

**BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON**

1 **IN RE: VIRGIL A. DEGOLIER**)
2)
3 **CLAIM NO. H-782709**)
4)
5 **DOCKET NOS. 60,471 & 60,471-A**
6 **DECISION AND ORDER**

7 **APPEARANCES:**

8 Claimant, Virgil A. Degolier, by
9 Aaby, Knies & Robinson, per
10 Robert M. Knies and John Aaby
11 Employer, Columbia Cement Company, by
12 Richard B. Johnson
13 Department of Labor and Industries, by
14 The Attorney General, per
15 Meredith Lehr, Assistant

16 This is an appeal filed by the employer on September 15, 1981 and a cross appeal filed by
17 the claimant on October 6, 1981, from an order of the Department of Labor and Industries dated
18 August 12, 1981, which adhered to the provisions of a prior order dated June 5, 1981, granting the
19 claimant a permanent partial disability award of 38.40% loss of hearing in both ears less prior
20 awards. The Department order is **AFFIRMED**.

21 **DECISION**

22 Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review
23 and decision on a timely Petition for Review filed by the employer to a Proposed Decision and
24 Order issued on February 18, 1983 in which the order of the Department dated August 12, 1981,
25 was affirmed.

26 The issue presented by this appeal and cross-appeal, and the evidence contained in the
27 record, are adequately recited in the Proposed Decision and Order. We agree with the proposed
28 disposition of this matter.

29 The controlling element in this case is the lack of any evidence which would indicate the
30 Department order of August 12, 1981, is incorrect. While the parties before this Board agreed to an
31 examination of the claimant by a physician, and then by a firm of audiologists, this was for the
32 purpose of reaching a possible agreed settlement of this case. Such an agreed settlement was not
33 possible; and those examination reports are not a part of the record for determining this matter on a
34 "contested case" basis. See WAC 263-12-093; WAC 263-12- 095(4); and WAC 263-12-130.
35 Further, the Department's claim file is not a part of the Board's record. WAC 263-12-135.

36 Counsel for the employer did submit herein the deposition of Dr. Donald G. Harvey, who is
37 not a physician but has a doctorate degree in audiology. This deposition was never formally
38 presented to the Board.

1 published, although it was considered by our industrial appeals judge, and by counsel for all parties,
2 to be properly in evidence herein. Even when so considered it is questionable whether it would be
3 competent evidence to establish the degree of the claimant's hearing loss due to environmental
4 working conditions and the degree of his hearing loss due to other causes. It is our conviction that
5 such a segregation and causal relationship question can only be established by the testimony of a
6 physician, preferably an otolaryngologist. We do not doubt the professional ability of an audiologist
7 to measure the hearing loss, but causal relationship depends on an interpretation of history
8 combined with accurate medical diagnosis. It is not shown by this record that a Ph.D in audiology
9 similarly qualifies an individual to make the same reasoned medical judgments. We will agree with
10 the Proposed Decision and Order that any increase or decrease in the claimant's award as made
11 by the department would have to be based on evidence supported by one so qualified.
12

13 We have long adhered to the proposition established by the case law cited in the Proposed
14 Decision and Order, that ratings concerning the extent of physical and mental impairment, i.e.,
15 permanent partial disability, must be supported by competent medical evidence. We will not
16 supplant that interpretation of the law in this appeal.
17

18 After consideration of the Proposed Decision and Order and the Petition for Review filed
19 thereto, and a careful review of the entire record before us, we are persuaded that the disposition
20 made by the Proposed Decision and Order is correct as a matter of fact and as a matter of law.
21

22 Proposed Finding No. 2 is deleted, and replaced by the Board's Finding No. 2 as follows:
23

- 24 2. The record before this Board contains no probative evidence to show the
25 incorrectness of the Department's order of August 12, 1981, making a
26 permanent partial disability award to the claimant for occupational
27 hearing loss of 38.40% complete loss of hearing in both ears.
28

29 The proposed findings, as above amended, conclusions and order are hereby adopted as
30 this Board's final findings, conclusions and order and are incorporated herein by this reference.
31

32 It is so ORDERED.
33

34 Dated this 18th day of May, 1983.
35

36 BOARD OF INDUSTRIAL INSURANCE APPEALS
37

38 /s/ _____
39 MICHAEL L. HALL Chairman

40 /s/ _____
41 FRANK E. FENNERTY, JR. Member

42 /s/ _____
43 PHILLIP T. BORK Member
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