

BEFORE THE OKLAHOMA WORKERS' COMPENSATION COMMISSION

FILED

WORKERS' COMPENSATION COMMISSION
STATE OF OKLAHOMA
July 27, 2020
Norma McRae
COMMISSION CLERK

JAMES DARIN MORGAN
Employee-Claimant

CITY OF NORMAN
Employer-Respondent

CITY OF NORMAN (OWN RISK)
Insurer

)
)
) Commission File No.
) CM-2019-07496L
)

) Claimant's Social Security
) Number: xxx-xx-7957
)

**ORDER DETERMINING COMPENSABILITY AND
AWARDING PERMANENT PARTIAL DISABILITY BENEFITS**

Hearing before Administrative Law Judge JOHN L BLODGETT on JULY 20, 2020, in Oklahoma City, Oklahoma.

Claimant appeared in person and by counsel, KENT ELDRIDGE.

Respondent and insurance carrier appeared by counsel, BRADLEY J MCCLURE.

I. STATEMENT OF THE CASE

The claimant filed his First Notice of Claim for Compensation (CC Form 3) on November 26, 2019 alleging injuries to the bilateral ears as the result of cumulative and repetitive trauma arising out of the course and scope of employment with respondent, with a date of awareness of August 16, 2019. The CC Form 3 describes the injurious activity as "repetitive injurious exposure to K-9 barking, SWAT training with firearms, police vehicle with sirens/radio." Claimant requests a finding of compensable injuries to the left and right ears. Claimant requests permanent partial disability benefits for his left and right ear injuries. Finally, claimant requests continuing medical maintenance with an audiologist (hearing aids) for his left and right ears.

Respondent denies claimant sustained injuries to the left ear and right ear arising out of and in the course of employment. Respondent denies the nature and extent of permanent partial disability benefits.

With the issues framed, trial was held and the case was fully submitted on July 20, 2020.

II. STIPULATIONS

The following stipulations were submitted by the parties and accepted as fact:

1. That the Oklahoma Workers' Compensation Commission has jurisdiction.
2. That claimant was an employee of City of Norman on August 16, 2019.

3. That City of Norman had an Own Risk Permit (OWN RISK PERMIT #10970) on August 16, 2019.
4. That claimant's wages were sufficient to entitle him to a rate of compensation of \$350.00 for permanent partial disability.
5. That claimant timely filed his workers' compensation claim (CC Form 3).

III. FINDINGS AND CONCLUSIONS

From a review of the record as a whole, including medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the claimant and to observe his demeanor, the following findings of fact and conclusions of law are made in accordance with 85A O.S., §72:

The claimant is forty-five (45) years old and was a credible witness. Claimant has been employed by the City of Norman as a police officer since 1999. Claimant has been a K-9 officer since 2006. As a K-9 officer, claimant operated a patrol vehicle which was specially designed to house a K-9 unit. This meant that a dog was regularly barking inside claimant's patrol vehicle. Claimant has also been a member of the police department's SWAT team for approximately fourteen (14) years. This required claimant to undertake additional training whereby he was exposed to loud firearms. As a SWAT officer, claimant worked inside the scoreboard at University of Oklahoma football games, where he was exposed to a loudspeaker. Claimant is also cross-deputized with the Cleveland County Drug Task Force and the Department of Homeland Security. Because he must respond to multiple different agencies, claimant has several different radios in his patrol vehicle. Finally, claimant's patrol vehicle had two (2) different sirens. Claimant continues to be employed by the City of Norman police department, presently.

Claimant noticed that he was having difficulty hearing at work and at home during the summer of 2019. Claimant noticed particular difficulty hearing with his left ear. Claimant complained that he had to turn up the television to a very high volume to be able to hear and had to be facing the person he was talking to in order to understand what they said. Additionally, at approximately the same time, claimant began to experience constant tinnitus in his ears of varying intensity. This sensation makes it very difficult for claimant to be in a silent room. In order to sleep, claimant must utilize a sound machine. When this sensation is at its worst, claimant experiences difficulty hearing.

On August 16, 2019, claimant was evaluated by an audiologist at Oklahoma Hearing Center. Claimant reported difficulty hearing and constant bilateral tinnitus, with the left greater than the right. Claimant reported a twenty (20) year history as a police officer as the cause of his complaints. Claimant denied prior hearing loss or tinnitus complaints. Diagnostic testing revealed moderate hearing loss in the right ear and severe hearing loss in the left ear. It was recommended that claimant undergo additional evaluation due to the significant difference in hearing loss. It was also recommended that claimant consider a hearing aid evaluation. On August 23, 2019, claimant was evaluated at Oklahoma Otolaryngology Associates. Again, claimant complained of hearing loss primarily in the left ear and bilateral tinnitus. Claimant attributed his complaints to his work activities as a police officer. Claimant was diagnosed with bilateral hearing loss with left asymmetry. Due to the asymmetry in hearing, an MRI was recommended to rule out the presence of a retrocochlear lesion. Hearing aids were again recommended. An MRI was performed September 4, 2019 at Norman Regional Healthplex. The MRI revealed no acute or suspicious

findings. Claimant has received no additional medical treatment. Claimant has not received hearing aids.

Claimant submitted the medical reports of Dr. Lonnie Litchfield in support of his alleged work injuries and request for permanent partial disability benefits. Dr. Litchfield is of the opinion that claimant's employment with the City of Norman police department is the major cause of his bilateral ear injuries. Dr. Litchfield is of the opinion that claimant has suffered permanent partial impairment as a result of his bilateral ear injuries. Respondent submitted the medical report of Dr. Kent Hensley in support of its defense. Dr. Hensley's report is silent on the issue of causation. Although Dr. Hensley did find that claimant had bilateral hearing loss, per an audiogram performed at his request, he did not find any permanent impairment as a result thereof.

The claimant bears the burden of proving by a preponderance of the evidence that he sustained a compensable injury. 85A O.S. § 2(9)(d). Compensable injury means damage or harm to the physical structure of the body of which the major cause is cumulative trauma arising out of the course and scope of employment. 85A O.S. §2(9)(a). Major cause means more than fifty percent (50%) of the resulting injury. 85A O.S. §2(27). "Cumulative trauma" means an injury to an employee that is caused by the combined effect of repetitive physical activities extending over a period of time in the course and scope of employment. 85A O.S. §2(14). A compensable injury shall be established by medical evidence supported by objective findings. 85A O.S. §2(9)(c). Objective findings are those findings which cannot come under the voluntary control of the patient. 85A O.S. §2(31)(a)(1). An employee who suffers a compensable injury shall be entitled to receive compensation as prescribed by the Administrative Workers' Compensation Act. 85A O.S. §2(9)(f).

Based upon the totality of the evidence, I find Dr. Litchfield's reports most probative on the issue of compensability. I am persuaded that claimant did sustain cumulative trauma injuries to his bilateral ears, caused by the combined effect of repetitive physical activities extending over a period of time in the course and scope of his employment with respondent. According to audiograms performed by several different audiologists, claimant has hearing loss in his bilateral ears. Claimant has been recommended for hearing aids by two (2) separate medical care providers.

IV. ORDER

1. Claimant sustained compensable cumulative trauma injuries to the LEFT EAR and RIGHT EAR of which the major cause was the combined effect of repetitive physical activities extending over a period of time in the course and scope of claimant's employment as a police officer for the City of Norman.
2. Claimant has sustained an 8% permanent partial disability to the BILATERAL EARS (due to bilateral hearing loss and tinnitus) as a result of cumulative trauma injuries with a date of awareness of August 16, 2019. At the claimant's rate of compensation, this is equal to an award of \$9,240.00, which has accrued in its entirety and shall be paid to claimant in a lump sum.
3. Claimant's attorney is entitled to an attorney fee not to exceed 20% of the permanent partial disability awarded herein.
4. Claimant is entitled to and respondent shall provide continuing medical maintenance for claimant's BILATERAL EARS with an audiologist or otolaryngologist to be designated by

respondent. Continued medical maintenance shall be limited to evaluation of the need for hearing aids, the providing of hearing aids, and the maintenance of hearing aids.

5. Pursuant to 40 O.S. §418, the respondent-insurer shall pay to the Oklahoma Tax Commission the Special Occupational Health and Safety tax in the amount of \$69.30, representing three-fourths of one percent of the total workers' compensation losses ordered herein, excluding medical payments and temporary total disability compensation.
6. Pursuant to 85A O.S., §118(A), a final award fee of One Hundred Forty Dollars (\$140.00) is taxed as costs in this matter, and shall be paid by the respondent to the Workers' Compensation Commission, if not previously paid.
7. Pursuant to 85A O.S., §122(B)(2), Respondent, if OWN RISK, shall pay a workers' compensation assessment in the amount of \$184.80 to the Oklahoma Tax Commission, representing two percent (2%) of the permanent partial disability benefits herein.
8. Pursuant to 85A O.S. § 31(7), For injuries occurring on or after July 1, 2019, a Multiple Injury Trust Fund assessment in the amount of \$277.20, representing (3%) of the Claimant's permanent partial disability award shall be deducted and paid to the Oklahoma Tax Commission by the Respondent.

IT IS SO ORDERED.

DONE this 23rd day of JULY, 2020.

BY ORDER OF:

/s/ 

JOHN L BLODGETT
ADMINISTRATIVE LAW JUDGE

ca/CRichardson

A copy of the above and foregoing Commission Order was mailed, by regular or certified United States Mail, on this filed stamped date to:

Claimant's Attorney: KENT ELDRIDGE
PO BOX 607
OKLAHOMA CITY, OK 73103-

Respondent's Attorney: BRADLEY J MCCLURE
1327 N ROBINSON
OKLAHOMA CITY, OK 73103-4848

I do hereby certify that the above and foregoing is a true and correct copy of the original order signed by the Judge herein. Witness by my hand and the official seal of this Commission on this date.



Norma McRae
Commission Clerk
July 27, 2020