objections not expressly ruled upon in this award are overruled to the extent they conflict with this award.

### **STIPULATIONS**

The parties stipulated to the following:

1. Employer and Claimant were operating under the provisions of the Missouri Workers' Compensation law in 2004.
2. Employer's liability was self insured c/o Helmsman Management Services.
3. Employer had notice of the alleged injury and a claim for compensation was timely filed.
4. Claimant's average weekly wage in 2004 was \$998.30, and she is entitled to the maximum rates of compensation.
5. Employer has paid no benefits to date.

### **ISSUES**

The parties stipulated the issues to be resolved are as follows:

1. Whether Claimant sustained an occupational disease.

2. Whether Claimant's hearing loss and tinnitus are medically and causally related to her work for Employer.
3. Whether Claimant is entitled to future medical care.
4. Applicable compensation rates.
5. Whether and to what extent Claimant has sustained any PPD.
6. Statute of Limitations.

### **FINDINGS OF FACT**

Based upon the competent and substantial evidence and my observations of Claimant at trial, I find:

1. Claimant is a 65 year old female who worked for Employer 25 years in the Bevo Building. This building is a bottling plant with some offices. Claimant testified to the varying noise levels in the plant and different offices.
2. Before working for Employer, Claimant had no industrial or other exposure to loud noises that hurt her ears. Claimant is a high school graduate who earned some college credits.
3. Claimant began working in Employer's Bevo Plant in November 1978 as a temporary employee through Kelly Girl Services. She worked as a keypunch operator. In this job, Claimant worked in a 7<sup>th</sup> floor office. Claimant testified the level of noise in this job was similar to that of a typewriter. Claimant testified when she stepped out of the office suite, the noise was at a 6 out of 10, with 10 being the loudest.
4. In January 1979, Employer hired Claimant to teach keypunching and handle bookkeeping duties. She moved to the 8<sup>th</sup> floor offices. Claimant testified when she walked out of this office suite, she was on a balcony and could hear the noise from the plant below.
5. At the end of 1979, Claimant moved to the first floor offices. She worked in a makeshift office that was formerly a storage room in the back of the suite. The conveyor belt was a few feet above the offices, and the noise of the bottling line was constant. The back door of Claimant's office opened to the bottling plant. Employees came through that door into Claimant's office to pick up paychecks. Claimant testified this door was opened about 100 times a day. She testified when the door opened, the noise was at a "definite 10". When the door was closed, the noise was only reduced to a 9 ½. Claimant described the noise as a sound like a lawnmower was running in the office. She had to talk loudly on the telephone and wore no hearing protection.

6. Claimant worked in this first floor office from 1980-1982. She testified this office was the noisiest office in comparison to all her other office assignments. She began to notice hearing problems while working in this office. She had headaches every night and ringing in her ears. The ringing sounded like Cicadas and occurred 24 hours a day. She did not report to medical or seek treatment. Claimant worked in the back office close to two years. She had no noisy hobbies and didn't mow her own lawn.
7. Claimant next worked on the 5<sup>th</sup> floor. The noise level in this office was slightly less than the first floor, and was a level of 7 because the can line was right outside the office door. Claimant testified the ringing in her ears continued to increase while she worked on the fifth floor.
8. In 1984, Claimant moved back to the 8<sup>th</sup> floor. The balcony on the 8<sup>th</sup> floor looking over the production line was closed off, thereby significantly reducing the noise. Claimant testified the noise level in this office was "quite a bit" improved and was down to a 3. Claimant testified this was a fairly normal office environment with carpet on the floor and acoustic tile in the ceiling.
9. In 1993, Claimant trained for a plant foreman position. She worked with a foreman in the Bevo Plant for approximately six months. Claimant wore hearing protection and testified this reduced the plant noise level to a 6. When Claimant removed the hearing protection to talk on the phone, the noise level was back to a 10.
10. After this training, Claimant worked the line as a weekend foreman several times in 1994, and this work tapered off and ended over the next two years. Claimant testified this was the last time she was exposed to a noise level of ten.
11. With the exception of her occasional weekend foreman shifts, Claimant worked from 1984 until her retirement, in a typical office environment, with little to any noise. Claimant continued working in the offices of the Bevo Plant, and was occasionally in noisy areas when she went to get information from a plant foreman. Claimant testified this occurred "occasionally, but not often." Claimant testified the ringing in her ears was a lot worse by the time she retired.
12. Claimant described the ringing as sounding like Cicadas. It is worse in a quiet room or at night. Because of the noise, she has trouble falling asleep, which affects her mood and makes her tired the next day. The noise causes anxiety, and she doesn't want to go to bed because she knows she will have difficulty sleeping. Her hearing is more sensitive in the morning, and the sound from the radio or television hurts her ears. As the day goes on, it becomes harder for her to hear, and she has to turn the television up very loud. Claimant testified the ringing in her ears is constant.
13. Claimant was diagnosed with diabetes in 1988. She already had the ringing in her ears by this time, and she was not on any medications when the ringing began. Claimant testified she experienced no change in the ringing after she quit smoking. Claimant does not wear hearing aids, and is interested in wearing them if that would cut down on the ringing.

14. Robert Imhof, Jr. testified on behalf of Claimant. He was employed by Employer from 1970 through 2001. He testified he met Claimant on numerous occasions for payroll issues. He went to get his paycheck from her in the first floor makeshift office. He came from the noisy plant into Claimant's office. In her office, the noise was muffled but not gone. The noise was distracting, Mr. Imhof had to speak loudly, and he had to strain to hear.
15. Claimant's expert, Dr. Davis, found Claimant had a 5.7% binaural hearing loss and an additional 10% PPD to the body as a whole regarding the tinnitus. His history indicates Claimant worked for Employer for 20 years, mostly near bottling and canning areas where the noise was a level of 10. He concluded she worked in loud noise levels at Employer from 1979-1999, and the noise exposure was a significant contributing factor for the presence of hearing loss and the resulting tinnitus. He opined Claimant would benefit from hearing aids and provided cost estimates.
16. Dr. McKinney testified on behalf of Employer. His history is more detailed than that of Dr. Davis. Dr. McKinney's history indicates Claimant worked in several different environments and is consistent with Claimant's testimony at trial. Dr. McKinney found Claimant had no compensable hearing loss. In his March 2006 report, he opined Claimant could have developed some tinnitus if she was working in the plant in a makeshift office based on her history of increased noise levels. He further opined without noise studies showing the exact noise levels in the office, this is not certain.
17. Employer wrote Dr. McKinney advising that all the areas in which Claimant worked had average decibel levels that were below the OSHA threshold for requirement of hearing protection. They also advised Claimant worked a total of 21 days as a plant foreman following her training in 1993. Dr. McKinney opined if the information regarding the OSHA threshold was correct, this type of noise exposure would not represent a substantial cause of tinnitus. He further opined working 21 days over a two to three year time frame, with hearing protection, does not represent a substantial contributor to tinnitus.
18. Dr. McKinney testified he does not recommend hearing aids for Claimant. Her range of hearing loss would be poorly resolved by the use of hearing aids. In addition, hearing aids would amplify the sound and cause Claimant to perceive tinnitus more severely.

## **RULINGS OF LAW**

Having given careful consideration to the entire record, based upon the above testimony, the competent and substantial evidence presented and the applicable law, I find the following:

- 1. Claimant's claim is barred by the Statute of Limitations.**

Claimant contends Employer is barred from asserting a Statute of Limitations defense since Employer did not assert this defense in their Answer to the Claim. Compliance with the statute of limitations is “a jurisdictional matter to the extent that, while the commission has jurisdiction to determine from the facts before it whether section 39 has been complied with, once it decides the question in the negative, its jurisdiction ends.” *Schrabauer v. Schneider Engraving Product, Inc., et al.*, 224 Mo.App. 304, 25 S.W.2d 529, (Mo. App. 1930). Section 39 was the statute of limitations section at the time this case was decided. The Court further found the statutory limitations upon the exercise of the commission’s “jurisdiction cannot be enlarged, diminished, or destroyed by express consent, or waived by acts of estoppel.” *Id.* 535. I find Employer is not barred from asserting Statute of Limitations as a defense at trial.

§287.197.7 (RSMo 2000) provides: “No claim for compensation for occupational deafness may be filed until after six months’ 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.”

§287.430 provides “...no proceedings for compensation under this chapter shall be maintained unless a claim therefore 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.”

Claimant testified she worked in a noisy environment while working in the first floor offices from approximately 1980 through 1982. This is when she began to notice hearing problems. In 1984 she was moved to a fairly normal office environment with a significant reduction in the noise level. Claimant worked several weekends as a plant foreman in the mid 1990’s, and she testified this was the last time she was exposed to a noise level of ten. She testified she worked from 1984 through her retirement, with the exception of her weekends as a plant foreman, in a typical office environment with little to any noise. Throughout this time period, Claimant was occasionally, but not often, in noisy areas when she went to get information from plant foremen.

I find this case analogous to *Baltz v. Frontier Airlines*, 842 S.W.2d 547, (Mo. App. E.D. 1992). In *Baltz*, an airline worker was transferred from an outside job where he was frequently exposed to loud aircraft noise to an inside job with less noise but occasional exposure to airplane noise outside. The Court held “separation from the type of noisy work” means a change in the type of duties with an accompanying change in the type or level of noise, not the complete segregation of all noise. The Court found the transfer to an inside job was sufficient separation from the previous type of noisy work to trigger the requisite six month “separation from the type of noisy work”.

I find Claimant’s move to the 8<sup>th</sup> floor office in 1984 was a “separation from the type of noisy work” and sufficient change in noise level to trigger the six month separation period. As such, Claimant’s statute of limitations began in late 1984, and her 2004 Claim for Compensation was barred by the Statute of Limitations.

I need not address the remaining issues as my finding on the first issue is dispositive.

Date: \_\_\_\_\_

Made by: \_\_\_\_\_

KATHLEEN M. HART  
*Administrative Law Judge*  
*Division of Workers' Compensation*

A true copy: Attest:

\_\_\_\_\_  
Naomi Pearson  
*Division of Workers' Compensation*