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Office of Administrative Law Judges
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Issue Date: 18 January 2012

CASE NO.: 2011-LHC-00715

OWCP NO.: 07-188215

IN THE MATTER OF:

WARREN JONES,

Claimant,

v.

CARGILL, INC.,

Employer,

and

CARGILL, INC., c/o SPECIALTY RISK SERVICES,

Carrier.

APPEARANCES:

V. WILLIAMS FARRINGTON, JR.

For The Claimant

GEORGE J. NALLEY, JR.
RACHEL SMITH

For The Employer/Carrier

Before: LARRY W. PRICE
Administrative Law Judge

DECISION AND ORDER

This is a claim for benefits under the Longshore and Harbor Workers' Compensation Act (the Act), as amended, 33 U.S.C. § 901, *et seq.*, brought by Warren Jones (Claimant), against Cargill, Inc. (Employer), and Cargill, Inc., c/o Specialty Risk Services (Carrier).

The issues raised by the parties could not be resolved administratively, thus the matter was referred to the Office of Administrative Law Judges for hearing. A formal hearing was held on October 6, 2011, in Covington, LA. All Parties were afforded a full opportunity to adduce testimony, offer documentary evidence, and submit post-hearing briefs. One Joint Exhibit (ALJX), Claimant's Exhibits 1-19 (CX), and Employer/Carrier's Exhibits 1-33 (EX) were offered and admitted into evidence. Additionally, the Court received post-hearing briefs from Claimant and Employer/Carrier. This decision is rendered after careful consideration of the record as a whole, the arguments of the parties, and the applicable law.

I. STIPULATIONS

The parties stipulated (ALJX-1, p. 1), and I find that:

1) There was an Employer/Employee relationship at the time of the alleged injury.

2) Employer was timely notified of the injury.

3) The Notice of Controversion was timely filed.

4) The District Director's Informal Conference was conducted on August 3, 2010.

5) Claimant's average weekly wage at the time of the injury was $706.50.

6) Neither compensation nor medical benefits have been paid.

II. ISSUES

The following issues remain in dispute:

1) Causation of hearing loss;

2) Extent of hearing loss;

3) Timeliness of claim; and

4) Attorney's fees.

III. STATEMENT OF THE CASE

A. Testimonial Evidence

a. Claimant

Claimant testified at the hearing and by deposition on July 13, 2010, in Reserve, Louisiana. (EX-6). Claimant is 62 years old and currently lives in Reserve, Louisiana. (Tr. 16). He finished high school and attended Delgado Community College for about two months. Claimant began working for Employer on January 1, 1977, as a laborer working in the bin bottom, bin top, and basement areas. (Tr. 16; EX-6, p. 11). Claimant was also assigned to work in the rail pit unloading grain from rail cars, which he testified was a noisy work environment. (Tr. 19; EX-6, p. 11). He worked as a laborer between five and ten years. (EX-6, p. 12).

After working in the rail yard, Claimant was moved to working on the river as a barge operator and Bobcat operator cleaning grain from the inside of the barges. (Tr. 17-19; EX-6, p. 12). Claimant testified that using the Bobcat in the barges was a noisy process, even though he wore earplugs. (Tr. 18-19). Claimant stated that he began operating the Bobcat in 1978, and he disagreed with the personnel records produced that showed he was a Bobcat operator only between March 16, 1981, and March 29, 1981. (Tr. 31-32).

Later, Claimant was reassigned to the Millwright Department as a Dust Mechanic; he was responsible for checking pressure readings and changing the bags to help keep dust out of the air. (Tr. 19; EX-6, p. 13). Claimant noted that the fans and air pumps in the dust control system were noisy. (Tr. 20). Part of this position also involved using an iron maul several times a week to beat on the metal grain bins if the dust was not flowing properly. (Tr. 28). Claimant clarified that he did not have to get into the silos to do this, but it would still create a "loud banging noise, boom…" (Tr. 26). He stated that the banging process could take upwards of one hour or more. (Tr. 28-29). Sometimes air operated vibrators were used in this process, which would "make a loud noise too." (Tr. 21).

Claimant also worked around the "Texas Shakers" which clean and turn the grain. (Tr. 21, 23). He explained that he would have worked around the shakers as a Millwright. He conducted preventative maintenance checks and repairs on the shakers and other machines throughout the facility. (Tr. 24-25). Claimant stated he wore earplugs while doing this work. (Tr. 25).

Claimant testified that he never wore a device that measured sound when he worked for Employer. (Tr. 21). However, he did confirm that hearing tests were conducted by Employer about once a year. These tests were performed in a truck, but even though they were supposed to be soundproof, Claimant stated he could still hear the noise of the plant from inside the truck. (Tr. 22). Claimant never had ear surgery, nor has anyone in his family had hearing problems. (Tr. 23). Claimant stated that he was given some papers with results after the hearing tests, but he did not understand them and did not take them with him after he retired. (EX-6, pp. 17-18). At the deposition, Claimant was presented with a copy of the 1991 test results recommending that he discuss his standard threshold shift with his supervisor. (EX-6, pp. 20-22). However, Claimant did not recall whether he approached his supervisor about the results of any hearing

test performed by Employer. (EX-6, pp. 22-24). Claimant testified that he noticed a problem with his hearing a little over five years before retiring. (EX-6, pp. 34-35).

Claimant was presented with a copy of a noise exposure questionnaire he completed for Dr. Juneau. (Tr. 36-37). He stated that someone else wrote on his form that his hearing loss began in 2003, but he believed he already had hearing loss prior to 2003 and was "finding out more about it then in 2003." (Tr. 37-39). Claimant could not remember whether he had filled out this portion of the form or the portion that indicated his hearing loss was sudden. (Tr. 40-41). While the form also indicated that Claimant began wearing hearing protection "'For [sic] the time started,'" Claimant stated that hearing protection was not available at the time he began working for Employer. (Tr. 41). He could not remember when hearing protection became available. (Tr. 41). Claimant clarified that although he did wear earplugs when he operated the Bobcat "later on," he did not wear earplugs when he first began operating the Bobcat in 1978. (Tr. 42). Claimant also testified that the high noise area warning posters were not posted when he first began working for Employer, but when they were, he always used hearing protection in compliance. (Tr. 42-43).

Claimant testified that he has never been exposed to planes, car racing, or loud music. (Tr. 54-55). He also testified that in Employer's facility he was also exposed to chainsaws, power tools such as drill motors, and small engines. (Tr. 43-44). Claimant reviewed several pages of reports from Employer's hearing tests from his personnel file; he verified his handwriting but also urged that he did not understand most of the graphs and notations when he was signing the reports. (Tr. 47-52).

In his last year of work for Employer, between July 2000 and July 2001, Claimant worked as a Millwright. (Tr. 57-58). Claimant was off of work for four to five weeks in 2000 when he had knee surgery. (Tr. 60-61). Claimant also had a hip replacement in 2001, and then a second one in 2003 after he stopped working for Employer. (Tr. 61). Claimant retired on July 21, 2001. (EX-6, p. 26).

Claimant testified that when he was on break or in the shop he did not always wear his earplugs. (Tr. 64). Also, he stated that he might take them out when he was not able to hear what the person next to him was trying to tell him. (Tr. 65). Claimant did not believe wearing hearing protection helped him because he could still "hear all that loud noise." (EX-6, p. 16).

b. James Golden

Mr. Golden began working at Employer's Reserve facility in 1980. He is currently the control room operator. (Tr. 66-67). Mr. Golden has also held the positions of production supervisor, team leader, and grain desk operator. Mr. Golden worked as the environmental health and safety coordinator from 2001 to 2011. He was in charge of managing the safety task procedures. (Tr. 68). Mr. Golden reviewed the Hearing Conservation Program document from the Reserve facility. (Tr. 69). The program is implemented when sound level study results are over 84 decibels. Sound level studies are conducted in the facility when there is a major process change or every three years. (Tr. 69).

Mr. Golden testified that currently, employees are fitted with hearing protection annually. (Tr. 70). Additionally, he stated that since the early 1980s, Employer or the testing company has given a presentation on how to install the protection before employees have their hearing tests. (Tr. 70-71). Mr. Golden confirmed that Hearing Conservation, Inc. (HCI) performed the majority of employee testing and noise surveys for Employer. (Tr. 76). He testified that Employer would have required confirmation of HCI's OSHA compliance. (Tr. 77).

Mr. Golden reviewed a document in Claimant's personnel file titled "performance management process." (Tr. 82). He noted that where the comment section, completed by Claimant's supervisor, indicates "Employee always wears personal protective equipment," this includes hearing protection. (Tr. 83).

Mr. Golden testified that the duties of a laborer at Employer's Reserve facility have not really changed from 1977 to the date of the dosimetry assessment he reviewed. (Tr. 85). Mr. Golden explained that as a laborer, Claimant would have had duties such as sweeping, unloading cars, sanitation, and working in the barge crew. (Tr. 82). He stated that the duties of a Bobcat operator have not changed since 1977, either. (Tr. 86). Mr. Golden testified that hearing protection use during Bobcat operations was required as far back as 1980. (Tr. 74). In 2001, mufflers were added to the Bobcats in 2001, and the cabs were enclosed in about 1997 to reduce noise exposure for the operators. (Tr. 74-75). Mr. Golden stated that Claimant could have sporadically operated the Bobcat, even when he was promoted to millwright environmental tech, if he volunteered to do so for overtime work. (Tr. 93).

According to Mr. Golden, Claimant would have been near and operating a Texas shaker maybe once a month. (Tr. 88). Mr. Golden stated that the maul beating activity is required about once a day, but he would only bang on the bins for about 15 minutes before using another method. (Tr. 89). Mr. Golden stated that any person monitored in the Noise Dosimetry Assessment could have been called to beat on the bins with a maul while they were being monitored. (Tr. 87).

Mr. Golden also stated that in certain areas of the facility, levels over 85 dBA are variable since all of the equipment is not running all of the time. (Tr. 73). Mr. Golden clarified that noise level surveys record the noise level just at the original start-up of the particular piece of equipment being measured. (Tr. 97). The measurements are also affected by how close to the machine the measurement was taken. (Tr. 96-97). Mr. Golden stated that no new equipment was installed between July 2001 when Claimant stopped working at Employer's Reserve facility, and October 2001 when the noise survey referenced was performed. (Tr. 97-98).

Mr. Golden testified that the hearing protection provided to employees at Employer's Reserve facility provided noise reduction between 27 and 29 decibels. (Tr. 144-145).

c. Dr. Michael Seidemann

Dr. Seidemann testified at the hearing and also by deposition on September 21, 2011, in Metairie, Louisiana. (EX-9). Dr. Seidemann is an audiologist and has been practicing since 1969. (Tr. 99). He was accepted as an expert in the field of forensic audiology. (Tr. 100).

Dr. Seidemann explained that the term "threshold" refers to the softest possible level that an individual can consistently detect the presence of a sound. (Tr. 103). Dr. Seidemann stated that there is no latency with noise-induced hearing loss; there is no subsequent progression of the damage the noise exposure causes after the noise ceases. (Tr. 104-105). He also explained that the majority of damage to the ear happens within the first 10 to 15 years of exposure, and after that, the rate of severity of hearing loss resulting greatly decreases. (Tr. 105-106; EX-9, pp. 11-12). However, Dr. Seidemann noted Claimant's hearing did not become significantly worse and did not accelerate in progression until after he stopped working for employer. (EX-9, p. 13). Dr. Seidemann noted that Claimant's audiogram performed by Employer in 1992, about 15 years after Claimant was hired by Employer, showed normal limits in his left ear and normal to mild hearing loss at some frequencies in his right ear. (EX-9, p. 12).

Dr. Seidemann commented on Annex F the American National Standards Institute (ANSI) S3.44-1996 standard for audiology used to estimate the amount of hearing loss that can result from varying intensities of noise exposure. (Tr. 107-111; EX-9, pp. 14-21). He noted that the tables in that Annex show the average thresholds resulting from exposure to different time weighted averages found in various populations, ranging from those who are the least susceptible to those who are the most susceptible to noise-induced hearing loss. (Tr. 108-111). Dr. Seidemann suggested the table could be applied to Claimant even though he did not know Claimant's level of susceptibility. (Tr. 111). However, he noted that there was no point in the Annex F table that would represent the amount of loss shown in Claimant's audiogram regardless of the intensity and duration of noise exposure. (EX-9, p. 23).

Dr. Seidemann prepared a report of his findings on August 30, 2010. (EX-10[1]). His testing conditions met the OSHA and ANSI standards. (Tr. 112; EX-10, p. 1). Dr. Seidemann reported that the test results were reliable and valid. (Tr. 113; EX-10, p. 1). He assigned a 1.6% binaural impairment rating, a 9.4% impairment in Claimant's right ear, and a 0.0% impairment in Claimant's left ear. (Tr. 113; EX-10, p. 2). However, Dr. Seidemann did not attribute this loss to occupational noise. In his report he also disagreed with Dr. Juneau's diagnosis of noise-induced hearing loss "in the absence of the noise-causative data that Dr. Juneau does not seem to have." (EX-10, p. 2). Dr. Seidemann does not believe that it is possible to establish workplace noise as potentially hazardous on the basis of the patient's subjective report; noise causative data is necessary for such a determination. (EX-9, pp. 48-49).

After reviewing Claimant's past audiograms, the Noise Dosimetry Assessment, Noise Level Surveys, and the results of testing by the audiologists in this case, Dr. Seidemann attributed Claimant's hearing loss to Claimant's age. (Tr. 116-117). He opined that the exposure levels reported by the Noise Dosimetry Assessment would not have been sufficient to cause the hearing loss reflected in any of the presented test results. (EX-9, pp. 29, 34). He found that the audiogram he compiled was "really very normal for the average 61 year old." (Tr. 117; EX-9, p. 52). Dr. Seidemann also reviewed the Spoor Presbyacusis Data table for males. (Tr. 117-118; EX-20). The table gives the expected audiometric thresholds for a person of the stated age in the row at the stated frequency level in each column; the values are only attributed to normal aging process effects. (Tr. 117-118; EX-9, pp. 49-50).

[1] This report is also presented in Claimant's Exhibit 7.

Dr. Seidemann discussed Claimant's past hearing tests. (Tr. 120; EX-7, p. 3). He found Claimant's earliest test from March 9, 1978, showed Claimant's hearing in both ears was "completely within normal limits at every frequency..." He noted that, as he understood it, Claimant's operation of the Bobcat at Employer's Reserve facility was discontinued in the early or mid 1980s. (Tr. 121). However, he found that Claimant's audiogram from February 11, 1985, was still within normal limits with no sign of hearing loss. (Tr. 121; EX-7, p. 3). Dr. Seidemann pointed to the first instance of change in Claimant's hearing in 1999. He did not find a "significant" change until July 13, 2000. Dr. Seidemann opined that the change in Claimant's hearing impairment from 1999 to 2000 was unrelated to occupational noise exposure based on the level of exposure Claimant had in his work activities. (Tr. 121; EX-9, p. 42). He opined that if occupational noise had not caused any significant change in Claimant's hearing between his first test in 1978 and the first test that showed any change in 1999, it wouldn't have caused the change that occurred between 1999 and 2000 or between 2001 when he left employment and 2010 when he was tested by himself and Drs. Juneau and Irwin. (Tr. 121-122).

Dr. Seidemann also pointed out that Dr. Juneau's audiogram results from April 25, 2010 show a mild hearing loss in the low frequencies and an essentially flat pattern of hearing loss, but he testified noise exposure does not cause a low frequency hearing loss or a flat pattern of loss. (Tr. 122; EX-9, pp. 23-25). He testified that he has never seen occupational noise-induced hearing loss that produced a flat pattern like the results in this audiogram because a flat audiogram is the result of other sources of causation. (EX-9, p. 23). Dr. Seidemann also testified that the results from Dr. Irwin's audiogram are not indicative of loss caused by noise exposure. (Tr. 123). Dr. Seidemann also noted that the there is an asymmetry between the loss in Claimant's right and left ears, which is not a typical pattern for loss caused by occupational noise exposure. (Tr. 124). Dr. Seidemann took the noise exposure data into account, which also indicated to him that Claimant's loss was not due to noise exposure. (Tr. 124-125). Dr. Seidemann testified that considering all of this information, it is possible for him to rule out noise exposure as a factor in an individual's hearing loss. (Tr. 143).

Dr. Seidemann does not believe that the maul activity described by Claimant would be enough to constitute an acoustic trauma; he stated that it is not a single event, but an event of repeated exposure. (Tr. 125-126; EX-9, p. 36). Dr. Seidemann opined that this maul activity would not have contributed to the loss seen in any of the audiograms showing hearing loss. (Tr. 126; EX-9, p. 36). If so, it would have caused a noise-exposed pattern or notching on the audiogram, and hearing loss in the higher frequencies, which were absent.

Dr. Seidemann testified that we do not have calibrated ears; therefore, if someone says that a noise was "loud," it does not necessarily mean that it is a hazardous or injurious level of noise. (Tr. 133). Dr. Seidemann opined that exposure to 85 decibels for 40 years time weighted average, even for a person with ears most susceptible to hearing loss, would not cause hearing loss. (Tr. 129). He suggested that injurious exposure to noise in an occupational setting is at a level greater than the time weighted average of 90 decibels, no matter the level of the individual's susceptibility to damage. (EX-9, pp. 67-68). However, he noted that he recommends companies institute hearing conservation programs at 85 decibels time weighted average to prevent damage before it starts. (Tr. 129).

Dr. Seidemann testified that even if Claimant had performed some intermittent Bobcat operations after he was technically listed and paid as a Bobcat operator, it would not have caused the kind of hearing loss shown in the 2010 audiograms. (Tr. 135).

B. Additional Medical Evidence

a. *HCI Hearing Test Results*

Employer produced a table listing results from the 18 hearing tests HCI conducted between 1978 and 2000 while Claimant worked for Employer. (EX-7, p. 3). A document entitled "Report on Your Hearing Test Results" from August 27, 1991, stated that "A standard threshold shift has occurred as defined by the federal OSHA hearing conservation amendment of March 8, 1983. The shift has occurred in your left ear." (EX-7, p. 15). This report was in response to hearing test results from testing on August 7, 1991. (EX-7, p. 16). Claimant's hearing wasn't tested by HIC on behalf of Employer again until August 11, 1992. The report on those test results noted "No significant adverse change in both ears from last test, and from baseline." (EX-7, p. 19).

b. *Kim K. Juneau, Au.D.*

Dr. Juneau, a licensed clinical audiologist and Claimant's choice of physician, testified by deposition on September 21, 2011, in Harahan, Louisiana. (CX-19, pp. 6-7). She has been in practice for 28 years and has performed approximately 20,000 audiometric tests during that period. (CX-19, p. 10, dep. exhib. 1, p. 1). Dr. Juneau specializes in industrial workplace testing and hearing loss. (CX-19, pp. 7-8). Her practice mainly consists of diagnostic testing for patients and hearing aid fittings. (CX-19, p. 9).

When Claimant presented to Dr. Juneau on April 21, 2010, he stated that he had hearing problems for a "very long time, but it has gradually gotten worse." (CX-19, p. 12). Dr. Juneau explained that Claimant filled out the "Noise Exposure Questionnaire" on his own in her office. (CX-19, pp. 57-58, dep. exhib. 3, pp. 26-31).[2] Claimant noted on the form that he worked an average of 12 hours a day and was exposed to very loud noise 85% of the day. Claimant also indicated that his hearing loss began in 2003 and was a gradual change. (CX-19, dep. exhib. 3, p. 26).

Dr. Juneau's testing revealed that Claimant had moderate, sloping to moderately severe hearing loss in his right ear, and mild sloping to moderately severe loss in his left ear. (CX-19, p. 13, dep. exhib. 3, p. 77). She found that Claimant was a consistent responder and the testing reliability was good. Dr. Juneau also reported Claimant had sensorineural hearing loss, which can be caused by occupational noise, presbycusis (hearing loss due to aging), ototoxicity, and certain diseases. (CX-19, p. 15). Dr. Juneau assigned a binaural hearing loss impairment rating of 23.1%. (CX-19, dep. exhib. 3, p. 12). Dr. Juneau explained that she cannot factor out the relative contribution of one cause or the other to the ultimate loss when there are several causes

[2] This questionnaire is also presented in Claimant's Exhibit 5.

present. (CX-19, p. 16). In her report from April 21, 2010, Dr. Juneau opined that Claimant's hearing loss is partially due to occupational noise exposure. (CX-19, dep. exhib. 3, p. 79).

Dr. Juneau reported in her letter dated July 13, 2011, that "[h]igh impact noise caused by mauls being beaten on metal bins may cause acoustic trauma that causes a flat hearing loss as exhibited by Mr. Jones' audiogram." (CX-19, dep. exhib. 3, p. 75; CX-15, p. 1). At the deposition she stated that the findings from her testing of Claimant were not typical of acoustic trauma because his loss pattern was consistently "flat." (CX-19, pp. 16-17). However, she went on to say that acoustic trauma typically causes a loss "across the board," and perhaps Claimant "did have a little acoustic trauma causing that pretty flat loss." (CX-19, p. 17). Dr. Juneau stated that the maul activity Claimant reported was a potential source for his hearing loss. (CX-19, p. 17). After the testing, Dr. Juneau recommended digital hearing aids for Claimant in both ears. (CX-19, p. 21).

Dr. Juneau also reviewed the results of hearing tests performed by HCI between 1978 and 2000. (CX-19, pp. 21-23, dep. exhib. 3, pp. 82-83). She would not classify these tests as "screening audiograms," but stated in the hearing that these were tests used to diagnose standard threshold shifts (STS). (CX-19, pp. 22-23). Dr. Juneau did note that on June 18, 1996, Claimant's results did not show a STS. (CX-19, p. 24). On August 6, 1996, Claimant was retested. Dr. Juneau expressed concern that for that test, "[s]omebody revised the baseline, and I don't know why because the baseline should not have been revised." Dr. Juneau noted that whoever adjusts the baseline must be an audiologist or physician, but the report did not show who did the testing. (CX-19, p. 25). She also explained that comparing Claimant's testing results from July 13, 2000, to the results from June 18, 1996, prior to change in the baseline, she finds a STS. However, comparing the results from July 13, 2000 to the results from August 6, 1996, after the baseline was revised, Dr. Juneau did not find a STS. (CX-19, pp. 24-25). She stated that hearing changes could first be seen in Claimant in 1991. (CX-19, p. 26).

Dr. Juneau was also asked to review the Noise Dosimetry Assessment, although she admitted she does not have experience in reviewing and interpreting these types of studies. (CX-19, p. 26, dep. exhib. 3, p. 74). She was concerned that the Noise Dosimetry Assessment was not performed until after Claimant stopped working for Employer, because the equipment he was using and tasks he was performing were not necessarily accurately represented in the dosimetry studies. (CX-19, pp. 29-30, dep. exhib. 3, p. 75).

Also presented at the deposition were three Noise Level Surveys completed by HCI after Claimant stopped working for Employer. (CX-19, dep. exhib. 3, pp. 69-73). Dr. Juneau explained that a noise survey is different from a dosimetry study because the noise survey is just a snapshot of noise levels at a particular time, and the dosimetry study reflects an average of noise levels a worker is exposed to over eight hour period. (CX-19, p. 56).

In reviewing Annex F of the ANSI S3.44-1996 Standard, Dr. Juneau opined that even if Claimant fell within the segment of the population most susceptible to noise-induced hearing loss, he would have had to be exposed to about an eight-hour time weighted average of 95 decibels over 20 years to correlate with his testing results. (CX-19, pp. 36, 44, dep. exhib. 2, p. 18). Dr. Juneau also stated that generally she believes hearing loss can be partially caused by noise exposure and in part by some other factor. (CX-19, p. 47). She noted that she can make a

determination as to whether noise was a contributing factor to Claimant's hearing loss based off of his reports of his work history and new test results; Dr. Juneau stated she does not need data from the past to make the conclusion. (CX-19, pp. 51-55).

On the test reliability section of Dr. Juneau's handwritten results, she circled "excellent." (CX-19, dep. exhib. 3, p. 77). Dr. Juneau noted that she looks at the whole picture to associate Claimant's test results, complaints, and case history with noise-induced hearing loss. (CX-19, p. 68). Dr. Juneau stated that Claimant has "really substantial loss for being 60 years old…There's nothing in his case history except occupational noise exposure." (CX-19, p. 69). She does not believe Claimant's audiogram is reflective of age-related hearing loss. (CX-19, p. 70). Dr. Juneau based much of her opinion about the cause of Claimant's hearing loss on his reports to her of his history. (CX-19, pp. 72-73). Dr. Juneau stated that there is nothing about the audiological evaluation data on its own that was unique to occupational noise-induced hearing loss or any other cause of hearing loss. (CX-19, pp. 72-73).

In looking at Claimant's hearing tests performed by HCI, Dr. Juneau opined that Claimant's hearing was still within normal limits through 1988. (CX-19, p. 76). Dr. Juneau opined that if Claimant had only worked on the Bobcat for two weeks, four times a day for only 20 minutes each time, this would not have caused the hearing loss exhibited in Claimant's last hearing test with Employer from 2000. (CX-19, p. 80). Claimant's last hearing test with Employer was conducted one year prior to his retirement, so Dr. Juneau does not consider this an "exit test," therefore, Claimant's hearing thresholds at retirement are undocumented. (CX-19, dep. exhib. 3, p. 75). Dr. Juneau noted that Claimant's testing in 2000 showed a STS in both ears, but Employer did not retest Claimant or notify him of his results as required by OSHA standards. (CX-19, pp. 81-82).

c. Thomas M. Irwin, Jr., M.D.

Dr. Irwin is a licensed ENT. (EX-13, p. 2[3]). Claimant presented to Dr. Irwin on October 29, 2010, for an independent medical examination at the request of the District Director. (EX-13, p. 3). Claimant complained of "difficulty hearing for several years" and that he does not have a family history of hearing loss. (EX-13, p. 33). Claimant denied any significant recreational noise exposure. Stephanie Waits, an audiologist who works with Dr. Irwin, performed the audiograms. (EX-13, p. 3). After the testing on October 29, 2010, Dr. Irwin assigned Claimant a binaural hearing impairment of 41.3%. In Dr. Irwin's report dated November 3, 2010, he assigned to Claimant a binaural hearing impairment of 39.7%.[4] Dr. Irwin reported that Claimant's pattern of hearing loss is relatively flat and not typical of acoustic trauma or noise-induced hearing loss, but these could not be totally excluded as the cause of Claimant's hearing loss. Dr. Irwin also reported that Claimant demonstrated a symmetrical sensorineural reduction in hearing in both ears. (EX-13, p. 38). He had no explanation for the discrepancies between his results and those of Drs. Juneau and Seidemann. (EX-13, p. 3). Dr. Irwin agreed that if there was going to be an error in establishing thresholds through testing, it is more likely the error would indicate a larger hearing loss than the patient actually had. (EX-13,

[3] This deposition testimony is also represented by Claimant's Exhibit 18.

[4] This report is also represented by Claimant's Exhibit 8.

p. 5). Claimant's results were consistent, and therefore, Dr. Irwin believed Claimant was not exaggerating his symptoms. (EX-13, p. 4).

Dr. Irwin testified that relatively flat hearing loss is not the classic or typical presentation of a hearing loss caused by acoustic trauma or noise exposure. (EX-13, p. 5). Dr. Irwin stated that he could not really determine within a reasonable degree of medical certainty that Claimant's hearing loss is more probably than not caused by his noise exposure at work. Dr. Irwin looks to noise level surveys and dosimetry assessments for sufficient exposure to noise levels above 85 decibels when trying to attribute hearing loss to occupational noise exposure. (EX-13, p. 6). Dr. Irwin clarified that the noise levels reported in these studies do not take into account the hearing protection worn by the employee being monitored. (EX-13, pp. 6-7). Dr. Irwin opined that with respect to the noise levels reflected in the Noise Dosimetry Assessment for the positions of Millwright and Environmental Tech., assuming Claimant was exposed to the same levels during his employment, it is not probable that occupational noise exposure was a factor in Claimant's hearing loss. (EX-13, p. 7). Based on the noise levels for the position of Bobcat operator, Dr. Irwin stated it is possible that noise exposure was a factor in Claimant's hearing loss. Dr. Irwin stated that assuming Claimant worked as a Bobcat operator in 1981 for two weeks for about an hour each day, this would lower the probability of a significant noise-induced hearing loss caused during that period. (EX-13, p. 8).

Dr. Irwin noted that across the board, Claimant's thresholds had deteriorated in the audiogram from 2000. (EX-13, p. 9). Dr. Irwin agreed that when a person is exposed to injurious occupational noise, the maximum injury occurs within the first ten to twelve years of that exposure. Dr. Irwin began to first see a trend in Claimant's hearing loss around 4,000 hertz starting in the 1990s.

Assuming that the Noise Dosimetry Assessment is an accurate reflection of Claimant's exposures until his retirement in 2001, Dr. Irwin stated he would not attribute the difference between the results of the hearing test in 2000 and the results of the audiogram performed in his office to occupational noise exposure. (EX-13, p. 10). Dr. Irwin also opined that the audiogram his office produced shows more hearing loss than he would expect for a typical person of Claimant's age.

Dr. Irwin characterized the 90.2 decibel eight-hour time-weighted average for the Bobcat operator a "potentially injurious" noise level. (EX-13, p. 12). Dr. Irwin stated he could not entirely exclude noise exposure as a potential source of Claimant's hearing loss, but he could not agree that Claimant's hearing loss is more likely than not was occupational noise-induced loss. (EX-13, pp. 12-13). Similarly, in his November 3, 2010 report, Dr. Irwin stated that while he could not determine whether Claimant's hearing loss was entirely attributable to an acoustic trauma, given his work history, it was not unreasonable to infer that a portion of Claimant's hearing loss could be the result of noise exposure. (EX-13, p. 39). After reviewing the Noise Dosimetry Assessment and Noise Level Surveys, Dr. Irwin stated in a letter dated July 5, 2011 that "noise levels obtained at the facility for millwright and environmental tech position were below the accepted sound pressure levels required for injury to hearing." (EX-13, p. 36; CX-14, p.1). However, in a subsequent letter dated August 11, 2011, Dr. Irwin stated that he was provided with further, unspecified information "regarding potential noise exposure for

[Claimant] does suggest he was exposed to noise levels sufficient to be considered a possible factor in his hearing loss, although the appearance of the pure tone audiogram of November 3, 2010 is not typical of acoustic trauma." (EX-13, p. 35; CX-16, p. 1).

d. Marvin W. Engelberg, Ph.D.

Dr. Engelberg received his Ph.D. in Audiology & Speech Pathology from the University of Michigan and is licensed in three states. (EX-23, dep. exhib. 1, p. 2). He is the Chief Consultant in Audiology for HCI. (EX-23, p. 4). Dr. Engelberg explained that the HIC testing techs and test result processors must take a 20-hour course with the Council for Accreditation of Occupational Hearing Conservationists (CAOHC) before participating in the testing process. (EX-23, pp. 7-8, 15). Dr. Engelberg testified that HCI did not begin performing the hearing tests at Employer's Reserve facility until 1989. (EX-23, pp. 9-10). The equipment used for such on-site testing is calibrated according to OSHA standards every two years. (EX-23, p. 12-13). Self-recording audiometry equipment was used in the testing. (EX-23, p. 58). Dr. Engelberg confirmed that the tests performed are pure tone hearing conduction tests and that their testing equipment produces reliable results. (EX-23, p. 60).

After the testing is completed, the results are sent to the corporate office for processing. (EX-23, p. 15). Dr. Engelberg explained that if there is anything abnormal with the testing results, he will be asked to review them. (EX-23, p. 16). If a STS is found in test results, Dr. Engelberg may be asked to make a determination of whether the shift is a result of the noise levels in the employee's work environment. (EX-23, p. 18). If the shift is due to work noise, then the employee is notified and fitted for ear protection. (EX-23, p. 19).

Dr. Engelberg stated that he is "confident that [Claimant] did not incur hearing loss from the work environment at Cargill." (EX-23, p. 22). He believes that the patterns observed on the results from Claimant's hearing tests between 1978 and 2010 do not match a noise-induced hearing loss pattern. (EX-23, pp. 46). He does not believe that the loss exhibited in the 2010 audiograms could have been the result of Claimant's employment at Employer's Reserve facility. (EX-23, p. 48).

Dr. Engelberg opined that if the hearing protection worn by Claimant had a reduction rating of 27 at the lowest, this would make it even less likely that work exposure was the cause of Claimant's hearing loss. (EX-23, p. 48). Dr. Engelberg was referred to a table from the Federal Register. (EX-23, p. 52, dep. exhib. 8). Dr. Engelberg noted that the data on the table shows that noise-induced hearing loss does not occur quickly but takes years to develop. (EX-23, p. 54). Dr. Engelberg agreed that according to the table, Claimant would have had to have been exposed to a 95 decibel eight hour time-weighted average over the course of 20 years to match the results in Dr. Juneau's testing if Claimant's hearing loss was the result of noise exposure. (EX-23, p. 55).

Dr. Engelberg also reviewed the Noise Level Surveys and Noise Dosimetry Assessment and confirmed they were performed by HCI. (EX-23, pp. 39-41). He testified that OSHA's action level for injurious noise levels is 85 decibels on a time weighted average, but the permissible exposure level is 90 decibels. (EX-23, p. 63).

C. Personnel Records

Claimant's personnel records show that Claimant was regularly identified as an employee who was safety conscious and "always wears Personal Protective Equipment." (EX-1, pp. 6, 9, 11, 13, 15, 21, 27).

A James Bertrand completed Task Analysis Worksheets from July 15, 1989, and another from July 15, 1988, which were included in Claimant's file. (EX-1, pp. 30, 32). Both of these documents made recommendations regarding Bobcat operations.

D. Noise Level Surveys and Noise Dosimetry Assessment

Noise Level Surveys submitted were conducted on July 24, 2008; August 4, 2005; May 20, 2002; December 2, 1999; and June 18, 1996. (EX-8, pp. 3-7; EX-17, pp. 1-3). The highest noise level on the 2008 survey was a reading of 99 decibels at the "2nd floor between A&B." (EX-8, p. 3). A reading taken of the Bobcat reported 96 decibels. (EX-8, p. 4). The highest noise level on the 2005 survey was a reading of 100 decibels. (EX-8, p. 6). This reading corresponded to three locations: 1st Floor Cleaning Tower, Bobcat (Inside), and Mustang. The highest noise level on the 2002 survey was a reading of 99 decibels at the "5th Floor Cleaning Tower." (EX-8, p. 7). The highest noise level on the 1999 survey was a reading of 98 decibels at the "Bobcat (inside)" at full throttle. (EX-17, p. 1). The highest noise level on the 1996 survey was a reading of 100 decibels at the "3rd floor cleaning tower." (EX-17, p. 2).

The Noise Dosimetry Assessment monitored 11 on-site employees on October 30, 2001, for about eight hours. (EX-8, p. 8). For the monitored Bobcat Operator, the eight-hour time weighted average was 90.2 decibels. This was the highest average noise level reported. For the monitored Laborer, the eight-hour time weighted average was 87 decibels. For the monitored Environmental Tech., the eight-hour time weighted average was 84 decibels. For the monitored Millwrights, the eight-hour time weighted averages were 78, 84, and 87 decibels.

E. Hearing Conservation Program

The Hearing Conservation Program at Employer's Reserve facility "is designed to address sound levels exceeding 85 dBA on a time weighted average to prevent employee hearing loss." (EX-18, p. 1). The program requires that noise surveys be conducted at least every three years. Additionally, the program includes hearing conservation training plans, hearing tests for employees, and posting of signs in areas of the facility where hearing protection is required. (EX-18, p. 1).

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

It has been consistently held that the Act must be construed liberally in favor of the claimant. *Voris v. Eikel*, 346 U.S. 328, 333 (1953); *J.B. Vozzolo, Inc. v. Britton*, 377 F.2d 144 (D.C. Cir. 1967). However, the United States Supreme Court has determined that the "true-doubt" rule, resolving factual doubt in favor of the claimant when the evidence is evenly balanced, violates Section 7(c) of the Administrative Procedure Act, 5 U.S.C. § 556(d), which

specifies that the proponent of a rule or position has the burden of proof. *Director, OWCP v. Greenwich Collieries*, 512 U.S. 267 (1994), *aff'g* 990 F.2d 730 (3d Cir. 1993).

A. Timeliness of the Claim

Employer argues that Claimant's claim is time-barred. Section 8(c)(13)(D) provides that the time for filing a hearing loss claim commences to run once the employee "receives an audiogram with an accompanying report, which indicates that the employee has suffered a loss of hearing." Section 13(a) of the Act provides that such a claim must be filed within one year from such notice. Employer notes that Claimant received notice by way of an audiogram and report explaining his hearing loss in 1991 and 1992 but did not file a claim until 2010.

However, Claimant avers that the documents provided to Claimant are deficient to meet the Section 8 standard arguing that they are not audiograms and Claimant was not provided with reports relating loss of hearing to his employment. In the alternative Claimant urges that Section 30(f) applies to prevent the running of time available to Claimant to file a claim. Section 30(f) states that when the employer has notice of an employee's injury, the time limitations in Section 13 do not begin to run against the Claimant until a report has "been furnished as required by the provisions of subsection (a) of this section." Section 30(a) requires that a report of the injury be sent to the Secretary with the requisite information such as date and cause of injury.

Employer had notice that Claimant had sustained hearing loss through the hearing tests performed by HCI. However, the Employer did not submit a report of this injury as required by Section 30(f) and 30(a) until May 24, 2010, vis-à-vis the Notice of Controversion. (CX-2, p. 1). Therefore, Claimant's claim is not time-barred.

B. Causation

Section 2(2) of the Act defines "injury" as "accidental injury or death arising out of and in the course of employment . . . ." 33 U.S.C. § 902(2). Section 20(a) of the Act provides the claimant with a presumption that her disabling condition is causally related to her employment. Before the Section 20(a) presumption may be invoked, the claimant must establish a *prima facie* case of a compensable injury. *Murphy v. SCA/Shayne Bros.*, 7 BRBS 309 (1977).

a. Claimant's Prima Facie Case

The claimant must establish a *prima facie* case by proving that: (1) she suffered some harm or pain and (2) an accident occurred or working conditions existed that could have caused the harm. *Kelaita v. Triple A Mach. Shop*, 13 BRBS 326 (1981). It is the claimant's burden to establish each element of her *prima facie* case by affirmative proof. *See Kooley v. Marine Industries Northwest*, 22 BRBS 142 (1989).

The first prong of the *prima facie* case requires the court to determine whether the claimant has in fact suffered an injury. The claimant has sustained an "injury" where she has some harm or pain, or if "something unexpectedly goes wrong within the human frame." *Wheatley v. Adler*, 407 F.2d 307, 313 (D.C. Cir. 1968) (en banc). The claimant's burden does

not include establishing an injury as defined in Section 2(2) of the Act. To place such a burden on the claimant would be contrary to the well-established rule that the Section 20(a) presumption applies to the issue of whether an injury arose out of and in the course of employment. *Kelaita*, 13 BRBS at 329.

The second prong of the *prima facie* case requires the court to determine whether the employment events claimed as a cause of the harm sustained by the claimant in fact occurred. *Sewell v. Noncommissioned Officers' Open Mess*, 32 BRBS 127 (1997), *recons. denied en banc*, 32 BRBS 127 (1998) (invoking the presumption by showing that working conditions resulted in stress which could have caused industrial psychological injury).

In this instance, Claimant has successfully invoked the Section 20(a) presumption of causation. Regarding the first prong, it is clear Claimant has sustained some harm as all of the doctors and audiologists who have testified in the case agree Claimant has suffered a hearing loss. The major issue in dispute is whether workplace conditions existed that could have caused this hearing loss. Claimant is successful in satisfying this prong of the Section 20(a) presumption also.

According to the testimony of several of the doctors and the Employer's hearing conservation program, OSHA standards require hearing conservation programs to be instituted where noise levels exceed 85 decibels. The dosimetry assessment and noise level studies show noise levels within Employer's Reserve facility exceeding this level. Particularly, the Bobcat Operator's dosimetry reading showed an eight-hour time weighted average of 90.2 decibels. The dosimetry study was completed after Claimant retired, but some of the Noise Level Surveys presented were completed prior to 2001. The highest noise level on the 1999 survey was a reading of 98 decibels for the "Bobcat (inside)" at full throttle. Mr. Golden testified that the cabs of the Bobcats would have been open between 1977 to the mid-1980s, therefore, the noise level readings would have likely been higher during that time period. Claimant was a Bobcat operator at various periods during his employment. He testified that employees at the Reserve facility did not begin wearing hearing protection until the mid 1980s.

Dr. Juneau opined that Claimant's hearing loss is partially due to occupational noise exposure. She identified the maul activity as a potential source of injurious noise during Claimant's employment at the Reserve facility. Dr. Juneau noted that she could determine whether noise was a contributing factor to Claimant's hearing loss based on his subjective reports of symptoms and work history. Dr. Juneau did not find anything else in Claimant's history except occupational noise exposure that could have contributed to his hearing loss; she did not find Claimant's audiogram reflected age-related hearing loss.

Dr. Irwin opined that Claimant's hearing loss pattern is not typical of acoustic trauma or noise-induced hearing loss, but he stated he could not rule these out as causes of Claimant's hearing loss. He also noted that the audiogram his testing produced showed more hearing loss than he would expect for a typical person of Claimant's age. Dr. Irwin also characterized the 90.2 decibel eight-hour time-weighted average noise level reading for the Bobcat Operator as a "potentially injurious" noise level.

Claimant has successfully established that the noise level conditions at his workplace between 1977 and 2001 could have caused his hearing loss. Claimant has met both prongs of the Section 20(a) presumption.

b. Employer/Carrier's Rebuttal Evidence

Once the claimant has invoked the Section 20(a) presumption, the burden then shifts to the employer to rebut the presumption with substantial countervailing evidence. *Swinton v. J. Frank Kelly, Inc.*, 554 F.2d 1075, 1082, 4 BRBS 466, 475 (D.C. Cir.), *cert. denied*, 429 U.S. 820 (1976). The relevant inquiry is whether the employer succeeded in establishing the lack of a causal nexus. *Dower v. General Dynamics Corp.*, 14 BRBS 324 (1981).

Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Avondale Indus. v. Pulliam*, 137 F.3d 326, 328 (5th Cir. 1998). The employer must produce facts, not speculation, to overcome the presumption of compensability. *See Smith v. Sealand Terminal*, 14 BRBS 844 (1982). Reliance on mere hypothetical probabilities in rejecting a claim is contrary to the Section 20(a) presumption. *Swinton*, 554 F.2d at 1083. Highly ambiguous evidence is not substantial and will not rebut the presumption. *Dewberry v. Southern Stevedoring Corp.*, 7 BRBS 322 (1977), *aff'd mem.*, 590 F.2d 331, 9 BRBS 436 (4th Cir. 1978).

The employer must present specific and comprehensive medical evidence proving the absence of, or severing the connection between, such harm and the employment. *Ranks v. Bath Iron Works Corp.*, 22 BRBS 301, 305 (1989). The testimony of a physician that no relationship exists between an injury and a claimant's employment is sufficient to rebut the presumption. *See Kier v. Bethlehem Steel Corp.*, 16 BRBS 128 (1984). The presumption is not rebutted, however, where the employer does not provide concrete evidence but merely suggests alternate ways that a claimant's injury might have occurred, where there was no evidence of another cause, and where the medical evidence was inconclusive as to causation. *Williams v. Chevron U.S.A., Inc.*, 12 BRBS 95 (1980).

I find Employer/Carrier have provided substantial evidence sufficient to rebut the Section 20(a) presumption invoked by Claimant. Drs. Engelberg and Seidemann are both firm in their opinions that Claimant did not suffer noise-induced hearing loss. Dr. Seidemann attributed Claimant's hearing loss to age. He found Claimant's hearing test results from 1985 within normal limits despite Claimant's operation of the Bobcat around that time. The low frequency hearing loss and flat pattern of loss shown in Claimant's testing results from 2010 were not consistent with noise-induced loss according to Dr. Seidemann. The asymmetry of Claimant's loss was also atypical of noise-induced loss. Even when Dr. Seidemann considered the Noise Level Surveys and Dosimetry Assessment, he did not change his opinion that noise exposure was not a factor in Claimant's hearing loss.

Dr. Engelberg was also confident in his opinion that Claimant's hearing loss was not related to Claimant's employment at the Reserve facility. Like Dr. Seidemann and Dr. Irwin, Dr. Engelberg opined that the patterns observed on Claimant's hearing tests from 1978 to 2010 are not indicative of a noise-induced hearing loss pattern. Dr. Engelberg also noted that according to

the ANSI Annex F and Federal Register tables, Claimant would have had to have been exposed to a 95 decibel eight hour time-weighted average over the course of 20 years to match the results in Dr. Juneau's testing if Claimant's hearing loss was the result of noise exposure. There is no evidence that these were Claimant's working conditions.

In light of the opinions of these audiologists, I find that Employer/Carrier have rebutted the Section 20(a) presumption. Their analysis of the hearing test results and noise level data has led them both to the same conclusion that Claimant's hearing loss was not caused by noise exposure in the workplace.

c. Weighing the Evidence

If the employer meets the burden, he rebuts the Section 20(a) presumption, and the administrative law judge must then weigh all the evidence and render a decision supported by substantial evidence. *Noble Drilling Co. v. Drake*, 795 F.2d 478, 481 (5th Cir. 1986). Upon weighing the evidence as a whole, I find that it favors Employer/Carrier.

Dr. Irwin is a licensed ENT physician and all of the audiologists in this case are licensed and credible. All three audiologists have testified that their equipment was properly calibrated. There was no evidence submitted showing that their testing procedures did not meet the appropriate standards.

Drs. Irwin, Seidemann, and Engelberg agree that a flat pattern of hearing loss is not indicative of noise-induced hearing loss. Dr. Juneau agrees with this, but attempts to explain how the pattern could relate to loss due to acoustic trauma. Dr. Juneau's opinion regarding the pattern of Claimant's hearing loss is an outlier; she is the only witness who testified with certainty that Claimant's hearing loss is due to occupational noise exposure.

Dr. Juneau testified that she was concerned that the Noise Dosimetry Assessment was not performed until after Claimant stopped working for employer. However, she stated that she could make a determination of noise-induced hearing loss solely based on Claimant's subjective description of his work history and progression of symptoms. Dr. Seidemann was doubtful of this methodology. Still, a dosimetry assessment monitoring Claimant's exposure or any other employee was not completed during the period when Claimant was employed at the Reserve facility. Therefore, the Noise Dosimetry Assessment was not representative of noise exposure during Claimant's employment history with Employer, but was instead, only indicative of the noise exposure during the limited times the study was actually performed. Additionally, the Noise Level Surveys were merely snapshots of noise levels at particular moments of time, not necessarily taken at a time when Claimant was exposed to those noise levels. Dr. Irwin opined that assuming the Noise Dosimetry Assessment from 2001 was an accurate reflection of Claimant's exposures throughout his employment at the Reserve facility, he would not attribute the hearing loss Claimant has evidenced between 2000 and 2010 to occupational noise exposure.

Claimant's hearing loss did not begin to appear on the HCI hearing tests until the 1990s. Drs. Seidemann and Irwin stated that noise-induced hearing loss will largely occur within the first 10 to 15 years of noise exposure. However, Dr. Seidemann noted that the testing by HCI in

1992 showed normal limits in Claimant's left ear and normal to mild hearing loss in Claimant's right ear. As Claimant began working at the Reserve facility in 1977, the test results from 1992 were taken fifteen years after Claimant began working in the environment where he claimed to have sustained the injurious noise exposure. Claimant himself reported that by the 1980s he had begun to wear hearing protection. Personnel records indicate that Claimant was faithful in wearing hearing protection. There is no latency related to noise-induced hearing loss, but Claimant's hearing loss did not become significantly worse and did not accelerate in progression until after he stopped working for employer and well after ten or fifteen years of first beginning to work at the Reserve facility.

The last hearing test Claimant had conducted during his employment with Employer was in 2000, about a year prior to his retirement on July 13, 2001. An exit hearing test was not performed, and Claimant did not have another hearing test until 2010. All of the doctors agreed that according to the ANSI Annex F table, Claimant would have had to be exposed to about an eight-hour time weighted average of 95 decibels over at least 20 years. None of the quantitative data presented shows that this was the nature of Claimant's workplace noise exposure. While the noise level reported for the monitored Bobcat Operator on the Noise Dosimetry Assessment was over OSHA's action level, there is not enough evidence presented about the amount of time Claimant worked operating a Bobcat to make a conclusion that this was a source of injurious noise exposure in Claimant's workplace.

Two of the testifying audiologists agree that the testing patterns and quantitative noise exposure data do not indicate Claimant suffered noise-induced hearing loss. Dr. Irwin says noise exposure is possibly a cause of Claimant's hearing loss but could not state that it is more probably than not the cause. Additionally, Dr. Irwin stated that conclusion of occupational noise-induced hearing loss could not be made using the Noise Dosimetry Assessment or Noise Level Surveys presented. Dr. Juneau is the only testifying witness to attribute Claimant's hearing loss to occupational noise exposure and she even stated that there was nothing about Claimant's audiological evaluation data standing alone that was unique to occupational noise-induced hearing loss. However, she even expressed concerns about relying on the noise level data submitted. Even though Dr. Juneau possesses credible qualifications and has vast experience in the field, the weight of the evidence in this case is in favor of Employer. Claimant has not carried his burden of proof.

IV. CONCLUSION

The evidence presented fails to weigh in support Claimant's arguments. Drs. Irwin, Seidemann, and Engelberg agree that a flat pattern of hearing loss, as is shown in this case, is not indicative of noise-induced hearing loss. Further, no quantitative data is provided to show that Claimant was exposed to injurious noise levels during his employment at Employer's Reserve facility. While the experts were all found qualified and credible, the consensus among their opinions was that Claimant's hearing loss was not attributable to noise exposure. The evidence

presented weighs in favor of Employer/Carrier. Consequently, Claimant's claim for benefits is **DENIED.**

So ORDERED.

A

Larry W. Price
Administrative Law Judge