

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

Injury No.: 12-040559

Employee: Dale Welty

Employer: Mississippi Lime Company

Insurer: Ace American Insurance Company

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (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 June 5, 2014, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Carl Strange, issued June 5, 2014, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 16th 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

ISSUED BY DIVISION OF WORKERS' COMPENSATION

FINAL AWARD

Employee: Dale Welty

Injury No. 12-040559

Dependents: N/A.

Employer: Mississippi Lime Company

Additional Party: N/A.

Insurer: Ace American Insurance Company

Hearing Date: March 24, 2014

Checked by: CS/rm

SUMMARY OF FINDINGS

1. Are any benefits awarded herein? Denied (See Findings).
2. Was the injury or occupational disease compensable under Chapter 287? Denied (See Findings).
3. Was there an accident or incident of occupational disease under the Law? (See Findings).
4. Date of accident or onset of occupational disease? April 30, 2012.
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 employer receive proper notice? Yes.
8. Did accident or occupational disease arise out of and in the course of the employment? (See Findings).
9. Was claim for compensation filed within time required by law? Yes.
10. Was employer insured by above insurer? Yes.

11. Describe work employee was doing and how accident happened or occupational disease contracted: Employee alleged hearing loss and 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: Alleged bilateral ears and body as a whole.
14. Nature and extent of any permanent disability: (See Findings).
15. Compensation paid to date for temporary total 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: N/A.
18. Employee's average weekly wage: Not calculated.
19. Weekly compensation rate:

\$524.05 for temporary total disability and permanent total disability; and
\$425.19 for permanent partial disability.
20. Method wages computation: By Agreement.
21. Amount of compensation payable: Denied (See Findings).
22. Second Injury Fund liability: N/A.
23. Future requirements awarded: N/A.

FINDINGS OF FACT AND RULINGS OF LAW

On March 24, 2014, the employee, Dale Welty, 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 April 30, 2012, 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.
2. On or about April 30, 2012, 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 employer had notice of employee's accident.
4. The employee's claim was filed within the time allowed by law.
5. The employee's rate for temporary total disability and permanent total disability is \$524.05 and his rate for permanent partial disability is \$425.19.
6. The employer has furnished no medical aid to the employee.
7. The employer has paid no temporary total disability benefits to the employee.

ISSUES:

1. Occupational Disease.
2. Medical Causation.
3. Nature and Extent of Disability.

EXHIBITS:

The following exhibits were offered and admitted into evidence:

Employee's Exhibits:

- A. Employer hearing loss records; and
- B. Deposition of David Mason, Ph.D.

Employer-Insurer's Exhibits:

1. Deposition of Dr. Anthony Mikulec; and
2. Medical Records of Department of Veterans Administration.

APPLICABLE LAW:

- The burden is on the employee to prove all material elements of his claim. *Melvies v Morris*, 422 S.W.2d, 335(Mo.App.1968). The employee has the burden of proving that not only he sustained an accident that arose out of and in the course of his employment, but also that there is a medical causal relationship between his accident and the injuries and the medical treatment for which he is seeking compensation. *Griggs v A.B. Chance Company*, 503 S.W.2d 697(Mo.App.1973).

FINDINGS OF FACT & RULINGS OF LAW:***Issue 2. Medical Causation***

Dale Welty (“Employee”) has been working for the Mississippi Lime Company (“Employer”) since 1977. As a result of his employment, Employee has alleged that he suffered tinnitus and binaural hearing loss due to occupational exposure of loud noise. In support of his position, Employee offered the opinions of an audiologist, David Mason, Ph.D. In his report, David Mason, Ph.D., opined that Employee’s progressive hearing loss “could be due to the noise exposure at the Mississippi Lime Company, but it could also be related to his family history of hearing loss”. At the time of his deposition, he testified that industrial noise is one of a number of things that can cause hearing loss and tinnitus, and that as far as he knows, work noise exposure would be the largest factor. However, he further testified that “there are other factors I don’t know, I don’t have any way of measuring, the most obvious thing is the noise exposure at work.” On cross-examination, he admitted that the Employee’s family history of hearing loss could have no bearing on Employee’s progressive hearing loss or it could explain all of it. In addition to noting that Employee received military compensation for hearing loss and tinnitus, he testified that at least a portion of Employee’s hearing loss was attributable to Employee’s military service, but he didn’t have any records to determine amount of loss (Employee’s Exhibit 1). Employer has offered the opinion of Dr. Anthony Mikulec that Employee’s hearing loss and tinnitus were not related his work for Employer.

Based on these facts and the other evidence, I find that Employee has failed to satisfy his burden of proof on the issue of medical causation. There is not enough credible evidence to support a finding that the alleged occupational noise exposure was the prevailing factor in causing Employee’s binaural hearing loss or tinnitus. The employee’s claim for compensation against Employer is therefore denied. Given the denial of Employee’s claim, the remaining issues are moot and shall not be ruled upon.

Made by:

Carl Strange
Administrative Law Judge
Division of Workers' Compensation