

Wass, Larry

OCCUPATIONAL DISEASE (RCW 51.08.140)

Schedule of benefits applicable

Because the worker's knowledge of his or her disabling condition does not affect the rate of compensation, *In re Eugene Williams*, BIIA Dec., 95 3780 (1997) is overruled to the extent it held that worker's knowledge of the disability is a factor in determining the date of manifestation. *Citing Boeing v. Heidi*, 147 Wn.2d 78 (2002). ...***In re Larry Wass*, BIIA Dec., 01 11201 (2002)** [*Editor's Note*: The Board's decision was appealed to superior court under Chelan County Cause No. 02-2-00881-4.]

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

1 **IN RE: LARRY A. WASS**) **DOCKET NO. 01 11201**
2)
3 **CLAIM NO. T-722283**) **DECISION AND ORDER**
4

5 **APPEARANCES:**

6
7 Claimant, Larry A. Wass, by
8 Woods & Brangwin, per
9 John M. Brangwin

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11 Self-Insured Employer, Aluminum Co. of America (ALCOA)/Reynolds Metals, by
12 Craig, Jessup & Stratton, PLLC, per
13 Rebecca D. Craig

14
15 Department of Labor and Industries, by
16 The Office of the Attorney General, per
17 M. Ann McIntosh, Assistant
18

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20 The self-insured employer, Aluminum Co. of America (ALCOA)/Reynolds Metals, filed an
21 appeal with the Board of Industrial Insurance Appeals on January 30, 2001, from an order of the
22 Department of Labor and Industries dated January 10, 2001. The order affirmed an order dated
23 May 10, 2000, that allowed the claim for occupational hearing loss, and closed the claim with
24 directions to the self-insured employer to purchase and maintain hearing aids and pay the claimant
25 an award for permanent partial disability equal to 15.88 percent for the complete loss of hearing in
26 both ears, based on the audiogram performed on January 19, 2000, and the schedule of benefits in
27 effect on March 19, 1999. **REVERSED AND REMANDED.**
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32 **DECISION**

33 Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board on timely
34 Petitions for Review filed by both the self-insured employer and the claimant to a Proposed
35 Decision and Order issued on May 31, 2002. The Proposed Decision and Order reversed the
36 Department order dated January 10, 2001, and remanded the claim to the Department to allow the
37 claim for occupational hearing loss with instructions to the self-insured employer to purchase and
38 maintain hearing aids for the claimant and pay him an award for permanent partial disability equal
39 to 16.2 percent for the complete loss of hearing in both ears, based on the audiogram performed on
40 April 25, 2001, and the schedule of benefits in effect on October 27, 1981,
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45 The Board affirms the evidentiary rulings in the record of proceedings.
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1 We grant review to correct the date of manifestation and the award for permanent partial
2 disability.
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4 This claim involves an occupational hearing loss caused, at least in part, by the claimant's
5 32 years of employment at ALCOA. Both parties disagree with the schedule of benefits identified in
6 the Proposed Decision and Order. The self-insured employer urges us to find that the claimant's
7 condition was manifest in 1974 because Mr. Wass had a measurable hearing loss then, while the
8 claimant argues for a 1999 date of manifestation because that is when he first had a ratable hearing
9 loss in both ears. He acknowledges an earlier ratable loss in one ear. We reject both arguments
10 for reasons outlined in *In re Eugene Williams*, BIIA Dec., 95 3780 (1998), as modified by *Boeing*
11 *Co. v. Heidy*, No. 71694-3 (Washington Supreme Court, August 8, 2002).
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16 RCW 51.32.180(b) states: The rate of compensation for an occupational disease is
17 established as of the date "the disease requires medical treatment or becomes totally or partially
18 disabling, whichever occurs first, . . ."
19

20 The Department of Labor and Industries uses the nationally recognized impairment guide
21 found in the American Medical Association's *Guides to the Evaluation of Permanent Impairment*,
22 (4th ed. 1993) (*Guides*) to rate hearing loss. The *Guides* consider only the four frequencies, 500,
23 1000, 2000 and 3000 Hz, which are basic to making speech understandable. The *Guides* does not
24 recognize a compensable disability until a subject experiences an average hearing loss of more
25 than 25 decibels (dB) across those four frequencies. The 25 dB "threshold" is generally accepted
26 as the dividing line between normal and abnormal hearing.
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31 In *Williams*, we held the date of manifestation is the date that, when coupled with knowledge
32 on the worker's part, the disease required medical treatment or became partially disabling,
33 whichever occurs first. However, the *Heidy* court held: "RCW 51.32.180(b) is clear – a worker's
34 knowledge of his or her disabling condition does not affect when the rate of compensation is
35 established." Accordingly, *Williams* is overruled insofar as it held that knowledge is a factor in
36 determining a date of manifestation.
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40 Mr. Wass did not seek medical attention or any other means of relief for hearing loss in 1974
41 or any time identified in the record, and he did not have a disability as defined by the *Guides* until
42 the audiogram administered on April 13, 1984.
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44 The claimant's argument that the date of manifestation should reflect the date a bilateral loss
45 is verified while ignoring the earlier date that a loss in one ear was verified is similar to the
46 argument we considered in *Williams*. There, the Department took the position that noise-induced
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1 hearing loss is not a single disease and, therefore, required using the schedule of benefits in effect
2 each time testing demonstrates an incremental increase in hearing loss. We could not find support
3 for that argument then, nor can we now.
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5 The schedule of benefits in effect in April 1984 is the schedule by which the claimant's
6 impairment will be compensated.
7

8 The self-insured employer asserts that it was error to use the audiogram of April 25, 2001, as
9 the basis for the impairment award because it was not supported by medical evidence. We agree
10 with that assertion.
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12 Dr. William Ritchie, a Board certified otolaryngologist and the only medical witness who
13 testified to the impairment, considered the results of several audiograms in reaching his opinion on
14 the most appropriate rating for the claimant's occupationally related hearing loss. Dr. Ritchie
15 determined that the test administered by a medical clinic on March 19, 1999, rather than the one he
16 administered on January 19, 2000, or the one administered by ALCOA in April 2001, just prior to
17 the claimant's retirement in May 2001, best reflected that loss.
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19 WAC 296-20-200 requires that evaluation of bodily impairment be made by experts
20 authorized to perform rating examinations. Dr. Ritchie is such an expert. While this Board has on
21 occasion exercised its authority to rate impairment in the absence of medical testimony specifying a
22 category or percentage, or that differs from the rating provided by the expert witness, we decline to
23 do so without any supporting expert testimony. Dr. Ritchie testified that the audiograms performed
24 in 2000 and 2001 showed acceleration of hearing loss that is probably not due to noise exposure.
25 There is no evidence before us that would allow us to reach a different conclusion. The claimant's
26 impairment rating should be based on the results of the audiogram administered on March 19,
27 1999.
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29 **FINDINGS OF FACT**

- 30 1. On March 19, 1999, Larry A. Wass filed an application for benefits with
31 the Department of Labor and Industries, alleging a hearing loss
32 proximately caused by distinctive conditions of his employment with the
33 Aluminum Company of America/Reynolds Metals (hereafter ALCOA).
34

35 On May 10, 2000, the Department issued an order that allowed and
36 closed the claim for occupational hearing loss with directions to the
37 self-insured employer to purchase and maintain hearing aids for
38 Mr. Wass and pay him compensation for permanent partial disability
39 equal to 15.88 percent of the complete loss of hearing in both ears,
40 based on the audiogram performed on January 19, 2000.
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1 On January 10, 2001, following the self-insured employer's timely
2 protest and request for reconsideration, the Department affirmed the
3 order dated May 10, 2000.

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5 On January 30, 2001, ALCOA filed an appeal from the order dated
6 January 10, 2001, with the Board of Industrial Insurance Appeals and on
7 February 27, 2001, the Board issued an Order Granting Appeal and
8 assigned Docket No. 01 11201.

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10 2. The claimant was employed by ALCOA for 32 1/2 years, prior to his
11 retirement in May 2001. The work environment at ALCOA was noisier
12 than the environment of all employments in general and of everyday life.
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14 3. The claimant developed a disease diagnosed as sensorineural hearing
15 loss and tinnitus that arose naturally and proximately out of his
16 employment with ALCOA.
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18 4. On April 13, 1984, the claimant's hearing loss in his right ear exceeded an
19 average of 25 dB over 500, 1000, 2000 and 3000 Hz.
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21 5. The claimant did not have additional occupationally related noise induced
22 hearing loss after March 1999.
23
24 6. Using the American Medical Association's *Guides to the Evaluation of*
25 *Permanent Impairment* (4th ed. 1993), the claimant's hearing loss did not
26 constitute a permanent partial impairment until April 13, 1984. Prior to that
27 date, the claimant did not need medical treatment for hearing loss.
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29 7. The claimant is entitled to an award for permanent partial disability equal
30 to 10.3 percent of the complete loss of hearing in both ears, which factors
31 in the impairment caused by tinnitus.

32 CONCLUSIONS OF LAW

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35 1. The Board of Industrial Insurance Appeals has jurisdiction over the
36 parties and the subject matter to this appeal.
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38 2. The claimant has hearing loss that is an occupational disease within the
39 meaning of RCW 51.08.140, which became partially disabling within the
40 meaning of RCW 51.32.180 on April 13, 1984.
41
42 3. The Department order dated January 30, 2001, is incorrect and is
43 reversed. This matter is remanded to the Department with instructions to
44 allow the claim for occupational hearing loss, direct the self-insured
45 employer to purchase and maintain hearing aids for the claimant, pay the
46 claimant an award for permanent partial disability equal to 10.3 percent of
47 the complete loss of hearing in both ears, based on the audiogram of

1 March 19, 1999, factoring in the condition of tinnitus, using the schedule of
2 benefits in effect on April 13, 1984, and thereupon close the claim.
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4 It is so ORDERED.

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6 Dated this 13th day of September, 2002.
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8 BOARD OF INDUSTRIAL INSURANCE APPEALS
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11
12 /s/ _____
13 THOMAS E. EGAN Chairperson
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17 /s/ _____
18 FRANK E. FENNERTY, JR. Member
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22 /s/ _____
23 JUDITH E. SCHURKE Member
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