Successive insurers

The insurer on the risk for an occupational disease claim (hearing loss) on the date of compensable disability is responsible for the full costs of the claim if the employment at that time continued to be "of a kind" which contributes to hearing loss, whether or not it added any specific percentage amount to the worker's hearing loss. …In re Winfred Hanninen, BIIA Dec., 50,653 (1979)
BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON

IN RE: WINFRED E. HANNINEN

DOCKET NO. 50,653

CLAIM NO. S-194807

DEcision AND ORDER

APPEARANCES:

Winfred E. Hanninen,
None

Employer, Longview Fibre Company, by
Studley, Purcell, Spencer, Guinn and Roesch, per
Wayne D. Purcell

Department of Labor and Industries, by
The Attorney General, per
Don Costa E. Seawell and John Dick, Assistants

This is an appeal filed by the employer, Longview Fibre Company, on October 3, 1977, from an order of the Department of Labor and Industries dated August 4, 1977, which adhered to a prior order closing this claim with a permanent partial disability award of 21.2% complete loss of hearing in both ears, and determined that this occupational disease claim is the self-insured employer's responsibility. SUSTAINED.

DECISION

Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review and decision on a timely Petition for Review filed by the employer to a Proposed Decision and Order issued by a hearing examiner for this Board on July 31, 1978, in which the order of the Department dated August 4, 1977 was sustained.

The Board has reviewed the evidentiary rulings of the hearing examiner and finds that no prejudicial error was committed and said rulings are hereby affirmed.

The issues presented by this appeal and the evidence presented by the parties are very adequately discussed in our hearing examiner's Proposed Decision and Order.

Four issues were raised by this appeal: (1) Whether an occupational noise-induced hearing loss can legally constitute an occupational disease under our Act; (2) Whether this claimant's hearing loss was in fact caused by the occupational noise exposure and is therefore compensable; (3) Whether the permanent partial disability rating of 21.2% binaural hearing impairment was a reasonable and correct award for the occupationally-caused hearing loss; and (4) Whether financial responsibility for this occupational disease claim should be borne by Longview Fibre Company as a
self-insured employer, or by the Department, i.e., the State Fund, which carried Longview Fibre's industrial insurance coverage prior to January 1, 1974.

As to issues (1), (2), and (3), we readily answer each question in the affirmative, as did our hearing examiner. The Proposed Decision and Order set forth the reasons for so deciding very fully and logically, and we incorporate all that discussion as our own.

As to issue (4), we likewise concur in the hearing examiner's decision; and conclude that this claim is Longview Fibre Company's responsibility in its self-insured capacity. We note that counsel for the employer included in his Petition for Review a request for oral argument on the issue of responsibility for this claim as between the State Fund and the self-insured employer. We have determined no need for this, inasmuch as this same issue has been previously reviewed and exhaustively discussed by the Board, in the case of Delbert Monroe, docket No. 49,698, our Decision and Order of 7/24/78. We refer to and incorporate our discussion of the issue in that case, and note that it is in basic accord with the examiner's well-reasoned analysis in the instant case. Particularly, we refer to our discussion on pages 6 and 7 of the Monroe case, showing that this employer did not pay any premiums for this type of case while insured with the State Fund prior to becoming self-insured. We adhere to the general principle requiring the insurer on the risk at the date of compensability to bear the monetary responsibility for these long-developing occupational disease claims.

After consideration of the Proposed Decision and Order and the employer's Petition for Review filed thereto, and a careful review of the entire record before us, we are persuaded that the Proposed Decision and Order is supported by the preponderance of the evidence and is correct as a matter of law.

The hearing examiner's proposed findings, conclusions and order are hereby adopted as this Board's findings, conclusions and order and are incorporated herein by this reference.

It is so ORDERED.

Dated this 16th day of March, 1979.

BOARD OF INDUSTRIAL INSURANCE APPEALS

/s/ PHILLIP T. BORK Chairman

/s/ SAM KINVILLE Member