



Workers' Compensation for Hearing Loss

By Christopher J. Stefancik

Attorney Christopher J. Stefancik received his Juris Doctor from The John Marshall Law School in Chicago, and is admitted to practice law in Illinois and Ohio. Chris has been representing injured workers for more than 15 years and currently heads the workers' compensation practice at Bevan & Associates, L.P.A., one of the largest full service law firms representing injured workers throughout the state of Ohio. For more information, visit <http://www.bevanlaw.com>.

Take a moment and picture a typical workers' compensation injury. What you probably did not picture was the violent assault of vibrating sound waves upon the delicate structures within the inner ear. In fact, workers exposed to hazardous noise within the workplace do not generally associate their loss of hearing to a work-related injury for which they may be entitled to significant benefits.

The prevalence of work-related hearing loss is well documented. The United States Department of Labor estimates that approximately 30 million people are exposed to hazardous noise within the workplace every year and over the last 25 years ranks noise-related hearing loss as, "one of the most prevalent occupational health concerns" in the United States. Given those estimates, in the United States alone, potentially more than 145 million people have been exposed to hazardous noise in the workplace.

Given these statistics, one would assume that work-related hearing loss claims would represent a substantial percentage of total workers' compensation claims, especially in a state like Ohio where employees are engaged in jobs where risk to noise exposure is greatest. Production and construction workers; craft and/or repair workers; machine operators; assemblers; inspectors; and service personnel (police, fire, etc.) represent a high percentage of the total workforce. This is, however, not the case in Ohio where hearing loss claims represent a relatively small percentage of all claims filed.

Physicians who treat hearing loss are generally not aware that workers' compensation is an option to cover treatment costs or may not know how simple it is to establish a claim where there is documented exposure to loud noise in the workplace. OSHA requires that employers in Ohio that expose workers to hazardous noise levels provide annual hearing tests, hearing protection, training, and monitor noise levels within the workplace. If a patient who suffers from hearing loss was employed in a workplace subject to these requirements then exposure is usually accepted. It is not an effective defense for an employer to simply argue that protection was provided. Where it is established that hearing loss has occurred and that exposure to noise in the workplace contributed to damage to the auditory system, a claim may be pursued regardless of whether protection was provided, utilized or even not utilized by the injured worker.

In addition, a claim is not precluded simply because the diagnosis occurs several years after the exposure occurred. In Ohio, the statute of limitations to file a claim for hearing loss is two years from the date the injured worker is made aware that the hearing loss is the result of work-related exposure. In other words the statute be-

gins to run upon the diagnosis of the condition by a physician as an occupational disease.

The full extent of the benefits available under a claim for hearing loss may not be realized by either the physician or the injured worker. Medical treatment, including annual exams to monitor deterioration and necessary hearing aids, are covered in full, relieving the injured worker from expensive co-pays. In addition, other conditions caused by noise exposure can be incorporated into the claim and treated. Vertigo is a common symptom of inner ear damage and can lead to flow-through injuries as a result of falls due to dizziness. Tinnitus, ringing in the ears, is a serious condition that can lead to insomnia and anxiety. These or any conditions causally related to the work-related hearing loss by a physician can be treated under an allowed claim.

The workers' compensation statute also provides a monetary award for total hearing loss. "Total loss of hearing" as defined by the statute, does not mean that the injured worker is no longer able to perceive any sound. Within the context of the statute, the word "hearing" connotes the ability to comprehend everyday speech. The mere fact that a person is able to discern certain sounds does not prevent a finding of a total loss of hearing if the person is unable to hear and comprehend the spoken word. State of Ohio, ex rel. *Sheller-Globe Corporation, Superior-Lima Division, Relator, v. Industrial Commission of Ohio*, (1981) 66 Ohio St.2d 51. It is vital for injured workers and medical providers to understand this definition because in many instances, hearing aids are prescribed precisely when an individual can no longer participate in normal conversation without them. The fact that the hearing device is necessary and covered under the claim is evidence supporting the payment of the significant total loss award. The statutory award in a 2015 workers' compensation claim is a lump sum payment of \$107,750.

Given the potential severity of the injury and impairment coupled with the prevalence of the work-related exposure it is evident that injured workers' rights to workers' compensation benefits for employment-induced hearing loss are too infrequently exercised. With better understanding of the benefits available and the documentation necessary to access those benefits more injured workers suffering from noise-induced hearing loss in the workplace can seek payment of benefits through the workers' compensation program. The workers' compensation statute is specifically enacted to provide benefits to those injured as a result of their employment. Any individual who suffers from hearing deficits and is or was exposed to hazardous noise in the course of their employment should discuss with their physician and a workers' compensation attorney whether they qualify for benefits.