

**THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

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**APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION**

SC Court of Appeals

**Susan S. Barden, Avery B. Wilkerson, Jr., and R. Michael Campbell, II
Commissioners**

Case Number: 2016-000510

Rodney Ward, Claimant,

Appellant,

v.

**ArcelorMittal Georgetown, Inc., Employer, and
New Hampshire Insurance Company, Carrier,**

Respondents.

RECORD ON APPEAL

**Mr. William Stuart Duncan, Esquire
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**Mr. Stephen Lynwood Brown, Esquire
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DECISION & ORDER
BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC FILE NUMBER 1321802

RODNEY WARD,

Claimant,

vs.

ARCELORMITTAL GEORGETOWN, INC.,

Employer,

NEW HAMPSHIRE INSURANCE COMPANY,

Carrier/
Defendants.

HEARING:

Hearing held in Georgetown, South Carolina,
on April 28, 2015.

APPEARANCES:

F. Drake Rogers III, Esquire, on behalf of the
Employer/Carrier.

William S. Duncan, Esquire, on behalf of the
Employee/Claimant.

PURPOSE OF HEARING:

To determine issues as set forth on Forms
50/51.

DECISION & ORDER BY:

T. Scott Beck, Commissioner.

DATE FILED:

August 20, 2015

STIPULATIONS

At the call of the case, the parties stipulated as follows:

1. That both the Claimant and the Defendants were subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act.
2. That jurisdiction and sufficiency of the notice of the hearing were admitted.
3. That, at the time of the injury, the average weekly wage being earned by the Claimant was the sum of \$2,133.31, resulting in a compensation rate of \$743.72.
4. That venue for this hearing was proper in Horry County, South Carolina, pursuant to stipulation by the parties.

APA SUBMISSIONS

The following APAs were submitted on behalf of the Employee/Claimant:

<u>APA</u>	<u>Name of Provider</u>	<u>Date of Report</u>	<u>No. Pages</u>
(1)	Dr. Terry L. Fry Waccamaw Surgical Assocs.	5/28/2003-12/11/2014	1-7
(2)	OSHA Reports Sound Level Survey	6/10/1975-4/7/1993	8-15
(3)	Noise Study	2/16/2000-5/23/2000	16-19
(4)	OSHA Reports with Noise Studies, Surveys and Citations to Georgetown Steel	11/29/1995-10/3/2002	20-39

The following Exhibits were submitted on behalf of the Employee/Claimant:

None.

The following APAs were submitted on behalf of the Employer/Carrier:

<u>APA</u>	<u>Name of Provider</u>	<u>Date of Report</u>	<u>No. Pages</u>
(5)	Dr. Howard Farrell	9/12/2014	40-45

The following Exhibits were submitted on behalf of the Employer/Carrier:

<u>APA</u>	<u>Name of Provider</u>	<u>Date of Report</u>	<u>No. Pages</u>
(A)	Georgetown Steel Audiograms/Calculations	8/21/02, 7/11/01, 6/14/00, 10/4/94, 10/19/83	46-58
(B)	ArcelorMittal Audiograms/Calculations	8/1/12, 11/1/10, 12/12/07, 10/30/06 9/19/05, 9/10/04	59-70
(C)	SCWCC #0706525 Rodney Ward v. Mittal Steel USA (DOA: 2/21/07); Correspondence & Form 50 dated 5/21/07 Correspondence dated 8/2/07 Order dated 9/7/07		71-75
(D)	Memorandum of Legal Issues presented by Attorney Duncan dated 5/25/07 in the case of Jack Woodward v. Georgetown Steel, SCWCC #0326658		76-86

CLAIMANT BIOGRAPHICAL

DATE OF BIRTH: 10/1/1948

SEX: Male

MARITAL STATUS: Married

EDUCATION: Graduated high school.

WORK HISTORY: The Claimant served in the Army for three years. He began working in the steel mill in Georgetown, SC, in 1970 and worked there until his retirement in 2013.

STATEMENT OF THE CASE

The above case came on to be heard before the undersigned Commissioner in Aynor, South Carolina, on April 28, 2015, pursuant to notice timely and properly given to all parties of record. The Claimant filed a Form 50 hearing request on July 21, 2014, alleging binaural hearing loss resulting from repetitive traumatic exposure to excessive noise

while working for the Employer. The Employer/Carrier filed a timely Form 51 on August 20, 2014, denying the Claimant sustained a compensable repetitive trauma injury by accident. The parties attended mediation on December 15, 2014, but did not reach settlement. The mediator filed a Form 70 on January 30, 2015, indicating that all disputed issues remained contested.

The Employer/Carrier asserted that the Claimant did not provide timely notice of a repetitive trauma injury pursuant to S.C. Code Ann. § 42-15-20 and that the claim was barred by the statute of limitations pursuant to S.C. Code Ann. § 42-15-40. The Employer/Carrier alleged that any hearing loss suffered by the Claimant was the result of his work with prior employers and not the Employer in this case. The Employer/Carrier further asserted that the Claimant's alleged hearing loss was not accidental as it was not "an unlooked for and untoward event" and, therefore, is not compensable pursuant to Capers v. Flautt, 305 S.C. 254, 407 S.E. 2d 660 (Ct. App. 1991), and Havird v. Columbia YMCA, 308 S.C. 397, 418 S.E.2d 329 (Ct. App. 1992). Finally, the Employer/Carrier asserted that the Claimant's claim is barred by the doctrine of *laches*.

During a pre-hearing conference, the Claimant's attorney submitted a memorandum of law setting forth the Claimant's position regarding the statute of limitations, notice, the accidental nature of the Claimant's hearing loss, and the application of the "last injurious exposure" rule pursuant to Geathers v. 3V, Inc., 371 S.C. 570, 641 S.E.2d 29 (2007). The undersigned Commissioner accepted the Claimant's memorandum without objection from the Employer/Carrier, and it was made part of the record.

EVIDENCE OF THE CASE

The Claimant was the only witness to testify at the hearing. He is 66 years old and a high school graduate. After high school, the Claimant served three years in the Army, one of which was in active duty in Vietnam. The Claimant stated that he was assigned to a communications position in Vietnam and was not exposed to loud noises while in the military. (Hrg. Tr. p. 10-11). The Claimant worked for the Employer and its predecessor companies at the steel mill in Georgetown, South Carolina, from 1970 until 2013. The Claimant worked in various capacities as a laborer and a supervisor. (Hrg. Tr. p. 11).

The Claimant testified that he was not required to wear hearing protection early in his career at the mill. He admitted that, for at least ten years from 1970 until roughly 1980, he wore no hearing protection whatsoever. Beginning around 1980, and to a greater degree in 2003, employees were required to wear hearing protection in every part of the mill. (Hrg. Tr. p. 12-13). After the plant began requiring employees to wear hearing protection around 1980, the Claimant testified that he always wore hearing protection. The Claimant specifically testified that he wore hearing protection every day since the Employer began operating the mill. (Hrg. Tr. p. 21-22). The Claimant described the noise in the mill as a "constant grinding" and "humming." He testified that the noise level was such that it was impossible to have a normal conversation with a co-worker and that he would have to use hand signals when communicating. (Hrg. Tr. p. 15-16). The Claimant testified that he worked about 60 hours a week from 2003 until his retirement in 2013. (Hrg. Tr. p. 18).

The Claimant testified that he started using hearing aids in 2007. (Hrg. Tr. p. 22). He stated that, even in a setting with no background noise, he could not carry on a

normal conversation without hearing aids. (Hrg. Tr. p. 18-19). The Claimant asserted that he does not have any "loud-noise hobbies" such as hunting. However, he did admit that he mows grass as "mission work" and for some pay. He stated that he mows five or six yards a week. He uses a gas-powered riding mower and a gas-powered trimmer. The Claimant asserted that he wears hearing protection when he operates those pieces of machinery because he is aware that loud noises can damage hearing. (Hrg. Tr. p. 17, 20).

The Claimant testified that he began to notice a decline in his hearing around 2000 and that he felt at that time his hearing loss was related to noise at the mill. (Hrg. Tr. p. 22-23). The Claimant admitted that, in 2007, he took the results of a hearing test to his attorney. (Hrg. Tr. p. 25). The Claimant's attorney filed a Form 50 hearing request on May 21, 2007, alleging hearing loss related to the Claimant's employment with the Employer. A hearing was scheduled to occur on September 11, 2007, but the Claimant's attorney voluntarily withdrew his Form 50 on August 2, 2007, and the hearing was cancelled. (APA p. 71-75). The Claimant admitted that he understood in 2007 that he had hearing loss and he believed it was due to his employment at the mill in Georgetown. (Hrg. Tr. p. 23-25).

The Claimant underwent an audiological evaluation under Dr. Terry Fry on February 21, 2007. (APA. p. 6). An "individual ear handicap" worksheet indicates the Claimant had a 23% binaural hearing impairment on June 29, 2007. (APA. p. 4). The Claimant underwent another audiological evaluation with Dr. Fry on March 4, 2014. According to Dr. Fry, that test revealed a 31% binaural hearing impairment. In a statement dated September 11, 2014, Dr. Fry stated that the Claimant's hearing loss was due to "his continued industrial noise exposure." However, this report does not specifically indicate whether the alleged worsening of the Claimant's hearing impairment from 2007 through to

2014 was, more likely than not, related to any noise exposure the Claimant may have had in his employment with the Employer. (APA p. 1-4). The Claimant submitted various OSHA reports, noise studies, surveys, and citations encompassing the period from June 10, 1975, until December 3, 2002. (APA p. 8-39). None of these documents cover the period the mill was owned and operated by the Employer.

The Claimant saw Dr. Howard Farrell on September 12, 2014, and underwent additional audiological testing. Dr. Farrell concluded that the Claimant exhibited 32.51% binaural hearing loss. Dr. Farrell reviewed the Claimant's work hearing tests from both Georgetown Steel and ArcelorMittal. Dr. Farrell stated that the Claimant's hearing tests while working for the prior employers are "not notably different than his current test with bi-lateral nerve hearing loss." For instance, the Claimant exhibited 20.9375% binaural hearing impairment on August 21, 2002, the final work study performed while Georgetown Steel Company, LLC, operated the mill (APA p. 48). After ArcelorMittal began operating the mill, the Claimant exhibited 20.3125% impairment in his last hearing study on August 1, 2012 (APA p. 60). Dr. Farrell further concluded that the Claimant's hearing loss pre-dates his employment at the Employer and that the Claimant's hearing loss had been stable while at ArcelorMittal Steel with no significant decline, according to hearing tests performed at the mill. Finally, Dr. Farrell stated, "I do believe with a reasonable degree of medical certainty that his hearing loss is not the result of his employment at ArcelorMittal Steel." (APA p. 41).

Based upon the stipulations of the parties, the testimony and evidence received and produced at the hearing, as well as my personal observation of the witnesses,

the undersigned Commissioner finds the following facts based upon the preponderance of the evidence:

FINDINGS OF FACT

IT IS FOUND AS A FACT THAT:

1. All parties to this proceeding are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act.
2. At the time of the injury, the average weekly wage being earned by the Claimant was the sum of \$2,133.31, resulting in a compensation rate of \$743.72.
3. The Claimant worked for the Employer and its predecessor companies at the steel mill in Georgetown, SC, from 1970 until 2013.
4. The Employer began operating the mill in 2004.
5. The Claimant was exposed to high noise levels in his employment with the Employer and its predecessor companies, but there is no documentation in evidence to establish the exact noise levels to which the Claimant was exposed during the period the Employer operated the mill.
6. The Claimant did not wear hearing protection whatsoever during the first approximately ten years of his employment at the mill, before the Employer operated the mill.
7. Beginning around 1980, the Claimant wore hearing protection every day he worked at the mill.
8. The Claimant specifically admitted that he wore hearing protection in all areas of the mill every day that he worked during the entire period the Employer operated the mill.

9. The Claimant began wearing hearing aids in 2007.
10. The Claimant retained an attorney in 2007.
11. The Claimant admitted that he was aware in 2007 that he had hearing loss and he believed his hearing loss was caused by his work at the mill.
12. The Claimant filed a Form 50 hearing request on May 21, 2007, alleging hearing loss resulting from his employment with the Employer. The Claimant subsequently withdrew this hearing request on August 2, 2007. It appears the Claimant abandoned this claim, as I can find no other documentation to conclude otherwise.
13. The Claimant was aware he had a compensable workers' compensation claim related to hearing loss as early as 2000 when, by his own admission, he realized his hearing was declining and he believed it was related to his employment.
14. At the latest, the Claimant was aware he had a compensable workers' compensation claim related to hearing loss in 2007, based on his testimony that he retained a lawyer because he knew his hearing had declined and he believed his hearing loss was related to his work with the Employer.
15. The Claimant was aware of his rights under the South Carolina Workers' Compensation Act and unreasonably neglected to pursue his claim in a timely fashion.
16. The Employer/Carrier was prejudiced by the Claimant's unreasonable delay in pursuing his claim.
17. Dr. Fry opined that the Claimant's hearing worsened between 2007 and 2013, but Dr. Fry did not state that the Claimant's employment with the Employer more likely than not caused the Claimant's increased hearing loss.

18. Dr. Farrell opined, with a reasonable degree of medical certainty, that the Claimant's hearing loss pre-dated his work with the Employer and that it is not the result of his employment with the Employer.

19. There is insufficient evidence to establish that the Claimant's hearing loss was caused by his employment with the Employer.

Based upon the above Statement of the Case, Evidence of the Case, and the Findings of Fact, the following Conclusions of Law are made:

CONCLUSIONS OF LAW

The following sections of the South Carolina Code of Laws give the appropriate definitions and provisions of the South Carolina Workers' Compensation Act as applicable to this case:

1. S.C. Code Ann. § 42-1-172 defines "repetitive trauma injury" and provides that "an injury is not considered a compensable repetitive trauma injury unless a commissioner makes a specific finding of fact by a preponderance of the evidence of a causal connection that is established by medical evidence between the repetitive activities that occurred while the employee was engaged in the regular duties of his employment and the injury." Here, there is insufficient evidence to establish that the Claimant sustained a compensable repetitive trauma injury resulting in hearing loss in his employment with the Employer. To the contrary, the preponderance of the evidence, including the persuasive opinion of Dr. Farrell, indicates that the Claimant's hearing loss pre-dated his work with the Employer and the Claimant did not sustain hearing loss due to his work with the Employer.

2. An injury must result from an accident that arose out of and in the course of the claimant's employment to be compensable under the Act. Bickley v. South

Carolina Electric & Gas Co., 259 S.C. 463, 192 S.E.2d 866 (1972). The burden is on the claimant to prove such facts as will render the injury compensable, and such an award must not be based on surmise, conjecture, or speculation. Brady v. Sacony of St. Matthews, 232 S.C. 84, 101 S.E.2d 50 (1957). Here, there is insufficient evidence to establish the Claimant sustained hearing loss as a result of his work with the Employer. A finding of compensability would be purely speculative and contrary to the greater weight of the evidence, in light of the lack of any conclusive medical evidence stated to a reasonable degree of medical certainty to prove that the Claimant's hearing loss more likely than not worsened due to his employment with the Employer.

3. S.C. Code Ann. § 42-15-20(C) provides that, in the case of repetitive trauma, the claimant must give notice of an injury to the employer within ninety (90) days of the date the employee discovered, or could have discovered by exercising reasonable diligence, that his condition is compensable, unless reasonable excuse is made to the satisfaction of the Commission for not giving timely notice *and* the Commission is satisfied that the employer has not been unduly prejudiced thereby.

4. In King v. Int'l Knife and Saw, the South Carolina Court of Appeals interpreted and applied the Act's notice requirement for repetitive trauma claims. 395 S.C. 437, 718 S.E.2d 227 (Ct. App. 2011). In that case, the Court held that a claimant's repetitive trauma condition is not compensable and "the 90-day reporting clock does not start" until the condition either requires medical care or interferes with a claimant's ability to work. *Id.* at 444-45. Here, the Claimant sought medical treatment for his hearing loss as early as February 21, 2007; therefore, the "90-day reporting clock" started on that date. The Claimant was, by his own admission, aware that he had a compensable claim when he hired

a lawyer and filed a Form 50 hearing request in 2007. However, he abandoned the prior claim and did not give notice of the present claim with a different alleged date of injury until seven years later when he filed the present hearing request. Accordingly, the Claimant did not provide timely notice of a repetitive trauma injury, and his request for benefits under the Act is denied.

5. S.C. Code Ann. § 42-15-40 states that a claimant's right to compensation for a repetitive trauma injury is "barred unless a claim is filed with the commission within two years after the employee knew or should have known that his injury is compensable but no more than seven years after the last date of injurious exposure." This portion of the statute was added by the Legislature effective July 1, 2007, overruling the South Carolina Supreme Court's prior contrary decision in Schurlock v. City of North Charleston, 352 S.C. 175, 574 S.E.2d 194 (2002) (holding the last day of exposure is the date from which the statute of limitations begins to run in a repetitive trauma case, rather than when claimant first discovered that he had a work-related injury). Therefore, the Claimant is misguided in relying on a last date of injurious exposure analysis. Here, the Claimant was aware his hearing had declined in 2007 and believed at that time it was related to his employment with the Employer. But, he did not file the present claim until 2014. The Claimant did not file his claim within two years after he knew his injury was compensable, and as a result, his claim is barred by the statute of limitations.

6. South Carolina Courts have defined *laches* as "neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done." Muir v. C.R. Bard, Inc., 336 S.C. 266, 296, 519 S.E.2d 583, 598 (Ct. App. 1999). South Carolina has acknowledged the

applicability of the doctrine of *laches* in a workers' compensation claim. Richey v. Dickinson, 359 S.C. 609, 612, 598 S.E.2d 307, 309 (Ct. App. 2004). "A claimant must prosecute his [workers' compensation] claim in a timely fashion or it may be barred by the doctrine of *laches*." McMillian v. Midlands Human Res., 305 S.C. 532, 533, 409 S.E.2d 443, 444 (Ct. App. 1991). If a party knows of his rights and does not timely assert them and that delay causes his adversary to incur expense or otherwise detrimentally change its position, then, under the doctrine of *laches*, equity will refuse to enforce those rights. Richey, 359 S.C. at 612, 598 S.E.2d at 309. The party asserting *laches* must show (1) negligence of the other party; (2) that party's opportunity to act sooner; and (3) as a result, the asserting party suffered material prejudice. Richey, 359 S.C. at 612, 598 S.E.2d at 309. *Laches* is a defense that operates independently from the statute of limitations. The court is vested with wide discretion in determining what is an unreasonable delay. Ham v. Flowers, 214 S.C. 212, 51 S.E.2d 753 (1949).

7. Here, the Claimant believed in 2007 that his hearing loss was related to his employment with the Employer. He alleged compensable hearing loss and filed a hearing request in 2007 but later withdrew that request and abandoned the claim. Thereafter, he did not pursue the present claim until 2014. I find that this delay in pursuing the claim was unreasonable, that the Claimant was negligent in his delay, and that he had the opportunity to act sooner but did not. The Claimant offered no reasonable explanation for his seven-year delay in seeking another hearing. Furthermore, I find that the Employer was materially prejudiced by this delay. Therefore, the claim is barred subject to the doctrine of *laches*.

Based upon the above Statement of Case, Evidence of the Case, Findings of Fact, and Conclusions of Law, the following Order is made:

ORDER

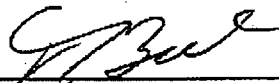
Based on the foregoing, it is hereby:

ORDERED that the Claimant's claim for repetitive trauma hearing loss is denied; it is further

ORDERED that the Claimant is not entitled to receive disability benefits or medical benefits under the South Carolina Workers' Compensation Act.

No hearing costs or penalties are assessed in this matter.

SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION



T. Scott Beck, Commissioner

CERTIFICATE OF SERVICE

This is to certify the undersigned has this date served this order in the above entitled action upon all parties to this cause by sending an electronic copy hereof by electronic mail addressed to the attorney or attorneys for said parties or by depositing a copy hereof, postage paid, in the United States certified mail addressed to any unrepresented party.
August 20, 2015

By: Shawn DeBruhl, Administrative Assistant to Commissioner Beck

DECISION AND ORDER
BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC FILE NUMBER 1321802

RODNEY WARD,
Claimant/Appellant,

vs.

ARCELORMITTAL GEORGETOWN, INC.,
Employer,

NEW HAMPSHIRE INSURANCE COMPANY,
Carrier,

Defendants/Respondents.

Appellate Panel Review
Columbia, South Carolina
on November 17, 2015

Appellate Panel Decision & Order filed

on August 20, 2015

AFFIRMED IN FULL

William S. Duncan, Esquire, on behalf of the Claimant/Appellant

F. Drake Rogers III, Esquire, on behalf of the Employer/Carrier.

This matter was heard before the Appellate Panel of the South Carolina Workers' Compensation Commission on November 17, 2015, pursuant to a Form 30 timely filed by the Appellant on September 1, 2015. This matter was originally heard before the Single Commissioner in Aynor, South Carolina on April 28, 2015, and this was an appeal from the Order filed on August 20, 2015.

The Hearing Commissioner made the following Findings of Fact, Conclusions of Law, and Order following an evidentiary hearing:

FINDINGS OF FACT

IT IS FOUND AS A FACT THAT:

1. All parties to this proceeding are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act.
2. At the time of the injury, the average weekly wage being earned by the Claimant was the sum of \$2,133.31, resulting in a compensation rate of \$743.72.
3. The Claimant worked for the Employer and its predecessor companies at the steel mill in Georgetown, SC, from 1970 until 2013.
4. The Employer began operating the mill in 2004.
5. The Claimant was exposed to high noise levels in his employment with the Employer and its predecessor companies, but there is no documentation in evidence to establish the exact noise levels to which the Claimant was exposed during the period the Employer operated the mill.
6. The Claimant did not wear hearing protection whatsoever during the first approximately ten years of his employment at the mill, before the Employer operated the mill.
7. Beginning around 1980, the Claimant wore hearing protection every day he worked at the mill.

8. The Claimant specifically admitted that he wore hearing protection in all areas of the mill every day that he worked during the entire period the Employer operated the mill.
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13. The Claimant was aware he had a compensable workers' compensation claim related to hearing loss as early as 2000 when, by his own admission, he realized his hearing was declining and he believed it was related to his employment.
14. At the latest, the Claimant was aware he had a compensable workers' compensation claim related to hearing loss in 2007, based on his testimony that he retained a lawyer because he knew his hearing had declined and he believed his hearing loss was related to his work with the Employer.
15. The Claimant was aware of his rights under the South Carolina Workers' Compensation Act and unreasonably neglected to pursue his claim in a timely fashion.
16. The Employer/Carrier was prejudiced by the Claimant's unreasonable delay in pursuing his claim.
17. Dr. Fry opined that the Claimant's hearing worsened between 2007 and 2013, but Dr. Fry did not state that the Claimant's employment with the Employer more likely than not caused the Claimant's increased hearing loss.
18. Dr. Farrell opined, with a reasonable degree of medical certainty, that the Claimant's hearing loss pre-dated his work with the Employer and that it is not the result of his employment with the Employer.

19. There is insufficient evidence to establish that the Claimant's hearing loss was caused by his employment with the Employer.

Based upon the above Statement of the Case, Evidence of the Case, and the Findings of Fact, the following Conclusions of Law are made:

CONCLUSIONS OF LAW

The following sections of the South Carolina Code of Laws give the appropriate definitions and provisions of the South Carolina Workers' Compensation Act as applicable to this case:

1. S.C. Code Ann. § 42-1-172 defines "repetitive trauma injury" and provides that "an injury is not considered a compensable repetitive trauma injury unless a commissioner makes a specific finding of fact by a preponderance of the evidence of a causal connection that is established by medical evidence between the repetitive activities that occurred while the employee was engaged in the regular duties of his employment and the injury." Here, there is insufficient evidence to establish that the Claimant sustained a compensable repetitive trauma injury resulting in hearing loss in his employment with the Employer. To the contrary, the preponderance of the evidence, including the persuasive opinion of Dr. Farrell, indicates that the Claimant's hearing loss pre-dated his work with the Employer and the Claimant did not sustain hearing loss due to his work with the Employer.
2. An injury must result from an accident that arose out of and in the course of the claimant's employment to be compensable under the Act. Bickley v. South Carolina Electric & Gas Co., 259 S.C. 463, 192 S.E.2d 866 (1972). The burden is on the claimant to prove such facts as will render the injury compensable, and such an award must not be based on surmise, conjecture, or speculation. Brady v. Sacony of St. Matthews, 232 S.C. 84, 101 S.E.2d 50 (1957). Here, there is insufficient evidence to establish the Claimant sustained hearing loss as a result of his work with the Employer. A finding of compensability would be purely speculative and contrary to the greater weight of the evidence, in light of the lack of any conclusive medical evidence stated to a reasonable degree of medical certainty to prove that the Claimant's

hearing loss more likely than not worsened due to his employment with the Employer.

3. S.C. Code Ann. § 42-15-20(C) provides that, in the case of repetitive trauma, the claimant must give notice of an injury to the employer within ninety (90) days of the date the employee discovered, or could have discovered by exercising reasonable diligence, that his condition is compensable, unless reasonable excuse is made to the satisfaction of the Commission for not giving timely notice *and* the Commission is satisfied that the employer has not been unduly prejudiced thereby.
4. In King v. Int'l Knife and Saw, the South Carolina Court of Appeals interpreted and applied the Act's notice requirement for repetitive trauma claims. 395 S.C. 437, 718 S.E.2d 227 (Ct. App. 2011). In that case, the Court held that a claimant's repetitive trauma condition is not compensable and "the 90-day reporting clock does not start" until the condition either requires medical care or interferes with a claimant's ability to work. *Id.* at 444-45. Here, the Claimant sought medical treatment for his hearing loss as early as February 21, 2007; therefore, the "90-day reporting clock" started on that date. The Claimant was, by his own admission, aware that he had a compensable claim when he hired a lawyer and filed a Form 50 hearing request in 2007. However, he abandoned the prior claim and did not give notice of the present claim with a different alleged date of injury until seven years later when he filed the present hearing request. Accordingly, the Claimant did not provide timely notice of a repetitive trauma injury, and his request for benefits under the Act is denied.
5. S.C. Code Ann. § 42-15-40 states that a claimant's right to compensation for a repetitive trauma injury is "barred unless a claim is filed with the commission within two years after the employee knew or should have known that his injury is compensable but no more than seven years after the last date of injurious exposure." This portion of the statute was added by the Legislature effective July 1, 2007, overruling the South Carolina Supreme Court's prior contrary decision in Schurilknight v. City of North Charleston, 352 S.C. 175, 574 S.E.2d 194 (2002) (holding the last day of exposure is the date from which the statute of limitations begins to run in a repetitive trauma case, rather than when claimant first discovered that he had a work-related injury). Therefore, the Claimant is misguided in relying on a last date of injurious exposure analysis. Here, the Claimant was aware his hearing

had declined in 2007 and believed at that time it was related to his employment with the Employer. But, he did not file the present claim until 2014. The Claimant did not file his claim within two years after he knew his injury was compensable, and as a result, his claim is barred by the statute of limitations.

6. South Carolina Courts have defined *laches* as “neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done.” Muir v. C.R. Bard, Inc., 336 S.C. 266, 296, 519 S.E.2d 583, 598 (Ct. App. 1999). South Carolina has acknowledged the applicability of the doctrine of *laches* in a workers’ compensation claim. Richey v. Dickinson, 359 S.C. 609, 612, 598 S.E.2d 307, 309 (Ct. App. 2004). “A claimant must prosecute his [workers’ compensation] claim in a timely fashion or it may be barred by the doctrine of *laches*.” McMillian v. Midlands Human Res., 305 S.C. 532, 533, 409 S.E.2d 443, 444 (Ct. App. 1991). If a party knows of his rights and does not timely assert them and that delay causes his adversary to incur expense or otherwise detrimentally change its position, then, under the doctrine of *laches*, equity will refuse to enforce those rights. Richey, 359 S.C. at 612, 598 S.E.2d at 309. The party asserting *laches* must show (1) negligence of the other party; (2) that party’s opportunity to act sooner; and (3) as a result, the asserting party suffered material prejudice. Richey, 359 S.C. at 612, 598 S.E.2d at 309. *Laches* is a defense that operates independently from the statute of limitations. The court is vested with wide discretion in determining what is an unreasonable delay. Ham v. Flowers, 214 S.C. 212, 51 S.E.2d 753 (1949).

7. Here, the Claimant believed in 2007 that his hearing loss was related to his employment with the Employer. He alleged compensable hearing loss and filed a hearing request in 2007 but later withdrew that request and abandoned the claim. Thereafter, he did not pursue the present claim until 2014. I find that this delay in pursuing the claim was unreasonable, that the Claimant was negligent in his delay, and that he had the opportunity to act sooner but did not. The Claimant offered no reasonable explanation for his seven-year delay in seeking another hearing. Furthermore, I find that the Employer was materially prejudiced by this delay. Therefore, the claim is barred subject to the doctrine of *laches*.

APPEAL TO APPELLATE PANEL

In his appeal to the Appellate Panel, the Claimant respectfully submits the following:

1. Whether the Commissioner misapprehended the meaning of King v. International Knife, 395 S.C. 437 when he found the Claimant's case did not meet the requirements of §42-15-20 (c) and §42-1-10?
2. Whether the Commissioner committed error when he found the Claimant knew or should have known his condition was compensable in 2007?

EVIDENCE OF THE CASE

The Claimant is 66 years old and a high school graduate. He worked for the Employer and its predecessor companies at the steel mill in Georgetown, South Carolina, from 1970 until 2013. The Claimant worked in various capacities as a laborer and a supervisor. (Hrg. Tr. p. 11).

The Claimant testified that he was not required to wear hearing protection early in his career at the mill. He admitted that, for at least ten years from 1970 until roughly 1980, he wore no hearing protection whatsoever. Beginning around 1980, and to a greater degree in 2003, employees were required to wear hearing protection in every part of the mill. (Hrg. Tr. p. 12-13). The Claimant testified that he always wore hearing protection after the plant began requiring employees to wear hearing protection around 1980. The Claimant specifically testified that he wore hearing protection every day since the Employer began operating the mill. (Hrg. Tr. p. 21-22). The Claimant described the noise in the mill as a "constant grinding" and "humming." He testified that the noise level was such that it was impossible to have a normal conversation with a co-worker and that he would have to use hand signals when communicating. (Hrg. Tr. p. 15-16). The Claimant testified that he worked about 60 hours a week from 2003 until his retirement in 2013. (Hrg. Tr. p. 18).

The Claimant testified that he started using hearing aids in 2007. (Hrg. Tr. p. 22). He stated that, even in a setting with no background noise, he could not carry on a normal conversation without hearing aids. (Hrg. Tr. p. 18-19). The Claimant asserted that he does not have any "loud-noise hobbies" such as hunting. However, he did admit that he mows grass as "mission work" and for some pay. He stated that he mows five or six yards a week. He uses a gas-powered riding mower and a gas-powered trimmer. The Claimant asserted that he wears hearing protection when he operates those pieces of machinery because he is aware that loud noises can damage hearing. (Hrg. Tr. p. 17, 20).

The Claimant testified that he began to notice a decline in his hearing around 2000 and that he felt at that time his hearing loss was related to noise at the mill. (Hrg. Tr. p. 22-23). The Claimant admitted that, in 2007, he took the results of a hearing test to his attorney. (Hrg. Tr. p. 25). The Claimant's attorney filed a Form 50 hearing request on May 21, 2007, alleging hearing loss related to the Claimant's employment with the Employer. A hearing was scheduled to occur on September 11, 2007, but the Claimant's attorney voluntarily withdrew his Form 50 on August 2, 2007, and the hearing was cancelled. (APA p. 71-75). The Claimant admitted that he understood in 2007 that he had hearing loss and he believed it was due to his employment at the mill in Georgetown. (Hrg. Tr. p. 23-25).

The Claimant underwent an audiological evaluation under Dr. Terry Fry on February 21, 2007. (APA. p. 6). An "individual ear handicap" worksheet indicates the Claimant had a 23% binaural hearing impairment on June 29, 2007. (APA. p. 4). The Claimant underwent another audiological evaluation with Dr. Fry on March 4, 2014. According to Dr. Fry, that test revealed a 31% binaural hearing impairment. In a statement dated September 11, 2014, Dr. Fry stated that the Claimant's hearing loss was due to "his

continued industrial noise exposure.” However, this report does not specifically indicate whether the alleged worsening of the Claimant’s hearing impairment from 2007 through to 2014 was, more likely than not, related to any noise exposure the Claimant may have had in his employment with the Employer. (APA. p. 1-4). The Claimant submitted various OSHA reports, noise studies, surveys, and citations encompassing the period from June 10, 1975, until December 3, 2002. (APA p. 8-39). None of these documents cover the period the mill was owned and operated by the Employer.

The Claimant saw Dr. Howard Farrell on September 12, 2014, and underwent additional audiological testing. Dr. Farrell concluded that the Claimant exhibited 32.51% binaural hearing loss. Dr. Farrell reviewed the Claimant’s work hearing tests from both Georgetown Steel and ArcelorMittal. Dr. Farrell stated that the Claimant’s hearing tests while working for the prior employers are “not notably different than his current test with bi-lateral nerve hearing loss.” For instance, the Claimant exhibited 20.9375% binaural hearing impairment on August 21, 2002, the final work study performed while Georgetown Steel Company, LLC, operated the mill (APA p. 48). After ArcelorMittal began operating the mill, the Claimant exhibited 20.3125% impairment in his last hearing study on August 1, 2012 (APA p. 60). Dr. Farrell further concluded that the Claimant’s hearing loss pre-dates his employment at the Employer and that the Claimant’s hearing loss had been stable while at ArcelorMittal Steel with no significant decline, according to hearing tests performed at the mill. Finally, Dr. Farrell stated, “I do believe with a reasonable degree of medical certainty that his hearing loss is not the result of his employment at ArcelorMittal Steel.” (APA p. 41).

STANDARD OF REVIEW

In an appellate review, the Appellate Panel shall, pursuant to S.C. Code Ann. § 42-17-50 (1983), weigh the evidence as presented at the initial hearing, and if grounds be shown therefore, make its own Findings of Fact and reach its own Conclusions of Law consistent with or inconsistent with those of the Hearing Commissioner. Furthermore, the findings of fact and law by the Hearing Commissioner become and are the law of the case, unless within the scope of the appellant's exception to the Full Commission and its notice to the respondent of the issues the respondent would be required to meet. Only issues within the application for review under S.C. Code Ann. section 42-17-50 are preserved for appeal to the Full Commission. Charleston Lumber Co. v. Miller Hous. Corp., 338 S.C. 171, 525 S.E.2d 869 (2000); Ham v. Mullins Lumber Co., 193 S.C. 66, 7 S.E.2d 712 (1940); Green v. City of Columbia, 311 S.C. 78, 427 S.E.2d 685 (Ct. App. 1993).

LEGAL ANALYSIS

- I. The issues that the Claimant did not specifically raise in his Form 30 Request for Commission Review are not preserved for appeal, and as a result, the Single Commissioner's findings of fact and conclusions of law on these issues are the law of the case.

In Ham v. Mullins Lumber Co., 193 S.C. 66, 7 S.E.2d 712 (1940), the South Carolina Supreme Court held that the findings of fact and law by the hearing commissioner become and are the law of the case, unless within the scope of the appellant's exception to the full commission and its notice to the respondent of the issues the respondent would be required to meet. Due process requires that litigants receive notice of the issues to be met on trial, hearing or appeal. Id. Only issues within the application for review under S.C. Code Ann. section 42-17-50 (1976) are preserved for appeal to the Commission. Id.; see also

Green v. City of Columbia, 311 S.C. 78, 427 S.E.2d 685 (Ct. App. 1993) (Single Commissioner's denial of benefits, although likely based upon an error of law, was not subject to appellate review where Claimant did not assert error on the Form 30 as to that particular issue), Charleston Lumber Co. v. Miller Hous. Corp., 338 S.C. 171, 175, 525 S.E.2d 869, 871 (2000) ("an unchallenged ruling, 'right or wrong, is the law of [the] case and requires affirmance'") (quoting Buckner v. Preferred Mut. Ins. Co., 255 S.C. 159, 161, 177 S.E.2d 544, 544 (1970)).

Here, the Claimant did not assert error as to the Commissioner's determination that the claim is barred by the statute of limitations and *laches*, and the determination that the Claimant failed to sustain his burden to prove a compensable injury with the Employer. This Panel therefore concludes that it does not have the authority to reach these issues, and the Single Commissioner's findings of fact and conclusions of law on these issues are the law of the case.

II. This claim is barred because the Claimant did not provide timely and adequate notice of the claim to the Employer.

S.C. Code Ann. § 42-15-20(C) provides that, in the case of repetitive trauma, the claimant must give notice of an injury to the employer within ninety (90) days of the date the employee discovered, or could have discovered by exercising reasonable diligence, that his condition is compensable, unless reasonable excuse is made to the satisfaction of the Commission for not giving timely notice *and* the Commission is satisfied that the employer has not been unduly prejudiced thereby. In King v. Int'l Knife and Saw, the South Carolina Court of Appeals interpreted and applied the Act's notice requirement for repetitive trauma claims. 395 S.C. 437, 718 S.E.2d 227 (Ct. App. 2011). In that case, the Court held that a claimant's repetitive trauma condition is not compensable and "the 90-day reporting clock

does not start” until the condition either requires medical care or interferes with a claimant’s ability to work. Id. at 444-45. Here, the Claimant sought medical treatment for his hearing loss as early as February 21, 2007; therefore, the “90-day reporting clock” started on that date. The Claimant was, by his own admission, aware that he had a compensable claim when he hired a lawyer and filed a Form 50 hearing request in 2007. However, he abandoned the prior claim, and did not give notice of the present claim with a different alleged date of injury until seven years later when he filed the present hearing request. Accordingly, the Single Commissioner’s finding that the Claimant did not provide timely notice of a repetitive trauma injury is affirmed.

The Claimant’s assertion that the Employer had “actual knowledge of every pertinent fact required of a written notice” is incorrect. (Appellant’s Brief p. 6). The Employer administered periodic hearing tests, but these test results indicated that the Claimant’s hearing did not decline from the time ArcelorMittal began operating the plant until the end of the Claimant’s employment. Therefore, the Employer’s knowledge of the Claimant’s hearing test results does not constitute notice of the Claimant’s present claim, and the Single Commissioner’s Order denying benefits on the basis of untimely notice is affirmed.

III. Assuming the Claimant properly appealed the Single Commissioner’s Order as to the statute of limitations, laches, and the Claimant’s failure to sustain his burden of proof, this Panel agrees with the Single Commissioner’s determination of these issues, and affirms the Order.

a. This claim is barred by the statute of limitations.

S.C. Code Ann. § 42-15-40 states that a claimant’s right to compensation for a repetitive trauma injury is “barred unless a claim is filed with the commission within two years after the employee knew or should have known that his injury is compensable but no

more than seven years after the last date of injurious exposure.” This portion of the statute was added by the Legislature effective July 1, 2007, overruling the South Carolina Supreme Court’s prior contrary decision in Schurlknight v. City of North Charleston, 352 S.C. 175, 574 S.E.2d 194 (2002) (holding the last day of exposure is the date from which the statute of limitations begins to run in a repetitive trauma case, rather than when claimant first discovered that he had a work-related injury). Here, the Claimant was aware his hearing had declined in 2007 and believed at that time it was related to his employment with the Employer. But, he did not file the present claim until 2014. The Claimant did not file his claim within two years after he knew his injury was compensable, and as a result, his claim is barred by the statute of limitations.

Contrary to the Claimant’s assertion, a doctor’s opinion linking the claimant’s alleged injury to his employment, stated with a reasonable degree of medical certainty, is not an essential element of the statute of limitations defense. (Appellant’s Brief p. 8). All that is required is evidence that the Claimant did not file his claim for compensation within two years of the date he knew or should have known his injury is compensable. Here, the Claimant admitted that he believed as early as 2007 that he had hearing loss that was caused by his employment. Moreover, he actually retained an attorney and began pursuing a claim in 2007. The Claimant cannot reasonably contend that he was unaware of this claim until less than two years before the date he filed in 2014. Therefore, the Single Commissioner’s decision that the claim is barred by the statute of limitations must be affirmed.

b. This claim is barred by the doctrine of *laches*.

South Carolina Courts have defined *laches* as "neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done." Muir v. C.R. Bard, Inc., 336 S.C. 266, 296, 519 S.E.2d 583, 598 (Ct. App. 1999). South Carolina has acknowledged the applicability of the doctrine of *laches* in a workers' compensation claim. Richey v. Dickinson, 359 S.C. 609, 612, 598 S.E.2d 307, 309 (Ct. App. 2004). "A claimant must prosecute his [workers' compensation] claim in a timely fashion or it may be barred by the doctrine of *laches*." McMillian v. Midlands Human Res., 305 S.C. 532, 533, 409 S.E.2d 443, 444 (Ct. App. 1991). If a party knows of his rights and does not timely assert them and that delay causes his adversary to incur expense or otherwise detrimentally change its position, then, under the doctrine of *laches*, equity will refuse to enforce those rights. Richey, 359 S.C. at 612, 598 S.E.2d at 309. The party asserting *laches* must show (1) negligence of the other party; (2) that party's opportunity to act sooner; and (3) as a result, the asserting party suffered material prejudice. Richey, 359 S.C. at 612, 598 S.E.2d at 309. *Laches* is a defense that operates independently from the statute of limitations. The court is vested with wide discretion in determining what is an unreasonable delay. Ham v. Flowers, 214 S.C. 212, 51 S.E.2d 753 (1949).

Here, the Claimant believed in 2007 that his hearing loss was related to his employment with the Employer. He alleged compensable hearing loss and filed a hearing request in 2007 but later withdrew that request and abandoned the claim. Thereafter, he did not pursue the present claim until 2014. This delay in pursuing the claim was unreasonable, the Claimant was negligent in his delay, and he had the opportunity to act sooner but did

not. The Claimant offered no reasonable explanation for his seven-year delay in seeking another hearing. Furthermore, the Employer/Carrier was materially prejudiced by this delay. As a result of the Claimant's unreasonable delay, the Employer/Carrier was denied the opportunity to provide appropriate medical treatment, remove the Claimant from exposure to high noise levels, or take other measures to minimize the Claimant's alleged injuries or prevent further hearing loss, should the claim have been found compensable when the Claimant originally filed in 2007. Furthermore, contemporaneous witnesses such as the Claimant's co-workers and supervisors from 2007 would be extremely difficult to identify and depose. The Single Commissioner correctly determined that the Employer/Carrier was prejudiced by the Claimant's unreasonable delay in pursuing his claim. The Single Commissioner's determination that this claim is barred subject to the doctrine of *laches* is therefore affirmed.

c. The Claimant did not sustain his burden to prove a compensable repetitive trauma injury.

S.C. Code Ann. § 42-1-172 defines "repetitive trauma injury" and provides that "an injury is not considered a compensable repetitive trauma injury unless a commissioner makes a specific finding of fact by a preponderance of the evidence of a causal connection that is established by medical evidence between the repetitive activities that occurred while the employee was engaged in the regular duties of his employment and the injury." Additionally, an injury must result from an accident that arose out of and in the course of the claimant's employment to be compensable under the Act. Bickley v. South Carolina Electric & Gas Co., 259 S.C. 463, 192 S.E.2d 866 (1972). The burden is on the claimant to prove such facts as will render the injury compensable, and such an award must not be based on surmise, conjecture, or speculation. Brady v. Sacony of St. Matthews, 232

S.C. 84, 101 S.E.2d 50 (1957). Here, there is insufficient evidence to establish the Claimant sustained hearing loss as a result of his work with the Employer. A finding of compensability would be purely speculative and contrary to the greater weight of the evidence, in light of the lack of any conclusive medical evidence stated to a reasonable degree of medical certainty to prove that the Claimant's hearing loss more likely than not worsened due to his employment with the Employer. As a result, the Single Commissioner's Order is supported by a preponderance of the evidence, and is affirmed.

Additionally, there is insufficient evidence to establish that the Claimant sustained a compensable repetitive trauma injury resulting in hearing loss in his employment with the Employer. The September 11, 2014, report from Dr. Fry stated that the Claimant's hearing loss was due to "his continued industrial noise exposure." However, this report does not specifically indicate whether the alleged worsening of the Claimant's hearing impairment from 2007 through to 2014 was, more likely than not, related to any noise exposure the Claimant may have had in his employment with the Employer. To the contrary, the preponderance of the evidence, including the persuasive opinion of Dr. Farrell, indicates that the Claimant's hearing loss pre-dated his work with the Employer and that the Claimant did not sustain hearing loss due to his work with the Employer. Therefore, the Claimant did not sustain any injury during his work with the Employer, and the "last injurious exposure" rule as articulated in Geathers v. 3V, Inc., 371 S.C 570, 641 S.E.2d 29 (2007), does not apply to render the Employer liable for the Claimant's alleged hearing loss. The Single Commissioner's findings of fact and conclusions of law in this regard are correct, supported by a preponderance of the reliable evidence in the record, and are therefore affirmed.

Based this Panel's examination of the complete record on appeal, review of the briefs and oral arguments of the parties, and the foregoing legal analysis, we enter the following Findings of Fact and Conclusions of Law, in full affirmation of the Findings and Conclusions of the Hearing Commissioner:

FINDINGS OF FACT

IT IS FOUND AS A FACT:

1. All parties to this proceeding are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act.
2. At the time of the injury, the average weekly wage being earned by the Claimant was the sum of \$2,133.31, resulting in a compensation rate of \$743.72.
3. The Claimant worked for the Employer and its predecessor companies at the steel mill in Georgetown, SC, from 1970 until 2013.
4. The Employer began operating the mill in 2004.
5. The Claimant was exposed to high noise levels in his employment with the Employer and its predecessor companies, but there is no documentation in evidence to establish the exact noise levels to which the Claimant was exposed during the period the Employer operated the mill.
6. The Claimant did not wear hearing protection whatsoever during the first approximately ten years of his employment at the mill, before the Employer operated the mill.
7. Beginning around 1980, the Claimant wore hearing protection every day he worked at the mill.

8. The Claimant specifically admitted that he wore hearing protection in all areas of the mill every day that he worked during the entire period the Employer operated the mill.

9. The Claimant began wearing hearing aids in 2007.

10. The Claimant retained an attorney in 2007.

11. The Claimant admitted that he was aware in 2007 that he had hearing loss and he believed his hearing loss was caused by his work at the mill.

12. The Claimant filed a Form 50 hearing request on May 21, 2007, alleging hearing loss resulting from his employment with the Employer. The Claimant subsequently withdrew this hearing request on August 2, 2007. It appears the Claimant abandoned this claim, as we can find no other documentation to conclude otherwise.

13. The Claimant was aware he had a compensable workers' compensation claim related to hearing loss as early as 2000 when, by his own admission, he realized his hearing was declining and he believed it was related to his employment.

14. At the latest, the Claimant was aware he had a compensable workers' compensation claim related to hearing loss in 2007, based on his testimony that he retained a lawyer because he knew his hearing had declined and he believed his hearing loss was related to his work with the Employer.

15. The Claimant was aware of his rights under the South Carolina Workers' Compensation Act and unreasonably neglected to pursue his claim in a timely fashion.

16. The Employer/Carrier was prejudiced by the Claimant's unreasonable delay in pursuing his claim.

17. Dr. Fry opined that the Claimant's hearing worsened between 2007 and 2013, but Dr. Fry did not state that the Claimant's employment with the Employer more likely than not caused the Claimant's increased hearing loss.

18. Dr. Farrell opined, with a reasonable degree of medical certainty, that the Claimant's hearing loss pre-dated his work with the Employer and that it is not the result of his employment with the Employer.

19. There is insufficient evidence to establish that the Claimant's hearing loss was caused by his employment with the Employer.

Based upon the Evidence of the Case, Legal Analysis, and the above Findings of Fact, the following Conclusions of Law are made:

CONCLUSIONS OF LAW

The following sections of the South Carolina Code of Laws give the appropriate definitions and provisions of the South Carolina Workers' Compensation Act as applicable to this case:

1. S.C. Code Ann. § 42-1-172 defines "repetitive trauma injury" and provides that "an injury is not considered a compensable repetitive trauma injury unless a commissioner makes a specific finding of fact by a preponderance of the evidence of a causal connection that is established by medical evidence between the repetitive activities that occurred while the employee was engaged in the regular duties of his employment and the injury." Here, there is insufficient evidence to establish that the Claimant sustained a compensable repetitive trauma injury resulting in hearing loss in his employment with the

Employer. To the contrary, the preponderance of the evidence, including the persuasive opinion of Dr. Farrell, indicates that the Claimant's hearing loss pre-dated his work with the Employer and the Claimant did not sustain hearing loss due to his work with the Employer.

2. An injury must result from an accident that arose out of and in the course of the claimant's employment to be compensable under the Act. Bickley v. South Carolina Electric & Gas Co., 259 S.C. 463, 192 S.E.2d 866 (1972). The burden is on the claimant to prove such facts as will render the injury compensable, and such an award must not be based on surmise, conjecture, or speculation. Brady v. Sacony of St. Matthews, 232 S.C. 84, 101 S.E.2d 50 (1957). Here, there is insufficient evidence to establish the Claimant sustained hearing loss as a result of his work with the Employer. A finding of compensability would be purely speculative and contrary to the greater weight of the evidence, in light of the lack of any conclusive medical evidence stated to a reasonable degree of medical certainty to prove that the Claimant's hearing loss more likely than not worsened due to his employment with the Employer.

3. S.C. Code Ann. § 42-15-20(C) provides that, in the case of repetitive trauma, the claimant must give notice of an injury to the employer within ninety (90) days of the date the employee discovered, or could have discovered by exercising reasonable diligence, that his condition is compensable, unless reasonable excuse is made to the satisfaction of the Commission for not giving timely notice *and* the Commission is satisfied that the employer has not been unduly prejudiced thereby.

4. In King v. Int'l Knife and Saw, the South Carolina Court of Appeals interpreted and applied the Act's notice requirement for repetitive trauma claims. 395 S.C. 437, 718 S.E.2d 227 (Ct. App. 2011). In that case, the Court held that a claimant's repetitive

trauma condition is not compensable and “the 90-day reporting clock does not start” until the condition either requires medical care or interferes with a claimant’s ability to work. *Id.* at 444-45. Here, the Claimant sought medical treatment for his hearing loss as early as February 21, 2007; therefore, the “90-day reporting clock” started on that date. The Claimant was, by his own admission, aware that he had a compensable claim when he hired a lawyer and filed a Form 50 hearing request in 2007. However, he abandoned the prior claim and did not give notice of the present claim with a different alleged date of injury until seven years later when he filed the present hearing request. Accordingly, the Claimant did not provide timely notice of a repetitive trauma injury, and his request for benefits under the Act is denied.

5. S.C. Code Ann. § 42-15-40 states that a claimant’s right to compensation for a repetitive trauma injury is “barred unless a claim is filed with the commission within two years after the employee knew or should have known that his injury is compensable but no more than seven years after the last date of injurious exposure.” This portion of the statute was added by the Legislature effective July 1, 2007, overruling the South Carolina Supreme Court’s prior contrary decision in Schurilknight v. City of North Charleston, 352 S.C. 175, 574 S.E.2d 194 (2002) (holding the last day of exposure is the date from which the statute of limitations begins to run in a repetitive trauma case, rather than when claimant first discovered that he had a work-related injury). Therefore, the Claimant is misguided in relying on a last date of injurious exposure analysis. Here, the Claimant was aware his hearing had declined in 2007 and believed at that time it was related to his employment with the Employer. But, he did not file the present claim until 2014. The

Claimant did not file his claim within two years after he knew his injury was compensable, and as a result, his claim is barred by the statute of limitations.

6. South Carolina Courts have defined *laches* as “neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done.” Muir v. C.R. Bard, Inc., 336 S.C. 266, 296, 519 S.E.2d 583, 598 (Ct. App. 1999). South Carolina has acknowledged the applicability of the doctrine of *laches* in a workers’ compensation claim. Richey v. Dickinson, 359 S.C. 609, 612, 598 S.E.2d 307, 309 (Ct. App. 2004). “A claimant must prosecute his [workers’ compensation] claim in a timely fashion or it may be barred by the doctrine of *laches*.” McMillian v. Midlands Human Res., 305 S.C. 532, 533, 409 S.E.2d 443, 444 (Ct. App. 1991). If a party knows of his rights and does not timely assert them and that delay causes his adversary to incur expense or otherwise detrimentally change its position, then, under the doctrine of *laches*, equity will refuse to enforce those rights. Richey, 359 S.C. at 612, 598 S.E.2d at 309. The party asserting *laches* must show (1) negligence of the other party; (2) that party’s opportunity to act sooner; and (3) as a result, the asserting party suffered material prejudice. Richey, 359 S.C. at 612, 598 S.E.2d at 309. *Laches* is a defense that operates independently from the statute of limitations. The court is vested with wide discretion in determining what is an unreasonable delay. Ham v. Flowers, 214 S.C. 212, 51 S.E.2d 753 (1949).

7. Here, the Claimant believed in 2007 that his hearing loss was related to his employment with the Employer. He alleged compensable hearing loss and filed a hearing request in 2007 but later withdrew that request and abandoned the claim. Thereafter, he did not pursue the present claim until 2014. We find that this delay in

pursuing the claim was unreasonable, that the Claimant was negligent in his delay, and that he had the opportunity to act sooner but did not. The Claimant offered no reasonable explanation for his seven-year delay in seeking another hearing. Furthermore, we find that the Employer was materially prejudiced by this delay. Therefore, the claim is barred subject to the doctrine of *laches*.

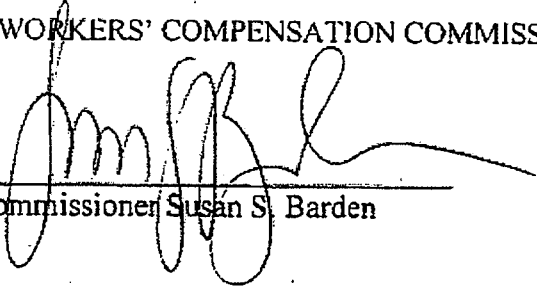
Based upon the Evidence of the Case, and the above Findings of Fact and Conclusions of Law, the following Order is made:

ORDER

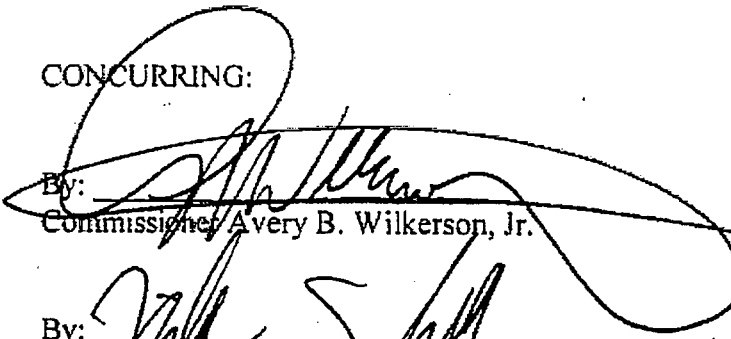
Based on the foregoing, it is hereby ORDERED that the decision and order of the Hearing Commissioner is hereby AFFIRMED IN FULL.

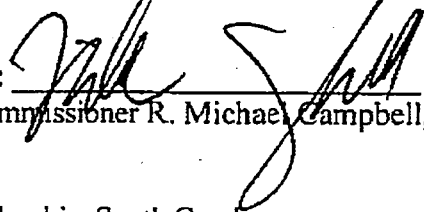
No hearing costs or penalties are assessed in this matter.

S.C. WORKERS' COMPENSATION COMMISSION

By: 
Commissioner Susan S. Barden

CONCURRING:

By: 
Commissioner Avery B. Wilkerson, Jr.

By: 
Commissioner R. Michael Campbell, II

Columbia, South Carolina

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500 • Post Office Box 1715
Columbia, South Carolina 29202-1715
(803) 737-5723 www.wcc.sc.gov



WCC File #: _____
Carrier File #: _____
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: Rodney Ward SSN: 250-84-4123 Employer's Name: ArcelorMittal Georgetown, LLC
Address: 435 Walnut Avenue Address: P.O. Box 619
City: Georgetown State: SC Zip: 29440 City: Georgetown State: SC Zip: 29442
Home Phone: _____ Work Phone: _____ Insurance Carrier: New Hampshire Insurance Company
Preparer's Name: William Stuart Duncan Law Firm: Law Offices of William St Preparer's Phone #: 843-546-1212

A claim for workers' compensation benefits is made based on the following grounds: Date of Injury or Illness: 10/31/2013
☐ Injury ☐ Illness ☒ Repetitive Trauma ☐ Occupational Disease ☐ Physical Brain Injury ☐ Concurrent Jurisdiction

1. The claimant sustained an injury to both ears (Part(s) of Body Injured) on 10/31/2013 (Month/Day/Year) in Georgetown county, state of SC. Body part(s) affected are: hearing loss - binaural
2. Briefly describe how the accident occurred. repetitive trauma hearing loss
3. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.
4. The relationship of employer and employee existed at the time of injury.
5. At the time of the injury the claimant was performing services arising out of and in the course of employment.
6. Notice of the accidental injury was given to the Employer on 10/31/2013 (Month/Day/Year) in the following manner:
Employer is aware of hearing loss from previous testing and claims and due to excessive noise in and around the mill.

- ☒ 7. Due to injury, the claimant is in need of (check one):
☒ (a) medical examination and treatment for: hearing loss
☐ (b) additional medical examination and treatment for: _____

- ☐ 8. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of: _____

- ☒ 9. Due to the injury, the Claimant has permanent disability of the following nature and extent (check one):
☐ (1) General Disability: ☐ Total ☐ Partial ☒ (2) Specific Disability: ☐ Total ☒ Partial ☐ (3) Wage Loss

- ☐ 9a. ☐ A determination of permanent disability is premature at this time.

- ☐ 10. Due to the injury, the Claimant has a serious bodily disfigurement consisting of: _____

10a. At the time of the injury, the Claimant was paid weekly wages of \$ 1,000.00, and demands accounting of days worked and wages earned as provided by law.

10b. Give names and addresses of all employers for whom the Claimant has worked since the date of the accident:
None.

11. Further grounds or unusual aspects of claim: _____

11a. List names and addresses of all physicians or other medical specialists who have seen or treated the Claimant as a result of the accident:
Terry L. Fry, M.D. and Carol H. Davis, M.A., Aud., 401 Marina Drive, Georgetown, SC 29440

11b. To the best of your knowledge, did you have any prior permanent disability?
If yes, describe: No.

12. Appropriate benefits as provided in the Act for the above grounds and other relief as the Workers' Compensation Commission may direct as just and proper.

- ☐ 13a. I am filing a claim. I am not requesting a hearing at this time.

14. Estimated time needed for hearing: _____

- ☒ 13b. I am requesting a hearing. A \$25 fee is required.

☒ Mediation

- ☐ a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
☐ b. Mediation is required pursuant to Reg. 67-1802.
☒ c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
☐ d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

SCWCC

JUL 29 2014

JUDICIAL

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to New Hampshire Insurance Company c/o Chartis Claims, Inc.
address P.O. Box 4230, Alpharetta, GA 30023 on the 21st day of July 2014, by ☐ first class postage ☒ certified mail ☐ personal service.

I verify the contents of this form are accurate and true to the best of my knowledge.

William Stuart Duncan Attorney for Claimant wsdlaw1@aol.com 07/21/2014
Preparer's Signature Title Email Date

Questions about the use of this form should be directed to the Claims Department at 803.737.5723. Refer to Regulations 67-204 through 67-211 and Regulations 67-601 through 67-615 as well as Reg. 67-1801.

WCC Form # 50
Revised 7/13

South Carolina Workers' Compensation Commission
P.O. Box 1715 • 1612 Marion Street
Columbia, South Carolina 29202-1715
(803) 737-5739
www.wcc.sc.gov

WCC File # 1321802
Carrier File # 7A995409241540
Carrier Code #
Employer FEIN

Rodney Ward ### #4-4123
Claimant's Name SSN
435 Walnut Avenue, Georgetown, SC 29440
Address City State Zip
Home Phone: () Work Phone: ()
Date of Injury: 10/31/2013

ArcelorMittal Georgetown, Inc.
Employer's Name
P. O. Box 619, Georgetown, SC 29442
Address City State Zip
New Hampshire Insurance Company
Insurance Carrier

F. Drake Rogers III
Preparer's Name:

Young Clement Rivers, LLP
Law Firm:

(843) 724-6645
Phone #

Date of Injury or Illness: **10/31/2013**

Estimated time for hearing: **45 minutes**

Complete each information blank. Specify clearly when contentions are admitted in part and denied in part. The employer/carrier, in answer to the claim, respectfully shows:

1. It is **ADMITTED/DENIED** the employee sustained an injury or illness on or about the date set forth in the Form 50. The reasons for denial are: The investigation of the employer/carrier does not reveal either an injury by accident or repetitive trauma arising out of and in the course and scope of employment; employer/carrier asserts the notice defense.
2. It is **ADMITTED/DENIED** both the employer and employee were subject to the Workers' Compensation Act at the time in question. The reasons for denial are: See number 1.
3. It is **ADMITTED/DENIED** the relationship of employer and employee existed at the time in question. The reasons for denial are: See number 1.
4. It is **ADMITTED/DENIED** at the time in question the employee was performing services arising out of and in the course of employment. The reasons for denial are: See number 1.
5. It is **ADMITTED/DENIED** notice of injury was given the employer. The reasons for denial are: See number 1.
6. It is **ADMITTED/DENIED** the employee **Needs / Is Entitled to Additional** medical care as a result of injury or illness. The reasons for denial are: See number 1; no medical evidence.
7. It is **ADMITTED/DENIED** the employee is entitled to temporary total disability for the period(s) of: See number 1; no medical evidence.
8. It is **ADMITTED/DENIED** the employee is permanently disabled. The reasons for denial are: See number 1; no medical evidence.
9. It is **ADMITTED/DENIED** the employee has serious disfigurement.
10. It is contended that an average weekly wage of **\$ Form 20 to be provided** applies, according to attached Form 20 as provided by law.
11. Further contentions, grounds of defense, or unusual aspects are: See number 1. Further, employer/carrier denies this matter completely and disputes responsibility for any of claimant's current alleged hearing loss. Employer/carrier specifically denies this matter on the basis of Section 42-15-20 in that notice of the accident or repetitive trauma was not timely provided, in addition to Section 42-15-40 - statute of limitations. It is the position of ArcelorMittal Georgetown, LLC, that any hearing loss suffered by the claimant was with prior employers and, therefore, not the responsibility of ArcelorMittal Georgetown, LLC. In the event that this matter is compensable, ArcelorMittal Georgetown, LLC, would argue that it is responsible only for hearing loss which the claimant can prove occurred during his employment with ArcelorMittal Georgetown, LLC. Any hearing loss sustained prior to his employment with ArcelorMittal Georgetown, LLC, would be the responsibility of some other employer and/or carrier. ArcelorMittal Georgetown, LLC, will argue additional defenses of *Capers v. Flautt & Mann* and *Havird v. Columbia YMCA*, as well as the doctrine of *laches*. Reserve right to amend.

☐ **Mediation**

- ☐ a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
☐ b. Mediation is required pursuant to Reg. 67-1802.
☐ c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
☐ d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.
Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

I verify the contents of this form are accurate and true to the best of my knowledge.

Preparer's Signature _____ Attorney for Employer/Carrier drogers@ycrlaw.com
Title _____ Email _____

August 20, 2014
Date

Refer to R.67-204 through R.67-210 and R.67-601 through R.67-615 for mediation. Questions about the use of this form may be directed to the Commission's Judicial Department at 803.737.5675 or jud@wcc.sc.gov or mediation@wcc.sc.gov. Pursuant to R.67-606, a Form 20 must be filed with the Claims Department at least 30 days from the date of filing this form.

WCC Form # 51
Revised 7/13

51

Employer's Answer to Request for Hearing

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
803-737-5675 www.wcc.sc.gov



WCC File #: **1321802**
Carrier File #: _____
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: Rodney Ward SSN: 250 - 84 - 4123 Employer's Name: ArcelorMittal Georgetown, Inc.
Address: 435 Walnut Avenue Address: P.O. Box 619
City: Georgetown State: SC Zip: 29440 City: Georgetown State: SC Zip: 29442
Home Phone: (843) 546 - 3753 Work Phone: () - Insurance Carrier: New Hampshire Insurance Company
Preparer's Name: William Stuart Duncan Law Firm: Law Offices of William Stuart Duncan, P.A. Preparer's Phone #: (843) 546 - 1212

REQUEST FOR COMMISSION REVIEW

Request for Commission Review by ☒ Claimant ☐ Employer (check one) Date of Injury or Illness: 10/31/13
(m/d/yyyy)

The undersigned makes application for review of the findings of the Commissioner in the above-captioned case. The request for review is based on the following grounds: (State the grounds of your appeal in the form of questions presented. Each question presented must contain a concise statement of one proposition of law or fact. Refer to evidence by title and exhibit number. Use additional pages if necessary).

Whether the Commission misapprehended the meaning of King v. International Knife, 395 SC 437 when he found the Claimant's case did not meet the requirements of §42-15-20(c) and §42-1-10?

Whether the Commissioner committed error when he found the Claimant knew or should have known his condition was compensable in 2007

(Check one) Oral argument ☒ is ☐ is not requested. Appellant's request for oral argument is waived if not indicated on this form.

☐ Mediation

☐ Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.

Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to F. Drake Rogers, III, Esquire, Young Clement Rivers, LLP, P.O. Box 993, Charleston, SC 29402 on the 1st day of September 2015, by X first class postage certified mail personal service.

Preparer's Signature

Attorney for Claimant
Title

wsdlaw1@aol.com
Email

09/01/15
Date

Check this box if you are not represented by an attorney ☐

Questions about the use of this form should be directed to the Judicial Department at 803.737.5675 or appeals@wcc.sc.gov.

If the claimant appeals and is not represented by counsel, the Judicial Department will properly serve this form pursuant to Reg. 67-607 C. Pursuant to Reg. 67-205 and Reg. 701, the appeal must be postmarked no later than 14 days from the date of service of the Decision and Order of the Hearing Commissioner along with the filing fee. Attach a Form 32, if you are unable to pay the filing fee. Refer to Reg. 67-211 and Reg. 67-701 through 711.



Claimant's Name: Rodney Ward Employer's Name: ArcelorMittal Georgetown, Inc.
Address: 435 Walnut Avenue Address: P.O. Box 619
City: Georgetown State: SC Zip: 29440 City: Georgetown State: SC Zip: 29442
Home Phone: (843) 546-3753 Work Phone: () - Carrier: New Hampshire Insurance Company
Preparer's Name: William Stuart Duncan Preparer's Phone #: (843) 546-1212

A claim for workers' compensation benefits is made based on the following grounds:

☐ Injury ☐ Illness ☒ Repetitive Trauma

1. Compensation Rate: 743.72 2. AWW: \$2,133.31 Date of Injury: 10/31/2013
3. Type of injury and body part(s): Repetitive trauma hearing loss both ears
4. Facts in controversy: Whether the Claimant sustained repetitive trauma hearing loss to both ears during his employment at ArcelorMittal Georgetown, Inc. Claimant provided notice to employer on 7/21/14 however, employer knew of Claimant's hearing loss through hearing test Which were periodically performed during his years of exposure at ArcelorMittal Georgetown, Inc.
5. Legal issues involved: §42-1-172; §42-9-30
6. Unusual aspects: None
7. Witnesses (designate if expert):* Claimant, Rodney Ward
8. Exhibits: Please see attached Notice of Witnesses and Written Reports/Physician or Other Evidence to be Introduced on Behalf of Claimant
9. Medical evidence (indicate report pursuant to R.67-612; deposition or appearance):
Please see attached Notice of Witnesses and Written Reports/Physician or Other Evidence to be Introduced on Behalf of Claimant
10. Name, address, and specialty, if any, of the treating physician: Terry L. Fry, M.D., ENT - Head and Neck Surgery, 401 Marina Drive, Georgetown, SC 29440
11. Impairment rating(s); body part(s); physician and date of opinion: 29% to right ear and 39% to left hear, 31% binaural hearing impairment, Dr. Terry L. Fry, 9/10/2014
12. I am amending my Form 50/51 in the following manner: _____

☒ **Mediation**

- ☐ a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
☐ b. Mediation is required pursuant to Reg. 67-1802.
☐ c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
☒ d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

I verify the contents of this form are accurate and true to the best of my knowledge.

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to F. Drake Rogers, III, Esquire, Young Clement Rivers, LLP, P.O. Box 993, Charleston, SC 29402 on the 9th day of April 2015 by: ☒ first class postage ☐ certified mail ☐ personal service.

Signature: William Stuart Duncan
Date of hearing: April 28, 2015

Email: wsdlaw1@aol.com
Time needed for hearing: 1 hour

Questions about the use of this form should be directed to the Jurisdictional Commissioner. Refer to Regulations 67-204 through 67-211 and Regulations 67-601 through 67-615; as well as Regulation 67-1801. File this form and proof of service on the opposing party according to R.67-611 and R.67-212. Do not send medical reports. * Commissioners reserve the right to admit expert witnesses at hearings.

Claimant's Name: Rodney Ward
Address: 435 Walnut Avenue Georgetown, SC 29440
Home Phone: Work Phone:
Preparer's Name: F. Drake Rogers III

Employer's Name: ArcelorMittal Georgetown, Inc.
Address: P. O. Box 619 Georgetown, SC 29442
Carrier: New Hampshire Insurance Company
Preparer's Phone #: (843) 724-6645

A claim for workers' compensation benefits is made based on the following grounds:

☐ Injury ☐ Illness ☒ Repetitive Trauma

1. Comp. Rate: \$ 743.72 2. AWW: \$ 2,133.31 Date of Injury: 10/31/2013
3. Type of injury and body part(s): Alleged hearing loss.
4. Facts in controversy: Whether Claimant can satisfy his burden of proving a compensable injury by repetitive trauma as a result of exposure to noise in his work environment at ArcelorMittal? Whether the Claimant gave timely notice of a claim once he knew or should have known he had one? Whether this claim is barred by the statute of limitations? Whether Claimant's hearing loss occurred prior to his employment with ArcelorMittal, and therefore the responsibility of some other employer/carrier? In the event that this matter is deemed compensable, what amount of hearing loss apportionment is a result of occupational exposure at ArcelorMittal, and what amount of hearing loss apportionment is due to non-occupational exposure and/or occupational exposure at previous employers? Defendants seek credit for binaural impairment which was determined prior to Claimant's employment with ArcelorMittal. (See attached Addendum: Binaural Hearing Impairment Chart.) Employer/Carrier asserts the defenses of Capers v. Flautt & Mann and Havird v. Columbia YMCA, as well as the doctrine of laches.
5. Legal issues involved: See #4. All affirmative defenses including but not limited to §42-15-20 notice; §42-15-40 statute of limitations; Capers v. Flautt, 305 S.C. 254, 407 S.E.2d 660 (1991); Havird v. Columbia YMCA, 308 S.C. 397, 418 S.E.2d 329 (1992); and doctrine of laches.
6. Unusual aspects: _____
7. Witnesses (designate if expert)* Joshua Fowler or other representative from the insured may testify.
8. Exhibits: (A) Georgetown Steel Audiograms/Calculations 8/21/02, 7/11/01, 6/14/00, 10/4/94, 10/19/83; (B) ArcelorMittal Audiograms/Calculations 8/1/12, 11/1/10, 12/12/07, 10/30/06, 9/19/05, 9/10/04; (C) SCWCC #0706525, Rodney Ward v. Mittal Steel USA (d/a 2/21/07); correspondence and Form 50 dated 5/21/07, correspondence dated 8/2/07, and Order dated 9/7/07; (D) Memorandum of Legal Issues presented by Attorney Duncan dated 5/25/07 in the case of Jack Woodward v. Georgetown Steel SCWCC #0326658. Transcript of Claimant's deposition taken 9/18/2014 may be submitted at the hearing.
9. Medical evidence: (indicate report pursuant to R.67-612; deposition or appearance):
(S) Dr. Howard Farrell - 9/12/2014
10. Name, address, and specialty, if any, of the treating physician: None authorized except IME by Dr. Howard Anthony Farrell.
11. Impairment rating(s); body part(s); physician and date of opinion:
8/21/2002 (prior to employment at ArcelorMittal) Georgetown Steel Audiogram reflects 20.937% binaural impairment.
6/29/2007 (prior claim) Dr. Frye determined 23% binaural impairment.
9/12/2014 Dr. Anthony Farrell determines 32.51% binaural impairment but states, "I do not believe that his hearing loss is in any way due to his time at ArcelorMittal."
12. I am amending my Form 50/51 in the following manner: _____
☒ Mediation
☐ a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
☐ b. Mediation is required pursuant to Reg. 67-1801.
☐ c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
☒ d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.
Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

I verify the contents of this form are accurate and true to the best of my knowledge.

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to William S. Duncan, Esquire

Address P. O. Drawer 736, Georgetown, SC 29442 on the 15th day of April 2015

By ☒ first class postage ☐ certified mail ☐ personal service.

Signature: F. Drake Rogers III

Date of hearing: 4/28/15

Email: drogers@vcdaw.com

Time needed for hearing: 1 hour

Questions about the use of this form should be directed to the Jurisdictional Commissioner. Refer to Regulations 67-204 through 67-211 and Regulations 67-601 through 67-15; as well as Regulation 67-1801. File this form and proof of service on the opposing party according to R.67-611 and R.67-212. Do not send medical reports. * Commissioners reserve the right to admit expert witnesses at hearings.

Rodney Ward v. ArcelorMittal Georgetown, Inc.
WCC File Number: 1321802
Date/Accident: 10/31/2013

ADDENDUM TO PRE-HEARING BRIEF
ON BEHALF OF THE EMPLOYER/CARRIER

BINAURAL HEARING IMPAIRMENT CHART

AUDIOGRAMS	DATE	RIGHT	LEFT	BINAURAL IMPAIRMENT
Georgetown Steel	10/19/1983	15	18.75	15.625
Georgetown Steel	10/4/1994	11.25	16.875	12.187
Georgetown Steel	6/14/2000	16.875	37.5	20.312
Georgetown Steel	7/11/2001	15	18.75	15.625
Georgetown Steel	8/21/2002	20.625	22.5	20.937
MITTAL	9/10/2004	13.125	24.375	15
MITTAL	9/19/2005	15	45	20
MITTAL	10/30/2006	9.375	22.5	11.562
DR. FRY	2/21/2007	21	32	23
MITTAL	12/17/2007	13.125	24.375	15
MITTAL	11/1/2010	37.5	35.625	35.937
MITTAL	8/1/2012	18.75	28.125	20.312
DR. FRY	3/4/2014	29	39	31
DR. FARRELL	9/12/2014	31.88	35.63	32.51

**STATE OF SOUTH CAROLINA
BEFORE THE SOUTH CAROLINA
WORKERS COMPENSATION COMMISSION
WCC FILE NO.: 1321802**

RODNEY WARD,	)	
	)	
Claimant,	)	
	)	
-versus-	)	
	)	
ARCELORMITTAL GEORGETOWN, INC.,	)	CLAIMANT'S MEMORANDUM ON LEGAL ISSUES
	)	
Employer,	)	
	)	
and	)	
	)	
NEW HAMPSHIRE INSURANCE COMPANY,	)	
	)	
Carrier/Defendant.	)	
	)	

The Claimant has been employed by the Georgetown Steel making facility since October 2, 1970. Due to long time exposure to high noise levels on his job, Claimant has suffered hearing loss due to a repetitive trauma injury. For purposes of this hearing the Claimant's date of injury is his last day worked, October 31, 2013. Claimant gave notice to Employer on October 31, 2013. Claimant as diagnosed with hearing loss by Dr. Terry Fry in February of 2007 where he was found to have 23% hearing loss. Claimant was examined again by Dr. Terry Fry on March 4, 2014 and found that he impairment had increased from 23% to 31%.

A. LEGAL ISSUES IN HEARING LOSS

1. INTRODUCTION

Hearing loss, in South Carolina, is compensated as a scheduled injury pursuant to §42-9-30 (17), S.C. Code Ann.¹ Accordingly, partial hearing loss is expressed as a percentage of total hearing loss. The statute, in its second clause, directs the Workers Compensation Commission to promulgate regulations, standardizing hearing loss testing. The Commission issued Regulations 67-1102 (S.C. Code of Regulations R. 67-1102).² Under the regulations, hearing loss is calculated at only four frequencies, 500 Hz, 1000 Hz, 2000 Hz, and 3000 Hz. R. 67-1102 B. (1).

2. THE FORMULA IN R. 67-1102 IS AN AID IN DETERMINING HEARING LOSS.

Regulations 67-1102 B. sets forth a formula for calculating hearing loss handicap. The three-step formula yields the hearing handicap as a binaural assessment. Thus, the hearing handicap is expressed as an average impairment of the Claimant's hearing in the range 500 Hz - 3000 Hz.

DISCUSSION

I. REPETITIVE TRAUMA

Repetitive trauma injuries differ from injuries which occur on a specific date because they

¹§ 42-9-30. Amount of compensation and period of disability for certain injuries.

In cases included in the following schedule, the disability in each case shall be deemed to continue for the period specified and the compensation so paid for such injury shall be as specified therein, to wit: ...

(17) For the complete loss of hearing in one ear, sixty-six and two-thirds percent of the average weekly wages during eighty weeks; and for the complete loss of hearing in both ears, sixty-six and two-thirds percent of the average weekly wages during one hundred sixty-five weeks, and the Commission shall by regulation provide for the determination of proportional benefits for total or partial loss of hearing based on accepted national medical standards.

²R.67-1102. Loss of Hearing.

A. The method for determining hearing impairment is based on the American Academy of Otolaryngology Guide for Evaluation of Hearing Handicap, copyright 1979, which is based upon the American Medical Association's Guides to the Evaluation of Permanent Impairment, copyright 1977.

B. The calculation of a hearing handicap is derived from the pure tone audiogram, obtained with an audiometer calibrated to ANSI S3.6-1969 standards and as follows.

(1) The average of the hearing threshold levels at 500 Hz, 1000Hz, 2000Hz, and 3000Hz are calculated for each ear.

(2) The percent impairment for each ear is calculated by multiplying by 1.5% the amount that the above average hearing threshold level exceeds 25dB (low fence) up to a maximum of 100%, which is reached at 92dB (high fence).

(3) The hearing handicap, a binaural assessment, is calculated by multiplying the smaller percentage (better ear) by five, adding this figure to the larger percentage (poorer ear), and dividing the total by six.

have “a gradual onset caused by the cumulative effects of repetitive traumatic events or “mini-accidents.” *Schulknicht v. City of North Charleston*, 352 SC 175, 574 SE2d 194 (2002). The *Schulknicht* Court characterized noise-induced hearing loss as a repetitive trauma injury. *Id.* The Supreme Court further noted, “it is difficult to determine the date an accident occurs in a repetitive trauma case because there is no definite time of injury.” *Id.* A repetitive trauma injury is compensable as an injury by accident. *Pee v. AVM, Inc.*, 352 SC 167, 573, SE2d 785 (2002).

Because of its peculiar nature, repetitive trauma presents issues of statute of limitations, notice of injury to the employer, and employee defenses.

II. STATUTE OF LIMITATIONS

A claimant must file his workers’ compensation claim within two (2) years of the injury claimed. §42-15-40, S.C. Code Ann. For a repetitive trauma injury, the date of the injury is deemed to be “the last day of exposure” to the trauma or for some claimant’s, “the last day worked” for the employer. *Schulknicht v. City of North Charleston*, 352 SC 175, 574 SE2d 194 (2002). For this Claimant, the two (2) year statute of limitations began to run on October 31, 2013. Claimant filed his claim on July 21, 2014, well within the two (2) year limitation.

III. NOTICE TO EMPLOYER

The notice to employer requirement is set out in §42-15-20, S.C. Code Ann. That section says notice of the accident shall be given to employer immediately, or as soon thereafter as practicable: In any event the notice must be given within 90 days of the “accident.” The key word here is “accident.” For a repetitive trauma, an accident occurs, on the last day of exposure or the last day worked. *Schulknicht v. City of North Charleston*, 352 SC 175, 574 SE2d 194 (2002). Under workers compensation law, a claimant is required to give written notice of his injury to the employer.

The issue is, on what date the 90 day notice period begins to run.

The Court in *Schulknicht* addressed the notice to employer at 352 S.C. 178-179, 574 S.E.2d 195-196. “We also note the separate requirement that a worker give the employer notice of injury.” This notice requirement ensures the employer will not be unfairly prejudiced by a two year period for filing that begins from the last date of exposure. *Id.* Immediately after that comment, the Court announced its holding that the statute of limitations begin to run on the last day of exposure. It is reasonable to infer the Court also intended, and would likewise apply, the “last day of exposure” rule to the §42-15-20 notice requirements.

However, when the employer has actual knowledge of the injury, the notice requirement is deemed satisfied, so long as the employer is not prejudiced. *Mize v. Sangamo Electric Company*, 251 S.C. 250, 161 S.E.2d 846 (1968). The burden is upon the employer to prove prejudice. *Id.* Where there is evidence the employer had actual knowledge of every pertinent fact required of a written notice, the notice requirement was satisfied. *Dawkins v. Capitol Construction Co.*, 252 S.C. 536, 167 S.E. 2d 439 (1969). In both *Mize* and *Dawkins*, the employer had actual knowledge of the accidents. Here, Georgetown Steel had actual knowledge of the hearing loss of the Claimant. Georgetown Steel administered periodic hearing tests and knew of the Claimant’s hearing loss before the Claimant knew. Georgetown Steel’s actual knowledge of the “accidents” satisfies the notice requirement of § 42-15-20. Two Tennessee cases are on point with this case. In *Luna v. GAF Fiberglass Corp.*, 2002 WL 975147 (Supreme Ct. Tenn. 2002), the Claimant did not know the results of the employer administered hearing tests. In another Tennessee case, the court found the notice requirement satisfied when the employer had actual knowledge of the claimant’s hearing loss. *George v. Building Materials Corp.*, 44 S.W. 3d 481(Tenn. 2001). *See also, Rockwell International v. Reed*, 804 P.2d

460 (Oklahoma App. 1990) (employer had notice of claimant's injury and neglected to advise claimant of right to file claim after employer sponsored hearing tests); *Boeing Helicopter Co. v. Workmen's Comp. Appeal Bd.*, 629 A.2d 184 (Penn. Cmwlth. 1993) (Employer waived notice requirement due to its knowledge of claimant's hearing loss); *Duquesne Light Co. v. W.C.A.B.*, 450 A.2d 1100 (Penn. Cmwlth. 1982) (employee not penalized for giving notice to employer before fully diagnosed with disabling injury).

A Court of Appeals case addresses the notice issue in repetitive trauma cases. *Bass v. Isochem*, 365 S.C. 454 (Ct. App. 2005). In *Bass*, the court said:

“We rule that in applying section 42-15-20 to a repetitive trauma injury, i.e., carpal tunnel syndrome, the Workers' Compensation Commission shall determine the statutory notice requirement from the time of disablement of the claimant. Notice begins to run when the employee becomes disabled and could discover with reasonable diligence his condition is compensable.”³ *Id* at p. 383.

In the last sentence the court set two triggering events as starting the 90 day notice deadline: (1) when the claimant becomes disabled; and (2) when, with reasonable diligence, he could discover his condition was compensable. The two triggering events are joined by the conjunctive “and”, thus implying both events be satisfied. In this case, claimant gave notice of his injury more than 90 days after his last day worked. However, the date to begin running of the 42-15-20 requirement was on the day the later of the two triggering events took place. The claimant was tested and evaluated by Dr. Terry Fry. It was only then he became aware of his compensable condition. Accordingly, the 42-15-20 period would begin to run on the day Dr. Fry diagnosed his hearing loss. Claimant filed his claim before he fully diagnosed by Dr. Fry.

³This is exactly the same interpretation given to § 42-15-20 in occupational disease cases. *Bailey v. Covil Corp.*, 291 S.C. 417, 354 S.E.2d 35 (1987)

IV. CLAIMANT'S HEARING LOSS WAS AN "UNLOOKED FOR AND UNUSUAL EVENT."

Claimant's hearing loss was an unlooked for and unusual event. *Capers v. Flaut*, 305 S.C. 254, 407 S.E. 2d 660 (Ct. App. 1991) and *Havird v. Columbia YMCA*, 308 S.C. 397, 418 S.E. 2d 329 (Ct. App. 1992),⁴ do not apply here. Both *Capers* and *Havird* are distinguishable from the present case.

In *Capers*, the claimant suffered contact dermatitis incident to his job as a dishwasher. The court there found *Capers*' dermatitis was not an injury by accident because it could have been anticipated. *Capers* left a previous job because of the same condition. The dermatitis was therefore not an "unlooked for or untoward event," that the claimant did not expect. *Capers* at 256, 407 S.E. 2d 661. Likewise, in *Havird*, the claimant suffered from varicose veins, aggravated by the conditions of his employment. The uncontroverted medical testimony revealed *Havird*'s varicose veins were naturally occurring, not caused by his employment. The court concluded *Havird*'s varicose veins were not injury by accident. *Havird* at 399, 418 S.E. 2d 330.

Here, the Claimant suffered a hearing loss injury by repetitive exposure to noise in the workplace. In *Pee v. AVM, Inc.*, 352 S.C. 167, 573 S.E. 2d 785 (2002), the Supreme Court recognized repetitive trauma injury as "injury by accident." *Pee* went on to say that "an injury is unexpected, bringing it within the category of accident, if the *worker* did not intend it or expect it would result from what he was doing." *Id.* at 171, 573 S.E. 2d 787. In *Pee*, the court found no evidence the claimant expected to be injured by the repetitive trauma. *Id.* (Emphasis added). The court apparently placed the burden on the employer to prove the injury was expected. In the present case, there is no evidence Rodney Ward anticipated or expected that he would be injured by exposure

⁴ Both *Capers* and *Havird* pre-date *Pee v. AVM, Inc.*, 352 S.C. 167, 573 S.E. 2d 785 (2002).

to industrial noise. *See also: Hargrove v. Titan Textile Co.*, 360 S.C. 276, 599 S.E. 2d 604 (Ct. App. 2004), *Creech v. Ducane Co.*, 320 S.C. 559, 467 S.E. 2d 114 (Ct. App. 1995).

The Pee Court found as a matter of law, “a repetitive trauma injury meets the definition of injury by accident in that it is an unforeseen injury caused by trauma.” *Pee* at 174, 573 S.E. 2d 789. Therefore, a finding that Rodney Ward’s hearing loss is a repetitive trauma injury is conclusive it was unforeseen.

Employer, is attempting to penalize Claimant since he had symptoms of a repetitive trauma (hearing loss), but continued to work. These facts are nearly identical to *Ralph Schurlknight*⁵, who worked as a fireman for twenty four (24) years and noticed an onset of hearing loss in the later years of employment. Our Supreme Court, in rejecting the discovery rule in hearing loss repetitive trauma cases, reasoned that such a rule would prejudice a Claimant who discovers symptoms of a repetitive trauma but continues to work. The importance here of the *Schurlknight* holding to Mr. Ward’s case, is our Supreme Court has decided a Claimant such as Mr. Ward will not be precluded from bringing a claim by continuing to do the job in the environment provided by the Employer. Although, decided on different grounds, it is important to note that the *Schurlknight* case was decided well after the *Havird* and *Capers* cases.

Must the Claimant who continues to work after becoming aware of a hearing impairment file a workers’ compensation claim each time he has an increase in hearing loss?

Workers’ Compensation should adopt a standard for persons affected by repetitive trauma who continue their employment where employer and Claimant are aware of his continued injurious exposure. Some types of repetitive exposure, such as noise, can result in increased injury i.e.

⁵*Schurlknight v. City of North Charleston*, 352 S.C. 175, 574 S.E. 2d 194 (2003)

progressive hearing impairment. That increased impairment however has little or no effect on the employee's ability to perform his job. However, the impairment can and does affect the employee's quality of life and his overall functioning in society. The hearing loss also limits Mr. Ward, should he try to work in some other job where hearing is more important.

In this case, Rodney Ward knew his hearing impairment in 2007 was 23% binaural. His employer also knew of his hearing impairment as evidenced by employer conducted hearing tests. Mr. Ward did, at that time, file a claim which he subsequently withdrew. Yet, he continued to work and ArcelorMittal continued to keep him employed. Apparently, ArcelorMittal was satisfied with his performance right up until his retirement, despite his hearing impairment. Following his retirement, Mr. Ward decided to file this claim for hearing loss, brought about by repetitive loud noise trauma.

Employees, situated as Mr. Ward, are faced with a dilemma :

- (1) Does he file his claim when he first becomes aware of his impairment and its cause?
- (2) Does he wait until leaving the job before filing his claim?
- (3) If he files, is compensated and then continues to work and suffers more injuries and impairment, is he precluded from filing again?
- (4) If he does not file when he becomes aware of his hearing impairment, continues to work and then files a claim when he leaves the job, is he barred by statute of limitations and notice requirements?

Surely, a claimant should not be required to file a claim each time his hearing deteriorates. That would mean filing multiple claims as the impairment increases; arguably, every day.

Certainty and uniformity require that the employee who continues to work after suffering impairment, know what his options and requirements are. After all, South Carolina law requires the workers' compensation act be construed liberally in favor of coverage. *Ellison v. Frigidaire Home Products*, 371 S.C. 159, (2006).

Pursuant to *Curiel v. Environmental Management SVC*, 376 S.C. 23 (2007), the Commission is required to consider Claimant's pre-existing hearing impairment along with the new and further injury to his hearing.⁶ The "new injury" concept is further supported by *Ellison v. Frigidaire Home Products*, 371 S.C. 159, (2006). "[C]laimant's present injury was properly considered in combination with his preexisting impairment, to determine eligibility for benefits. See also, *Butts v. C.R. England Trucking*, 2008 WL 9832868 (S.C. App.), 2008) (Unpublished Opinion) which followed the *Ellison* standard. Here we have Claimant with a prior or preexisting hearing impairment, return to work in the same noisy conditions, suffering a new and more extensive hearing loss.

V. LAST INJURIOUS EXPOSURE RULE; GEATHERS RULE

The South Carolina Supreme Court adopted the "last injurious exposure" rule in *Geathers v. 3V, Inc.*, 371 SC 570 641. S.E. 2d 29 (2007). The last injurious exposure rule provides a solution where a worker suffers successive workplace injuries during a period covered by changes in employers or changes in insurance carriers covering the same employer. Although *Geathers* is not a repetitive trauma case, it is likely the court would apply *Geathers* to repetitive trauma, including progressive hearing loss. In adopting the last injurious exposure rule, the Court also rejected apportionment among successive employers and successive carriers. Because the Claimant now

⁶Interpreting §42-9-400(a)

works for Mittal Steel, and out of an abundance of caution, the Claimant has amended his claim to include ArcelorMittal Steel.

Last Injurious Exposure Rule

The law in South Carolina places full liability upon the carrier covering the risk at the time of the most recent injury that bears a causal relation to the disability (wherein the Supreme Court adopted the last injurious exposure rule). *Geathers v. 3V, Inc.*, 371 S.C. 570, 641 S.E.2d 29 (2007). The Court held this to be true, even if the prior injury significantly contributed to the final condition. Id at 347.

"...[O]nce a rebuttal presumption is established that the Claimants hearing impairment is work-related, the employer (here ArcelorMittal) with whom the Claimant was last injuriously exposed to hazardous noise shall be exclusively liable for benefits does not require a Claimant to prove that the last employment caused a measurable hearing loss, liability is imposed exclusively" on the employer with whom the Claimant was last injuriously exposed to the hazardous noise. AMJUR WORKERS Section 186. Here Claimant was exposed to the harshest noise in the mill during his last six years of employment and, although not required to do so, can show a measurable hearing loss which all doctors point his hazardous exposure to noise at the ArcelorMittal plant as the cause of his hearing loss. In fact, on April 6, 2006, Claimant was diagnosed by Dr. Fry with a 24% binaural hearing loss. On June 29, 2006, Claimant was diagnosed by Dr. Arthur LaBruce a 27% binaural hearing loss. The Claimant's hearing continued to deteriorate during seven more years of exposure from the loud noises at the mill and was determined on September 10, 2013 to have a 29% binaural hearing loss.

VI. DEFENSES

Various defenses have been raised in repetitive trauma cases: pre-existing injury; failure to follow medical advice; congenital hearing impairment; injury unrelated to employment; aging; disease; statute of limitations; and notice to employer. In any workers compensation case where the employer raises an affirmative defense, the employer bears the burden of proving the elements of the defense. *Youmans v. Coastal Petroleum Co.*, 333 S.C. 195, 508 S.E.2d 43 (Ct.App. 1998); *Chandler v. Suitt Constr. Co.*, 288 S.C. 503, 343 S.E.2d 633 (Ct.App. 1986); *Zeigler v. S.C. Law Enforcement Div.*, 250 S.C. 326, 157 S.E.2d 598 (1967).

In this case, there is no competent evidence the Claimant's hearing loss could be attributed to failure to follow medical advice, pre-existing injury, congenital hearing impairment, injury unrelated to employment, disease, aging. The issues of statute of limitations and notice to employer are discussed *supra*.

VII. DODGE MEDICALS

The Claimant is entitled to lifetime medicals pursuant to §42-15-60, S.C. Code Ann. and *Dodge v. Bruccoli, Clark, Layman, Inc.*, 334 S.C. 574, 514 S.E.2d 593 (Ct.App. 1999). The Commission may order further medical treatment which "will tend to lessen the period of disability" within the meaning of §42-15-60. *Id.* Because of the Claimant's hearing loss, he will need further diagnosis and care for his disability. That continuing care would consist of periodic hearing examinations and hearing aids. Hearing aids would need to be replaced on a regular basis. Such treatment would tend to lessen Claimant's period of disability within the spirit of *Dodge*.



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April 27, 2015

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**STATE OF SOUTH CAROLINA
BEFORE THE SOUTH CAROLINA
WORKERS COMPENSATION COMMISSION
WCC FILE NO.: 1321802**

RODNEY WARD,	)	
	)	
Claimant/Appellant,	)	
	)	
-versus-	)	APPELLANT'S BRIEF
	)	
ARCELORMITTAL GEORGETOWN,	)	
LLC,	)	
	)	
Employer,	)	
	)	
and	)	
	)	
NEW HAMPSHIRE INSURANCE	)	
COMPANY,	)	
	)	
Carrier/Defendant.	)	
	)	

STATEMENT OF THE CASE

This appeal to the full Commission concerns a Workers' Compensation claim submitted by the Claimant/Appellant for workplace noise-induced repetitive trauma hearing loss, culminating upon his retirement from Employer on October 31, 2013.

Rodney Ward (herein Appellant) has been employed by the Georgetown steel making facility since October 2, 1970. Due to long time exposure to high noise levels on his job, Appellant has suffered hearing loss due to a repetitive trauma injury. For purposes of this hearing the Appellant's date of injury is his last day worked, October 31, 2013. Appellant gave notice to Employer on October 31, 2013. Appellant was diagnosed with hearing loss by Dr. Terry Fry in February of 2007 where he was found to have 23% hearing loss. Appellant was examined again by Dr. Terry Fry on

March 4, 2014 and found that his impairment had increased from 23% to 31%.

The case was heard by the Honorable T. Scott Beck on April 28, 2015. Commissioner Beck signed the Decision and Order on August 20, 2015, denying the claim. Appellant filed a Form 30, Request for Commission Review appealing the Decision and Order on September 1, 2015.

STANDARD OF REVIEW

A review of the decision of the single Commissioner is to the full Commission. §42-17-50, S.C. Code Ann. The full Commission may “reconsider the evidence, receive further evidence, rehear the parties or their representative and, if proper, amend the award.” *Id.* In such a review, “the Commission may make its own findings of fact and reach its own conclusions of law either consistent or inconsistent with those of the hearing commissioner. *Lowe v. Am-Can Transport Services, Inc.*, 283 S.C. 534, 324 S.E. 2d 87 (Ct. App. 1984). “The appellate panel is the ultimate fact finder in Worker’s Compensation cases and is not bound by the single commissioner’s findings of fact. The final determination of witness credibility and the weight to be accorded evidence is reserved to the appellate panel.” *Gadson v. Mikasa Corp.*, 368 S.C. 214, 222, 628 S.E. 2d 262, 266 (Ct.App. 2006) (Internal citations omitted).

STATUTORY AUTHORITY

Section 42-1-172, S.C. Code Ann., is the exclusive authority on Repetitive Trauma Injury. Subsection (A) states in part, “Compensability of a repetitive trauma injury must be determined only under the provisions of this statute.”¹ (Emphasis added). Further, §42-15-20(C)² governs notice to

1. § 42-1-172. Definitions.

(A) “Repetitive trauma injury” means an injury which is gradual in onset and caused by the cumulative effects of repetitive traumatic events. Compensability of a repetitive trauma injury must be determined only under the provisions of this statute.

employer requirements for repetitive trauma injury and §42-15-40 governs the time for filing a claim as a result of repetitive trauma injury.

ISSUES FOR REVIEW

1. Whether the Single Commissioner erred when he found that Appellant failed to give timely notice of his repetitive trauma hearing loss to Employer.
2. Whether the Single Commissioner erred when he found that Appellant failed to timely file his claim (Form 50) of his repetitive trauma hearing loss.
3. Whether the Single Commissioner erred when he ruled Appellant's claim was barred by the equitable doctrine of *laches*.

(B) An injury is not considered a compensable repetitive trauma injury unless a commissioner makes a specific finding of fact by a preponderance of the evidence of a causal connection that is established by medical evidence between the repetitive activities that occurred while the employee was engaged in the regular duties of his employment and the injury.

(C) As used in this section, "medical evidence" means expert opinion or testimony stated to a reasonable degree of medical certainty, documents, records, or other material that is offered by a licensed and qualified medical physician.

(D) A "repetitive trauma injury" is considered to arise out of employment only if it is established by medical evidence that there is a direct causal relationship between the condition under which the work is performed and the injury.

(E) Upon reaching maximum medical improvement, the employee may be entitled to benefits pursuant to Section 42-9-10, 42-9-20, or 42-9-30. Medical benefits for compensable repetitive trauma injuries shall be as provided elsewhere in this title.

2. §42-15-20(C). In the case of repetitive trauma, notice must be given by the employee within ninety days of the date the employee discovered, or could have discovered by exercising reasonable diligence, that his condition is compensable, unless reasonable excuse is made to the satisfaction of the commission for not giving timely notice, and the commission is satisfied that the employer has not been unduly prejudiced thereby.

4. Whether the Single Commissioner erred when he found that Appellant failed to prove causation of his repetitive trauma hearing loss was sustained while employed by Employer.

ARGUMENT

1. **THE SINGLE COMMISSIONER ERRED WHEN HE FOUND THAT APPELLANT FAILED TO GIVE TIMELY NOTICE OF HIS REPETITIVE TRAUMA HEARING LOSS, TO EMPLOYER.**

The Single Commissioner adopted the Employer's stance to penalize Appellant because he had symptoms of a repetitive trauma (hearing loss), but continued to work. These facts are nearly identical to *Ralph Schurlknight*³, who worked as a fireman for twenty four (24) years and noticed an onset of hearing loss in the later years of employment. Our Supreme Court, in rejecting the discovery rule in hearing loss repetitive trauma cases, reasoned that such a rule would prejudice a Claimant who discovers symptoms of a repetitive trauma but continues to work. The importance here of the *Schurlknight* holding to Mr. Ward's case, is our Supreme Court has decided a Appellant such as Mr. Ward will not be precluded from bringing a claim by continuing to do the job in the environment provided by the Employer. Must the Claimant who continues to work after becoming aware of a hearing impairment file a workers' compensation claim each time he has an increase in hearing loss? The obvious answer is no.

Workers' Compensation must adopt a standard for persons affected by repetitive trauma (especially hearing loss) who continue their employment where employer and Claimant are aware of employee's continued injurious exposure. Some types of repetitive exposure, such as noise, can result in increased injury resulting in progressive hearing impairment. That increased impairment

³*Schurlknight v. City of North Charleston*, 352 S.C. 175, 574 S.E. 2d 194 (2003)

however may have little or no effect on the employee's ability to perform his job.⁴ However, the impairment can and does affect the employee's quality of life and his overall functioning in society. The hearing loss also limits Mr. Ward, should he try to work in some other job where hearing is more important.

Appellant returned to work at the Steel Mill, now under ArcelorMittal management. ArcelorMittal had constructive, if not actual, knowledge of Appellant's hearing loss at the time he returned to work in the mill. As was previously noted, Appellant had a binaural hearing loss of 23.38% in 2006. By 2013 his hearing loss had increased to 29%.

Employees, situated as Mr. Ward, are faced with a dilemma :

- (1) Does he file his claim when he first becomes aware of his impairment and its cause?
- (2) Does he wait until leaving the job before filing his claim?
- (3) If he files, is compensated and then continues to work and suffers more injuries and impairment, is he precluded from filing again?
- (4) If he does not file when he becomes aware of his hearing impairment, continues to work and then files a claim when he leaves the job, is he barred by statute of limitations and notice requirements?

Surely, a Appellant should not be required to file a claim each time his hearing deteriorates. That would mean filing multiple claims as the impairment increases; arguably, every day.

When the employer has actual knowledge of the injury, the notice requirement is deemed satisfied, so long as the employer is not prejudiced. *Mize v. Sangamo Electric Company*, 251 S.C.

⁴ The noise level on the melt floor is so extreme that employees use hand signals to communicate. Theoretically, a totally deaf person could perform the job.

250, 161 S.E.2d 846 (1968). The burden is upon the employer to prove prejudice. *Id.* Where there is evidence the employer had actual knowledge of every pertinent fact required of a written notice, the notice requirement was satisfied. *Dawkins v. Capitol Construction Co.*, 252 S.C. 536, 167 S.E. 2d 439 (1969). In both *Mize* and *Dawkins*, the employer had actual knowledge of the accidents. Here, ArcelorMittal had actual knowledge of the hearing loss of the Appellant. Employer administered periodic hearing tests and knew of the Appellant's hearing loss before the Appellant knew. ArcelorMittal's actual knowledge of the "accidents" satisfies the notice requirement of § 42-15-20. Two Tennessee cases are on point with this case. In *Luna v. GAF Fiberglass Corp.*, 2002 WL 975147 (Supreme Ct. Tenn. 2002), the Appellant did not know the results of the employer administered hearing tests. In another Tennessee case, the court found the notice requirement satisfied when the employer had actual knowledge of the Appellant's hearing loss. *George v. Building Materials Corp.*, 44 S.W. 3d 481 (Tenn. 2001). *See also, Rockwell International v. Reed*, 804 P.2d 460 (Oklahoma App. 1990) (employer had notice of Appellant's injury and neglected to advise Appellant of his right to file claim after employer sponsored hearing tests); *Boeing Helicopter Co. v. Workmen's Comp. Appeal Bd.*, 629 A.2d 184 (Penn. Cmwlth. 1993) (Employer waived notice requirement due to its knowledge of Appellant's hearing loss); *Duquesne Light Co. v. W.C.A.B.* 450 A.2d 1100 (Penn. Cmwlth. 1982) (employee not penalized for giving notice to employer before fully diagnosed with disabling injury). Here, Employer was not prejudiced. It had actual or constructive knowledge of the noise levels in its facility and it had actual or constructive notice of Appellant's hearing tests. Additionally, Employer provided noise attenuation protection to its employees.

Certainty and uniformity require that the employee who continues to work after suffering impairment, know what his options and requirements are. After all, South Carolina law requires the

workers' compensation act be construed liberally in favor of coverage. *Ellison v. Frigidaire Home Products*, 371 S.C. 159, (2006).

Pursuant to *Curiel v. Environmental Management Svcs*, 376 S.C. 23 (2007), the Commission is required to consider Appellant's pre-existing hearing impairment along with the new and further injury to his hearing.⁵ The "new injury" concept is further supported by *Ellison v. Frigidaire Home Products*, 371 S.C. 159, (2006). "[C]laimant's present injury was properly considered in combination with his preexisting impairment, to determine eligibility for benefits. See also, *Butts v. C.R. England Trucking*, 2008 WL 9832868 (S.C. App.), 2008) (Unpublished Opinion) which followed the *Ellison* standard. Here we have Appellant with a prior or preexisting hearing impairment, return to work in the same noisy conditions, suffering a new and more extensive hearing loss. The former claim was withdrawn. The evidence clearly shows Appellant suffered an additional or "new" hearing loss after he began work for ArcelorMittal. (APA 1). Dr. Fry's opinion, to a reasonable degree of medical certainty, states that Appellant suffered an additional 8% hearing loss during the time he worked for ArcelorMittal. Although Defendant's Doctor, Howard Anthony Farrell opines that Appellant's hearing loss is attributable to former mill owners (APA 40-45), it must be kept in mind that Dr. Fry has been Appellant's ENT for at least seven years. She has had more contact with which to form an opinion than a Doctor who sees Appellant only one time. The Single Commissioner's finding of failure to give timely notice is clearly in error.

2. THE SINGLE COMMISSIONER ERRED WHEN HE FOUND THAT APPELLANT FAILED TO TIMELY FILE HIS CLAIM (FORM 50) OF HIS REPETITIVE TRAUMA HEARING LOSS.

⁵ Interpreting §42-9-400(a)

The time limitation for filing a workers Compensation claim is set out in §42-15-40.⁶ The question is therefore, when did Appellant become aware he had a compensable hearing loss? For Appellant to know he had a compensable loss, it is not enough for him to suspect such. Medical evidence is required by statute to prove the causation of the hearing loss to workplace noise. In fact, the medical evidence must be stated to a “reasonable degree of medical certainty.” §42-1-72 (C,D) S.C. Code Ann.⁷ That standard is required for all medical evidence. *Michau v. Georgetown County*, 396 S.C. 589 (2012).

Here, the medical evidence linking the hearing loss and the work environment is a letter from Dr. Terry Fry, MD, FACS, dated December 11, 2014. (APA 1). In her letter, Dr. Fry states Appellant’s binaural hearing loss increased from 23% to 31% in seven years. It is on December 11, 2014 that Appellant knew he had an additional work related hearing loss. That is the date from which the two year filing requirement begins to run. Your attention is directed to the last paragraph of Section 1, above, discussing the “new” accident and the credibility of Dr. Fry over Dr. Farrell. The Single Commissioner committed error when he found the Appellant failed to timely file his claim.

3. THE SINGLE COMMISSIONER ERRED WHEN HE RULED APPELLANT’S CLAIM WAS BARRED BY THE EQUITABLE DOCTRINE OF LACHES.

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§42-15-40....For a “repetitive trauma injury” as defined in Section 42-1-172, the right to compensation is barred unless a claim is filed with the commission within two years after the employee knew or should have known that his injury is compensable but no more than seven years after the last date of injurious exposure. This section applies regardless of whether the employee was aware that his repetitive trauma injury was the result of his employment.

⁷ §42-1-172

(C) As used in this section, “medical evidence” means expert opinion or testimony stated to a reasonable degree of medical certainty, documents, records, or other material that is offered by a licensed and qualified medical physician.

(D) A “repetitive trauma injury” is considered to arise out of employment only if it is established by medical evidence that there is a direct causal relationship between the condition under which the work is performed and the injury.

The Single commissioner's ruling that Appellant's claim is barred by *laches* is misplaced. He cites "neglect for an unreasonable and unexplained length of time under circumstances requiring diligence to do what should have been done"... as the basis for *laches*. However, our Supreme Court requires more. "Delay alone in the assertion of a right does not constitute laches." *Grossman v. Grossman*, 242 S.C. 298, 130 S.E.2d 850 (1963). The party pleading *laches* must prove injury, prejudice, expenses, change of position or disadvantage. *Archambault v. Sprouse*, 215 S.C. 336 (1949); *Arceneaux v. Arrington*, 284 S.C. 500, 503(Ct.App. 1985). The Single Commissioner failed to articulate facts sufficient to constitute *laches*. "Whether the plaintiff is barred by laches is to be determined in light of the facts of each case, taking into consideration whether the delay has worked injury, prejudice, or disadvantage to the other party." *Privette v. Garrison*, 235 S.C. 119 (1959). In this case, Defendant/Employer has shown no element of laches except delay. The Single Commissioner should be reversed on his finding of laches and the Appellate Panel should make its own finding that laches does not apply here.

4. THE SINGLE COMMISSIONER ERRED WHEN HE FOUND THAT APPELLANT FAILED TO PROVE CAUSATION OF HIS REPETITIVE TRAUMA HEARING LOSS WAS SUSTAINED WHILE EMPLOYED BY, EMPLOYER..

The law in South Carolina places full liability upon the carrier covering the risk at the time of the most recent injury that bears a causal relation to the disability (wherein the Supreme Court adopted the last injurious exposure rule). *Geathers v. 3V, Inc.*, 371 S.C. 570, 641 S.E.2d 29 (2007). The Court held this to be true, even if the prior injury significantly contributed to the final condition. *Id* at 347.

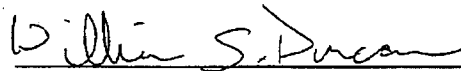
"...[O]nce a rebuttal presumption is established that the Claimant's hearing impairment is work-related, the employer (here ArcelorMittal) with whom the Claimant was last injuriously exposed to hazardous noise shall be exclusively liable for benefits does not require a Claimant to prove that the

last employment caused a measurable hearing loss, liability is imposed exclusively on the employer with whom the Claimant was last injuriously exposed to the hazardous noise.” AMJUR WORKERS Section 186. Here Appellant was exposed to the harshest noise in the mill during his last six years of employment and, although not required to do so, can show a measurable hearing loss which all doctors point his hazardous exposure to noise at the ArcelorMittal plant as the cause of his hearing loss. In fact, in February, 2007 Appellant was diagnosed by Dr. Fry with a 23% binaural hearing loss. The Claimant’s hearing continued to deteriorate during seven more years of exposure from the loud noises at the mill and he was determined on December 11, 2014 to have a 31% binaural hearing loss by Dr. Terry Fry. (APA1).

CONCLUSION

The Single Commissioner erred in his findings and conclusions when he ruled Appellant was not entitled to benefits for his repetitive trauma hearing loss. The Appellate Panel should make its own Findings of Fact and Conclusions of Law and award Rodney Ward accordingly.

Respectfully submitted,



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Rodney Ward,
Claimant,

vs.

ArcelorMittal Georgetown, Inc.,
Employer,

New Hampshire Insurance Company,
Carrier,
Defendants.

This matter originally came to be heard before Commissioner T. Scott Beck in Aynor, South Carolina, on April 28, 2015, pursuant to notice timely and properly given to all parties of record. The Claimant filed a Form 50 on July 21, 2014, asserting binaural hearing loss as a result of repetitive trauma in his employment. The Employer/Carrier filed a timely Form 51 on August 20, 2014, denying the claim. The Employer/Carrier asserted that the Claimant did not provide timely notice of a repetitive trauma injury pursuant to S.C. Code Ann. § 42-15-20 and that the claim was barred by the statute of limitations pursuant to S.C. Code Ann. § 42-15-40. The Employer/Carrier alleged that any hearing loss suffered by the Claimant was the result of his work with prior employers and not the Employer in this case. The Employer/Carrier further asserted that the Claimant's alleged hearing loss was not accidental as it was not "an unlooked for and untoward event" and, therefore, is not compensable pursuant to Capers v. Flautt, 305 S.C. 254, 407 S.E. 2d 660 (Ct. App. 1991), and Havird v. Columbia YMCA, 308 S.C. 397, 418 S.E.2d 329 (Ct. App. 1992). Finally, the Employer/Carrier asserted that the Claimant's claim is barred by the doctrine of *laches*.

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employment with the Employer. Commissioner Beck further determined that the Claimant had not provided timely notice of his claim to the Employer and that the claim was barred by the Act's two-year statute of limitations. Finally, Commissioner Beck found that the claim was barred according to the doctrine of *laches*.

The Claimant filed a timely Form 30, Request for Commission Review, on September 1, 2015, asserting Commissioner Beck erred in concluding that the Claimant did not provide timely and proper notice of his claim to the Employer and erred in concluding that the Claimant knew or should have known that his claim was compensable in 2007.

STATEMENT OF THE FACTS

The Claimant is 66 years old and a high school graduate. He worked for the Employer and its predecessor companies at the steel mill in Georgetown, South Carolina, from 1970 until 2013. The Claimant worked in various capacities as a laborer and a supervisor. (Hrg. Tr. p. 11).

The Claimant testified that he was not required to wear hearing protection early in his career at the mill. He admitted that, for at least ten years from 1970 until roughly 1980, he wore no hearing protection whatsoever. Beginning around 1980, and to a greater degree in 2003, employees were required to wear hearing protection in every part of the mill. (Hrg. Tr. p. 12-13). After the plant began requiring employees to wear hearing protection around 1980, the Claimant testified that he always wore hearing protection. The Claimant specifically testified that he wore hearing protection every day since the Employer began operating the mill. (Hrg. Tr. p. 21-22). The Claimant described the noise in the mill as a "constant grinding" and "humming." He testified that the noise level was such that it was impossible to have a normal conversation with a co-worker and that he would have to use hand signals when communicating. (Hrg. Tr. p.

15-16). The Claimant testified that he worked about 60 hours a week from 2003 until his retirement in 2013. (Hrg. Tr. p. 18).

The Claimant testified that he started using hearing aids in 2007. (Hrg. Tr. p. 22). He stated that, even in a setting with no background noise, he could not carry on a normal conversation without hearing aids. (Hrg. Tr. p. 18-19). The Claimant asserted that he does not have any "loud-noise hobbies" such as hunting. However, he did admit that he mows grass as "mission work" and for some pay. He stated that he mows five or six yards a week. He uses a gas-powered riding mower and a gas-powered trimmer. The Claimant asserted that he wears hearing protection when he operates those pieces of machinery because he is aware that loud noises can damage hearing. (Hrg. Tr. p. 17, 20).

The Claimant testified that he began to notice a decline in his hearing around 2000 and that he felt at that time his hearing loss was related to noise at the mill. (Hrg. Tr. p. 22-23). The Claimant admitted that, in 2007, he took the results of a hearing test to his attorney. (Hrg. Tr. p. 25). The Claimant's attorney filed a Form 50 hearing request on May 21, 2007, alleging hearing loss related to the Claimant's employment with the Employer. A hearing was scheduled to occur on September 11, 2007, but the Claimant's attorney voluntarily withdrew his Form 50 on August 2, 2007, and the hearing was cancelled. (APA p. 71-75). The Claimant admitted that he understood in 2007 that he had hearing loss and he believed it was due to his employment at the mill in Georgetown. (Hrg. Tr. p. 23-25).

The Claimant underwent an audiological evaluation under Dr. Terry Fry on February 21, 2007. (APA. p. 6). An "individual ear handicap" worksheet indicates the Claimant had a 23% binaural hearing impairment on June 29, 2007. (APA. p. 4). The Claimant underwent another audiological evaluation with Dr. Fry on March 4, 2014. According to Dr. Fry, that test revealed a 31% binaural hearing impairment. In a statement dated September 11, 2014, Dr. Fry

stated that the Claimant's hearing loss was due to "his continued industrial noise exposure." However, this report does not specifically indicate whether the alleged worsening of the Claimant's hearing impairment from 2007 through to 2014 was, more likely than not, related to any noise exposure the Claimant may have had in his employment with the Employer. (APA. p. 1-4). The Claimant submitted various OSHA reports, noise studies, surveys, and citations encompassing the period from June 10, 1975, until December 3, 2002. (APA p. 8-39). None of these documents cover the period the mill was owned and operated by the Employer.

The Claimant saw Dr. Howard Farrell on September 12, 2014, and underwent additional audiological testing. Dr. Farrell concluded that the Claimant exhibited 32.51% binaural hearing loss. Dr. Farrell reviewed the Claimant's work hearing tests from both Georgetown Steel and ArcelorMittal. Dr. Farrell stated that the Claimant's hearing tests while working for the prior employers are "not notably different than his current test with bi-lateral nerve hearing loss." For instance, the Claimant exhibited 20.9375% binaural hearing impairment on August 21, 2002, the final work study performed while Georgetown Steel Company, LLC, operated the mill (APA p. 48). After ArcelorMittal began operating the mill, the Claimant exhibited 20.3125% impairment in his last hearing study on August 1, 2012 (APA p. 60). Dr. Farrell further concluded that the Claimant's hearing loss pre-dates his employment at the Employer and that the Claimant's hearing loss had been stable while at ArcelorMittal Steel with no significant decline, according to hearing tests performed at the mill. Finally, Dr. Farrell stated, "I do believe with a reasonable degree of medical certainty that his hearing loss is not the result of his employment at ArcelorMittal Steel." (APA p. 41).

ARGUMENT AND CITATION OF AUTHORITY

A Decision and Order of a Single Commissioner must be affirmed if it is supported by a preponderance of the evidence in the record, is not affected by an error of law, and is not based

on "surmise, conjecture, or speculation." Linen v. Ruscon Construction Co., 286 S.C. 67, 70, 332 S.E. 2d 211, 212 (1985). Additionally, the Full Commission should give weight to the Single Commissioner's decision, based upon the fact that the Full Commission does not have the opportunity or benefit of observing the witnesses, as does the Single Commissioner. Green v. Raybestos - Manhattan, Inc., 250 S.C. 58, 156 S.E.2d 318 (1967). In the present case, the Single Commissioner's Order denying benefits is founded on and supported by the preponderance of the evidence and testimony in the record. Furthermore, the Single Commissioner correctly applied the law to the facts of this case. Accordingly, the Single Commissioner's Order must be affirmed in its entirety.

I. **THE COMMISSIONER'S FINDINGS THAT THE CLAIM IS BARRED BY THE STATUTE OF LIMITATIONS AND THE EQUITABLE DOCTRINE OF LACHES AND THAT THE CLAIMANT DID NOT SUSTAIN HIS BURDEN TO PROVE A COMPENSABLE INJURY WITH THE EMPLOYER ARE THE LAW OF THE CASE AND ARE NOT SUBJECT TO APPELLATE REVIEW.**

In the Claimant's Form 30 Request for Commission Review, the Claimant did not specifically assert error in the Single Commissioner's findings as to the Employer/Carrier's statute of limitations and *laches* defenses and the finding that the Claimant failed to sustain his burden to prove a compensable injury with the Employer. Therefore, these issues are not preserved for appeal, and the Single Commissioner's findings of fact and conclusions of law on these issues are the law of the case. In Ham v. Mullins Lumber Co., 193 S.C. 66, 7 S.E.2d 712 (1940), the South Carolina Supreme Court held that the findings of fact and law by the hearing commissioner become and are the law of the case, unless within the scope of the appellant's exception to the full commission and its notice to the respondent of the issues the respondent would be required to meet. Due process requires that litigants receive notice of the issues to be met on trial, hearing or appeal. Id. Only issues within the application for review under S.C. Code

Ann. section 42-17-50 (1976) are preserved for appeal to the Commission. Id.; see also Green v. City of Columbia, 311 S.C. 78, 427 S.E.2d 685 (Ct. App. 1993) (Single Commissioner's denial of benefits, although likely based upon an error of law, was not subject to appellate review where Claimant did not assert error on the Form 30 as to that particular issue).

Here, the Claimant did not assert error as to the Commissioner's determination that the claim is barred by the statute of limitations and *laches* and the determination that the Claimant failed to sustain his burden to prove a compensable injury with the Employer. Therefore, the Full Commission does not have the authority to reach these issues, and the Single Commissioner's findings of fact and conclusions of law on these issues must be affirmed.

II. THE SINGLE COMMISSIONER CORRECTLY DETERMINED THAT THIS CLAIM IS BARRED BECAUSE THE CLAIMANT DID NOT PROVIDE TIMELY AND ADEQUATE NOTICE OF HIS CLAIM TO THE EMPLOYER.

S.C. Code Ann. § 42-15-20(C) provides that, in the case of repetitive trauma, the claimant must give notice of an injury to the employer within ninety (90) days of the date the employee discovered, or could have discovered by exercising reasonable diligence, that his condition is compensable, unless reasonable excuse is made to the satisfaction of the Commission for not giving timely notice *and* the Commission is satisfied that the employer has not been unduly prejudiced thereby. In King v. Int'l Knife and Saw, the South Carolina Court of Appeals interpreted and applied the Act's notice requirement for repetitive trauma claims. 395 S.C. 437, 718 S.E.2d 227 (Ct. App. 2011). In that case, the Court held that a claimant's repetitive trauma condition is not compensable and "the 90-day reporting clock does not start" until the condition either requires medical care or interferes with a claimant's ability to work. Id. at 444-45. Here, the Claimant sought medical treatment for his hearing loss as early as February 21, 2007; therefore, the "90-day reporting clock" started on that date. The Claimant was, by his own admission, aware that he had a

compensable claim when he hired a lawyer and filed a Form 50 hearing request in 2007. However, he abandoned the prior claim and did not give notice of the present claim with a different alleged date of injury until seven years later when he filed the present hearing request. Accordingly, the Single Commissioner's finding that the Claimant did not provide timely notice of a repetitive trauma injury must be affirmed.

Furthermore, the Claimant's assertion in his brief that the Employer had "actual knowledge of every pertinent fact required of a written notice" is incorrect. (Appellant's Brief p. 6). The Employer administered periodic hearing tests, but these test results indicated that the Claimant's hearing did not decline from the time ArcelorMittal began operating the plant until the end of the Claimant's employment. Therefore, the Employer's knowledge of the Claimant's hearing test results does not constitute notice of the Claimant's present claim, and the Single Commissioner's Order must be affirmed.

III. THE SINGLE COMMISSIONER CORRECTLY CONCLUDED THAT THIS CLAIM IS BARRED BY THE STATUTE OF LIMITATIONS.

As stated above, the Claimant did not assert error on his Form 30 as to the Commissioner's finding that the claim is barred by the statute of limitations, and therefore, the Full Commission does not have authority to review this finding on appeal. Assuming, *arguendo*, that the Commissioner's finding as to the statute of limitations is subject to appellate review, the Commissioner's determination is correct and should be affirmed.

S.C. Code Ann. § 42-15-40 states that a claimant's right to compensation for a repetitive trauma injury is "barred unless a claim is filed with the commission within two years after the employee knew or should have known that his injury is compensable but no more than seven years after the last date of injurious exposure." This portion of the statute was added by the Legislature effective July 1, 2007, overruling the South Carolina Supreme Court's prior contrary

decision in Schuriknight v. City of North Charleston, 352 S.C. 175, 574 S.E.2d 194 (2002) (holding the last day of exposure is the date from which the statute of limitations begins to run in a repetitive trauma case, rather than when claimant first discovered that he had a work-related injury). Here, the Claimant was aware his hearing had declined in 2007 and believed at that time it was related to his employment with the Employer. But, he did not file the present claim until 2014. The Claimant did not file his claim within two years after he knew his injury was compensable, and as a result, his claim is barred by the statute of limitations.

Contrary to the Claimant's assertion, a doctor's opinion linking the claimant's alleged injury to his employment, stated with a reasonable degree of medical certainty, is not an essential element of the statute of limitations defense. (Appellant's Brief p. 8). To the contrary, all that is required is evidence that the Claimant did not file his claim for compensation within two years of the date he knew or should have known his injury is compensable. Here, the Claimant admitted that he believed as early as 2007 that he had hearing loss that was caused by his employment. Moreover, he actually retained an attorney and began pursuing a claim in 2007. The Claimant cannot reasonably contend that he was unaware of this claim until less than two years before the date he filed in 2014. Therefore, the Single Commissioner's decision that the claim is barred by the statute of limitations must be affirmed.

IV. THE SINGLE COMMISSIONER CORRECTLY DETERMINED THIS CLAIM IS BARRED BY LACHES.

As stated above, the Claimant did not assert error on his Form 30 as to the Commissioner's finding that the claim is barred by *laches*, and therefore, the Full Commission does not have authority to review this finding on appeal. Assuming, *arguendo*, that the Commissioner's finding as to *laches* is subject to appellate review, the Commissioner's determination is correct and should be affirmed.

South Carolina Courts have defined *laches* as "neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done." Muir v. C.R. Bard, Inc., 336 S.C. 266, 296, 519 S.E.2d 583, 598 (Ct. App. 1999). South Carolina has acknowledged the applicability of the doctrine of *laches* in a workers' compensation claim. Richey v. Dickinson, 359 S.C. 609, 612, 598 S.E.2d 307, 309 (Ct. App. 2004). "A claimant must prosecute his [workers' compensation] claim in a timely fashion or it may be barred by the doctrine of *laches*." McMillian v. Midlands Human Res., 305 S.C. 532, 533, 409 S.E.2d 443, 444 (Ct. App. 1991). If a party knows of his rights and does not timely assert them and that delay causes his adversary to incur expense or otherwise detrimentally change its position, then, under the doctrine of *laches*, equity will refuse to enforce those rights. Richey, 359 S.C. at 612, 598 S.E.2d at 309. The party asserting *laches* must show (1) negligence of the other party; (2) that party's opportunity to act sooner; and (3) as a result, the asserting party suffered material prejudice. Richey, 359 S.C. at 612, 598 S.E.2d at 309. *Laches* is a defense that operates independently from the statute of limitations. The court is vested with wide discretion in determining what is an unreasonable delay. Ham v. Flowers, 214 S.C. 212, 51 S.E.2d 753 (1949).

Here, the Claimant believed in 2007 that his hearing loss was related to his employment with the Employer. He alleged compensable hearing loss and filed a hearing request in 2007 but later withdrew that request and abandoned the claim. Thereafter, he did not pursue the present claim until 2014. This delay in pursuing the claim was unreasonable, the Claimant was negligent in his delay, and he had the opportunity to act sooner but did not. The Claimant offered no reasonable explanation for his seven-year delay in seeking another hearing. Furthermore, the Employer/Carrier was materially prejudiced by this delay. If the Claimant had compensable injuries, the Employer/Carrier would have lost the opportunity to provide appropriate treatment that may have prevented additional injury after 2007. Furthermore, contemporaneous witnesses such as the

Claimant's co-workers and supervisors from 2007 would be extremely difficult to identify and depose. Therefore, the Single Commissioner correctly determined that the Employer/Carrier was prejudiced by the Claimant's unreasonable delay in pursuing his claim. The Single Commissioner's determination that this claim is barred subject to the doctrine of *laches* must be affirmed.

V. **THE SINGLE COMMISSIONER CORRECTLY DETERMINED THAT THE CLAIMANT DID NOT SUSTAIN HIS BURDEN TO PROVE A COMPENSABLE INJURY WITH THE EMPLOYER**

As stated above, the Claimant did not assert error on his Form 30 as to the Single Commissioner's finding that the Claimant failed to sustain his burden to prove a compensable injury with the Employer. Assuming, *arguendo*, that the Commissioner's finding as to this issue is subject to appellate review, the Commissioner's determination is correct and should be affirmed.

S.C. Code Ann. § 42-1-172 defines "repetitive trauma injury" and provides that "an injury is not considered a compensable repetitive trauma injury unless a commissioner makes a specific finding of fact by a preponderance of the evidence of a causal connection that is established by medical evidence between the repetitive activities that occurred while the employee was engaged in the regular duties of his employment and the injury." Additionally, an injury must result from an accident that arose out of and in the course of the claimant's employment to be compensable under the Act. Bickley v. South Carolina Electric & Gas Co., 259 S.C. 463, 192 S.E.2d 866 (1972). The burden is on the claimant to prove such facts as will render the injury compensable, and such an award must not be based on surmise, conjecture, or speculation. Brady v. Sacony of St. Matthews, 232 S.C. 84, 101 S.E.2d 50 (1957). Here, there is insufficient evidence to establish the Claimant sustained hearing loss as a result of his work with the Employer. A finding of compensability would be purely speculative and contrary to the greater weight of the evidence, in light of the lack of any conclusive medical evidence stated to a reasonable degree of medical certainty to prove that the

Claimant's hearing loss more likely than not worsened due to his employment with the Employer. As a result, the Commissioner's Order is supported by a preponderance of the evidence, and must be affirmed.

Additionally, there is insufficient evidence to establish that the Claimant sustained a compensable repetitive trauma injury resulting in hearing loss in his employment with the Employer. The September 11, 2014, report from Dr. Fry stated that the Claimant's hearing loss was due to "his continued industrial noise exposure." However, this report does not specifically indicate whether the alleged worsening of the Claimant's hearing impairment from 2007 through to 2014 was, more likely than not, related to any noise exposure the Claimant may have had in his employment with the Employer. To the contrary, the preponderance of the evidence, including the persuasive opinion of Dr. Farrell, indicates that the Claimant's hearing loss pre-dated his work with the Employer and that the Claimant did not sustain hearing loss due to his work with the Employer. Therefore, the Claimant did not sustain any injury during his work with the Employer, and the "last injurious exposure" rule as articulated in Geathers v. 3V, Inc., 371 S.C 570, 641 S.E.2d 29 (2007), does not apply to render the Employer liable for the Claimant's alleged hearing loss. The Single Commissioner's findings of fact and conclusions of law in this regard are correct, supported by a preponderance of the reliable evidence in the record, and must be affirmed.

CONCLUSION

The Single Commissioner, upon careful consideration of the entirety of the testimony and evidence in the record, correctly concluded that this claim is not compensable. His findings as to the Employer/Carrier's notice defense are correct and supported by a preponderance of the evidence. The Claimant did not assert error on his Form 30 as to the Single Commissioner's determinations with regard to the statute of limitations and *laches* defenses and the Claimant's failure to prove a compensable injury with the Employer. Therefore, these

findings are the law of the case and are not subject to appellate review. Assuming, *arguendo*, that the Full Commission has authority to review these findings, they are also correct and supported by a preponderance of the reliable testimony and evidence in the record, including medical evidence. For these reasons, the Single Commissioner's Order must be affirmed.

Respectfully Submitted,

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Attorneys for the Employer/Carrier

Charleston, South Carolina

Dated: October 26, 2015.

CERTIFIED COPY

In The Matter Of:

RODNEY WARD

v.

ARCELORMITTAL GEORGETOWN, INC. and NEW
HAMPSHIRE INSURANCE COMPANY

RODNEY CAROL WARD - Vol. 1

September 18, 2014

MERRILL CORPORATION

LegalLink, Inc.

1345 Avenue of the Americas

17th Floor

New York, NY 10105

Phone: 212.557.7400

Fax: 212.367.6178

1 Q. Actually, what were you seeking
2 treatment for at that time?

3 A. Okay. During that period of time, I
4 kept feeling like I couldn't hear what people were
5 saying and my wife even said, you need to get your
6 hearing checked because sometimes I ask you a
7 question and you don't give me the answer that I
8 should have got from the question I asked you.

9 She said, also, when I'm in those
10 meetings, you need to hear what people are saying
11 because you are running the mill.

12 So during that time, I said, hey, I
13 better go get my ears checked. If I have to wear
14 hearing aids, so be it. That's what I have to do
15 to hear people.

16 So, during that transition over the
17 years, that's when in 2007 I broke down and went to
18 have an outside physician to check my hearing.

19 Q. Maybe I didn't hear you exactly. You
20 said during the transition in 2007?

21 A. During the years, I felt like my
22 hearing loss was -- I was losing hearing.

23 Q. Okay. Did you have, I guess, a belief
24 as to why you were losing your hearing?

25 A. No more than, I guess, the continued

1 noise that's in the mill. The constant noise was
2 probably a possibility and I just needed to hear.
3 So I said, hey, I'm going to go check my hearing
4 out.

5 Q. Did the mill have a program by which
6 they tested your hearing on --

7 A. Yes, sir.

8 Q. -- an annual basis?

9 A. Yes, they did.

10 Q. Did that start in the 1970s, as soon as
11 you got there, or was that started later?

12 A. I think it probably started in later
13 years where they tested you so many times during
14 the time I was there.

15 Q. Okay. And --

16 A. It wasn't an every-year-deal.

17 Q. And the testing was everybody that
18 worked in the mill?

19 A. Everybody that worked in the mill, yes.

20 Q. When they tested you, did they tell you
21 how the test results came out?

22 A. Yes.

23 Q. How did they relay that information to
24 you?

25 A. They just showed me the chart, that I

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
COLUMBIA, SOUTH CAROLINA
WCC FILE NO. 1321802

EMPLOYEE/CLAIMANT: RODNEY WARD

EMPLOYER: ARCELORMITTAL GEORGETOWN, INCORPORATED

INSURER: NEW HAMPSHIRE INSURANCE COMPANY

SOUTH CAROLINA WORKERS' COMPENSATION HEARING

PURSUANT TO NOTICE OF WORKERS' COMPENSATION
HEARING, THE WITHIN HEARING WAS TAKEN ON THE 28TH DAY OF
APRIL, 2015, COMMENCING AT THE HOUR OF 11:54 A.M., IN
AYNOR, SOUTH CAROLINA, BEFORE THE HONORABLE T. SCOTT BECK,
ATTENDED BY COUNSEL AS FOLLOWS:

HOLLY K. GLEASON
VERBATIM REPORTER

JAN L. WHITWORTH
COURT REPORTING SERVICES
POST OFFICE BOX 551
ROEBUCK, S.C. 29376

COPY

APPEARANCES

WILLIAM S. DUNCAN, ESQUIRE, OF THE FIRM
LAW OFFICES OF WILLIAM STUART DUNCAN, P.A.
1001 FRONT STREET
P.O. BOX 736
GEORGETOWN, SOUTH CAROLINA 29442

ATTORNEY FOR THE EMPLOYEE/CLAIMANT,

F. DRAKE ROGERS, III, ESQUIRE, OF THE FIRM
YOUNG CLEMENT RIVERS, L.L.P.
25 CALHOUN STREET, SUITE 400
CHARLESTON, SOUTH CAROLINA 29401

ATTORNEY FOR THE EMPLOYER/CARRIER,

ALSO PRESENT:

RAYMOND C. FISCHER, ESQUIRE, OF THE FIRM
LAW OFFICES OF WILLIAM STUART DUNCAN, P.A.

I N D E X

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CERTIFICATE OF NOTARY PUBLIC.....	27

1 PURSUANT TO NOTICE OF HEARING, THE WITHIN HEARING
2 WAS TAKEN BY THE ABOVE-NAMED COURT REPORTER, A NOTARY
3 PUBLIC FOR THE STATE OF SOUTH CAROLINA, AYNOR, SOUTH
4 CAROLINA.

5 * * * * *

6 BY COMMISSIONER BECK:

7 ALL RIGHT. TODAY'S DATE IS APRIL 28TH, 2015.
8 THIS IS WORKERS' COMPENSATION FILE NUMBER 1321802.
9 THE CLAIMANT IN THIS MATTER IS RODNEY WARD,
10 REPRESENTED TODAY BY ATTORNEY BILL DUNCAN AND
11 RAYMOND FISHER. THE EMPLOYER IS ARCELORMITTAL
12 GEORGETOWN, INC. THE CARRIER IS NEW HAMPSHIRE
13 INSURANCE COMPANY. THEY ARE BOTH REPRESENTED TODAY
14 BY ATTORNEY DRAKE ROGERS. THE DATE OF ALLEGED
15 ACCIDENT IN THIS MATTER IS OCTOBER THE 31ST, 2013.
16 AVERAGE WEEKLY WAGE IS \$2,133.31, YIELDING A
17 COMPENSATION RATE OF \$743.72. WE ARE HERE TODAY ON
18 CLAIMANT'S FORM 50. I'VE RECEIVED APAS FROM BOTH
19 THE CLAIMANT AND THE DEFENDANT IN THIS MATTER.

20 ARE THERE ANY OBJECTIONS TO APAS, JURISDICTION,
21 VENUE, OR ANY OTHER MATTER? MR. DUNCAN?

22 BY MR. DUNCAN:

23 NO, SIR.

24 BY COMMISSIONER BECK:

25 MR. ROGERS?

1 BY MR. ROGERS:

2 NO, SIR.

3 BY COMMISSIONER BECK:

4 WITHOUT OBJECTION, THE COMMISSION FILE BECOMES
5 A PART OF THE RECORD WITH THE EXCEPTION OF SELF-
6 SERVING DECLARATIONS AND UNSTIPULATED MEDICAL
7 REPORTS. ALSO, DURING THE PREHEARING CONFERENCE IN
8 THIS MATTER, THE RESPECTIVE POSITIONS OF BOTH
9 PARTIES WERE DISCUSSED.

10 FROM THE STANDPOINT OF THE CLAIMANT, MR. WARD
11 IS HERE SEEKING A FINDING OF COMPENSABILITY FOR
12 HEARING LOSS IN BOTH EARS DUE TO REPETITIVE TRAUMA
13 AND ASKING FOR MEDICAL CARE CONSISTING OF HEARING
14 AIDS AND ASSOCIATED MEDICAL VISITS AND AN AWARD OF
15 P.P.D. FOR BINAURAL HEARING LOSS IN THE AMOUNT OF 31
16 PERCENT. HE ASSERTS THAT HE ACHIEVED MAXIMUM
17 MEDICAL IMPROVEMENT ON DECEMBER 11, 2014.

18 MR. DUNCAN, ANYTHING IN ADDITION TO THAT OR ON
19 THE CLAIMANT'S POSITION YOU'D LIKE TO PUT ON THE
20 RECORD OR ANY OTHER MATTER YOU'RE HERE TO LITIGATE
21 TODAY, SIR?

22 BY MR. DUNCAN:

23 YOUR HONOR, WE HAVE -- THIS CASE INVOLVES -- AS
24 WE DISCUSSED IN THE PREHEARING, INVOLVES SEVERAL
25 LEGAL ISSUES THAT I THINK ARE RELEVANT. I'D BE

1 HAPPY TO GO OVER THEM, OR WE CAN JUST -- IF YOU HAVE
2 OUR MEMORANDUM AS PART OF THE RECORD, THESE ARE OUR
3 LEGAL POINTS ON THOSE.

4 BY MR. ROGERS:

5 JUST FOR THE RECORD, THIS MEMORANDUM IS NOT ON
6 THIS CASE. IT'S ON ---

7 BY MR. DUNCAN:

8 I'M SORRY. AND I APOLOGIZE.

9 BY THE COMMISSIONER:

10 THIS IS WOODWARD HERE.

11 BY MR. DUNCAN:

12 COMMISSIONER, WE JUST MADE A MISTAKE. I'M
13 SORRY, AND I APOLOGIZE. I'VE GOT TO GET ANOTHER
14 BRIEFCASE. CAN I JUST RUN TO MY CAR FOR A SECOND?
15 I APOLOGIZE. SORRY.

16 (OFF THE RECORD)

17 BY COMMISSIONER BECK:

18 I WILL NOTE THAT I'VE JUST BEEN HANDED UP A
19 MEMORANDUM ON LEGAL ISSUES FOR MR. RODNEY WARD, FILE
20 NUMBER 1321802, THAT HAS BEEN MADE PART OF THE
21 RECORD. ANYTHING ELSE YOU WOULD LIKE TO ADD, MR.
22 DUNCAN?

23 BY MR. DUNCAN:

24 NO, SIR.

25 BY COMMISSIONER BECK:

1 ALL RIGHT. WITH REGARD TO THE DEFENDANTS'
2 POSITION, THEY DENY COMPENSABILITY IN THIS MATTER IN
3 ITS ENTIRETY ON A NUMBER OF GROUNDS. THEY ASSERT A
4 NOTICE DEFENSE, A STATUTE OF LIMITATIONS DEFENSE, A
5 LACHES DEFENSE, WOULD ASSERT THAT THERE WAS A LACK
6 OF CAUSATION, AND FINALLY, ACTUALLY, THAT THEY ARE
7 NOT RESPONSIBLE -- IT IS NOT THE RESPONSIBILITY OF
8 THIS DEFENDANT, BUT RATHER THE PRIOR DEFENDANT,
9 GEORGETOWN STEEL, AND I'M ASSUMING THAT BASED ON THE
10 CONVERSATION THAT WE HAD IN PREHEARING CONFERENCE,
11 AN ABANDONMENT OF THE CLAIM RESULTING FROM THE 2007
12 MATTER, IN WHICH THE 50 WAS WITHDRAWN.

13 BY MR. ROGERS:

14 YES, SIR.

15 BY COMMISSIONER BECK:

16 HOWEVER, IF I FIND THE MATTER IS COMPENSABLE,
17 IT'S YOUR POSITION THAT YOUR CLIENT, MR. ROGERS,
18 WOULD ONLY BE ON THE HOOK FOR A 3.8 PERCENT BINAURAL
19 LOSS IN THIS MATTER.

20 BY MR. ROGERS:

21 YES, SIR, AND I ---

22 BY COMMISSIONER BECK:

23 ANYTHING ELSE YOU'D LIKE TO ADD?

24 BY MR. ROGERS:

25 NO, JUST MAYBE JUDICIAL NOTICE. I'VE JUST BEEN

1 HANDED THE SAME BRIEF THAT YOU'VE BEEN HANDED, AND
2 THERE IS A PRIOR BRIEF FROM MR. DUNCAN IN MY APAS
3 THAT'S -- JUDICIAL NOTICE PURPOSES, THAT IT TAKES AN
4 180 DEGREE DIFFERENCE OF OPINION ON THE APPORTIONED
5 VERSUS LAST INJURIOUS EXPOSURE, SO JUST, IF YOU
6 WOULD ---

7 BY COMMISSIONER BECK:

8 ALL RIGHT. ANYTHING ELSE YOU'D LIKE TO BE ON
9 THE RECORD OR ANY OTHER MATTER YOU'RE HERE TO
10 LITIGATE?

11 BY MR. ROGERS:

12 NO, SIR, NOT AT THIS TIME.

13 BY COMMISSIONER BECK:

14 ALL RIGHT. MR. DUNCAN, YOU MAY CALL YOUR
15 WITNESS, PLEASE.

16 BY MR. DUNCAN:

17 I CALL MR. RODNEY WARD TO THE STAND.

18 BY COMMISSIONER BECK:

19 MR. WARD, WOULD YOU RAISE RIGHT HAND, SIR,

20 RODNEY WARD

21 BEING FIRST DULY SWORN, TESTIFIED ON HIS OATH AS FOLLOWS:

22 BY COMMISSIONER BECK:

23 PLEASE, STATE YOUR FULL NAME FOR THE RECORD.

24 BY THE WITNESS:

25 RODNEY CAROLL WARD.

1 BY COMMISSIONER BECK:

2 ALL RIGHT. MR. WARD, I'M GOING TO HAVE YOU
3 HAVE A SEAT RIGHT THERE, AND WE'RE JUST GOING TO
4 HAVE YOU TESTIFY FROM RIGHT WHERE YOU'RE AT. I
5 WOULD ASK THAT YOU KEEP YOUR VOICE LEVEL UP. THE
6 COURT REPORTER HAS GOT TO BE ABLE TO HEAR YOU. I
7 DON'T KNOW IF SHE'S GOT MICROPHONES OVER THERE OR
8 NOT, BUT THEY'VE GOT TO BE ABLE TO PICK UP
9 EVERYTHING YOU'RE SAYING, OKAY?

10 BY THE WITNESS:

11 OKAY.

12 BY COMMISSIONER BECK:

13 MR. DUNCAN.

14 DIRECT EXAMINATION BY MR. DUNCAN:

15 Q. MR. WARD, TELL ME HOW OLD YOU ARE TODAY.

16 A. I'M 66.

17 Q. AND WHAT'S YOUR DATE OF BIRTH?

18 A. OCTOBER 1ST, 1948.

19 Q. AND WHERE DO YOU LIVE?

20 A. IN GEORGETOWN, SOUTH CAROLINA.

21 Q. AND ARE YOU MARRIED?

22 A. I AM MARRIED.

23 Q. HOW LONG HAVE YOU BEEN MARRIED?

24 A. THAT'S A TOUGH QUESTION, 42 YEARS -- 43 YEARS.

25 Q. AND DO YOU HAVE CHILDREN?

- 1 A. I HAVE TWO CHILDREN.
- 2 Q. AND THEY'RE BOTH GROWN AND OUT OF THE HOUSE?
- 3 A. YES, SIR.
- 4 Q. AND TELL ME HOW FAR YOU WENT IN SCHOOL.
- 5 A. UP TO THE 12TH GRADE.
- 6 Q. AND WHAT DID YOU DO AFTER COMPLETING SCHOOL?
- 7 A. I JOINED THE ARMY AND WENT IN THE MILITARY.
- 8 Q. AND YOU WENT TO VIETNAM?
- 9 A. YES, I DID.
- 10 Q. AND HOW MANY YEARS DID YOU SERVE IN VIETNAM?
- 11 A. ONE YEAR.
- 12 Q. ALL RIGHT. AND THEN YOU CAME OUT OF THE MILITARY?
- 13 A. NO, SIR, I HAD ABOUT 16, 17 MONTHS LEFT AND -- AFTER
- 14 I GOT BACK OUT OF TOUR DUTY IN VIETNAM.
- 15 Q. AND YOU WERE ESSENTIALLY A DRILL SERGEANT AFTER
- 16 THAT?
- 17 A. RIGHT.
- 18 Q. AND AS PART OF YOUR DEPLOYMENT IN VIETNAM, WAS THAT
- 19 DEPLOYMENT INVOLVING LOUD NOISES?
- 20 A. I WAS IN AN AREA WHERE I WORKED THROUGH IN
- 21 COMMUNICATIONS. I DID NOT REALLY BE AROUND
- 22 ARTILLERY AND STUFF LIKE THAT.
- 23 Q. AND WHAT ABOUT WHEN YOU WENT ON TO BECOME A DRILL
- 24 SERGEANT?
- 25 A. THE ONLY TIME DURING THAT ERA WAS WORKING ON GETTING

1 THE TROOPS TO RIFLE RANGES WHERE CALVARY ACTUALLY
2 DID ALL THE TRAINING STUFF, AND BASICALLY, WE WAS IN
3 THE BACKGROUND PRETTY MUCH SUPERVISING.

4 Q. AND WHAT DID YOU DO WHEN YOU CAME OUT OF THE
5 MILITARY?

6 A. I APPLIED FOR EMPLOYMENT AT GEORGETOWN STEEL, WHICH
7 I WAS HIRED IN OCTOBER THE 2ND, 1970.

8 Q. AND HOW MANY YEARS DID YOU WORK AT THE MILL?

9 A. FORTY-THREE YEARS.

10 Q. AND WHAT TYPE OF JOBS DID YOU HAVE IN THE MILL?

11 A. I WORKED IN THE ROLL SHOP AREA, WHICH MEANT I WAS A
12 GAP FITTER, BEARING FITTER, AND A ROLL TURNER, AND
13 DURING THAT TIME, IN 1974, I WAS PROMOTED TO
14 SUPERVISOR IN THAT AREA, LATER BECAME GENERAL
15 SUPERVISOR IN THAT AREA, AND IN 19 -- 2003, WE HAD
16 ABOUT A TEN-MONTH -- A TEN-MONTH LULL WHERE THE MILL
17 SHUT DOWN, AND WHEN I WENT BACK, I WENT BACK AS AREA
18 SUPERVISOR AND DID ACTUALLY THE WORK IN THE ROLL
19 SHOP AREA AND THE -- RUNNING THE MILL AND STUFF LIKE
20 THAT.

21 Q. DURING THAT TIME, WERE YOU EVER INVOLVED IN DOING
22 ANY OF THE AMBIENT NOISE STUDIES THERE?

23 A. NO, I -- I'VE ACTUALLY UNDERSTOOD THE SAFETY
24 DEPARTMENT WAS DOING SOME OF THOSE AREA -- NOISE
25 LEVEL AREAS IN OTHER AREAS OF THE MILL.

1 Q. NOW, I KNOW YOU'VE LOOKED AT ALL OF THEM BEFORE, AND
2 I'VE GOT THEM HERE AS APAS, BEGINNING AT PAGE 8 AND
3 GOING THROUGH APA 31, THAT SHOW THE DIFFERENT AREAS
4 THAT YOU HAD WORKED IN REGARDING THE ACTUAL NOISE AT
5 THAT TIME. HAD THE MILL -- FROM, LET'S SAY, THE MID
6 '80s ON, WHEN THESE REPORTS WERE TAKEN, ALL THE WAY
7 UP IN THE 1990 TO PRESENT, HAD THE MILL CHANGED IN
8 ITS DESIGN OR OPERATION THAT WOULD HAVE CHANGED THE
9 AMBIENT NOISE IN THERE, OR IS IT ALL ABOUT THE SAME?

10 A. I THINK DURING THAT TIME AS WE GREW, THE SPEED OF
11 THE EQUIPMENT, WE DID CHANGE SOME EQUIPMENT IN '74
12 WHERE WE PUT ANOTHER FINISHING MILL IN, BUT,
13 BASICALLY, EVERYTHING ELSE PRETTY MUCH STAYED THE
14 SAME. BUT AS YOU INCREASE THE SPEED, OF COURSE, THE
15 -- THAT CONSTANT NOISE LEVEL WENT UP, ALSO.

16 Q. AND SO EVEN THE NOISE THAT WE HAVE TODAY SINCE THE
17 LAST -- SINCE THE MILL REOPENED IN 2013 UNTIL YOU
18 LEFT IN 2013, WOULD THAT NOISE HAVE BEEN AT LEAST AS
19 MUCH OR GREATER THAN IT WAS IN THESE STUDIES?

20 A. YES.

21 Q. BECAUSE -- NOT BECAUSE OF A CHANGE IN EQUIPMENT, BUT
22 HOW FAST YOU'D RUN THE EQUIPMENT?

23 A. RIGHT.

24 Q. AND WHAT ABOUT THE HEARING PROTECTION? TELL ME
25 ABOUT DURING YOUR TENURE AT THE BUILDING WE ALL CALL

1 GEORGETOWN STEEL, ALL THROUGH ARCELORMITTAL, WHAT
2 TYPE OF HEARING PROTECTION, IF ANY, DID YOU WEAR?

3 A. OKAY. YEARS AGO, WHEN HEARING PROTECTION REALLY
4 WASN'T A BIG DEAL THERE, WE COME TO WORK, AND WE
5 WORKED AND WE DEALT WITH WHAT DAY-TO-DAY OPERATIONS
6 WE HAD, AND AS TIME GREW -- GREW ON, PROBABLY, OSHA
7 GOT INVOLVED MORE WITH THE HEARING PROTECTION, AND
8 WE STARTED ADDING -- ADDING HEARING PROTECTION TO
9 DIFFERENT AREAS OF THE MILL, AND IN 2003, IF YOU
10 COME OUT OF THE OFFICE, YOU HAD HEARING PROTECTION
11 THROUGHOUT EVERY PART OF THE MILL.

12 Q. IT WAS MANDATED?

13 A. MANDATED.

14 Q. AND WERE YOU EVER WRITTEN UP OR CHARGED FOR
15 VIOLATING THAT MANDATE?

16 A. NO, SIR.

17 Q. YOU STEADILY WORE YOUR HEARING PROTECTION?

18 A. YES, SIR.

19 Q. AND I NOTE THAT FROM 2003 ALL THE WAY UP UNTIL 2013,
20 AND ACCORDING TO DR. FRY, THAT YOUR HEARING GOT
21 EIGHT PERCENT WORSE DURING THAT TIME, CORRECT?

22 A. OKAY. BACK IN 2007 ACTUALLY WHEN I WENT TO THE
23 DOCTOR AND GOT SOME HEARING PROTECT -- HEARING AIDS,
24 WHAT HAPPENED HERE, DURING THIS TIME, IN MY AREA OF
25 SUPERVISION, I HAD TO HAVE MEETINGS AND REALLY

1 DIRECT CONTACT WITH A LOT -- WITH THE EMPLOYEES,
2 AND I FELT MYSELF NOT HEARING EVERYTHING CLEARLY. I
3 MEAN, ESPECIALLY WHEN YOU'RE IN THE MILL AND STUFF
4 LIKE THAT, YOU KNOW, YOU'D HAVE TO DO YOUR HAND
5 SIGNALS AND STUFF, BUT WHEN YOU'D GO IN THE OFFICE,
6 IT'S THE SAME WAY. WHEN PEOPLE TALKED, I WOULDN'T
7 QUITE UNDERSTAND THEM. I FELT LIKE I WAS
8 MISUNDERSTANDING WHAT THEY WERE SAYING, BECAUSE OVER
9 AND OVER I HAD TO HAVE THEM TO REPEAT, AND THEN MY
10 WIFE SAID, "HEY, YOU NEED TO GET SOME HEARING AIDS
11 'CAUSE YOU'RE GONNA MAKE THE WRONG DECISION. YOU'RE
12 GONNA HEAR THE WRONG THING AND SAY THE WRONG THING
13 AND YOU COULD GET SOMEBODY HURT." SO AT HER PUSH, I
14 WENT TO THE DOCTOR AND VISITED DR. FRY'S OFFICE, AND
15 SHE EXAMINED MY HEARING, AND SHE SAID, "HEY," ---

16 BY MR. ROGERS:

17 COMMISSIONER, I'M GOING TO OBJECT TO ANYTHING
18 THE DOCTOR SAID.

19 BY COMMISSIONER BECK:

20 SUSTAINED.

21 DIRECT EXAMINATION RESUMED BY MR. DUNCAN:

22 Q. WELL, AS A RESULT OF YOU GOING IN THERE ---

23 A. SHE SAID, "HEY", ---

24 BY MR. ROGERS:

25 I OBJECT TO THE ---

DIRECT EXAMINATION RESUMED BY MR. DUNCAN:

Q. YOU CAN'T TELL ME WHAT SHE SAID. I WAS JUST ASKING WHAT SHE DID. DID SHE PRESCRIBE YOU TO GET HEARING AIDS AT THAT TIME?

A. YES, SHE DID.

Q. AND WHILE YOU CONTINUED AT THE MILL, DID YOU ACTUALLY WEAR THE HEARING AIDS IN THE MILL?

A. NOT DIRECTLY IN THE MILL, BUT WHEN I WENT IN THE OFFICES DEALING WITH PEOPLE, YES.

Q. SO YOU DIDN'T WANT TO AMPLIFY THE LOUD NOISE?

A. RIGHT. WELL, I COULD NOT -- I HAD TO -- AT THAT TIME, YOU HAD TO HAVE HEARING PROTECTION, AND THE HEARING AIDS WAS NOT PROTECTING MY EARS, AND THEY WANTED ME TO PUT THESE MUFFS ON MY EARS WITH THE HEARING AIDS IN MY EARS, AND I COULDN'T HANDLE THAT. I COULDN'T -- IT WAS ALMOST UNSAFE FOR ME AT THE TIME, SO I ELECTED TO WEAR MY HEARING PROTECTION ON THE FLOOR. WHEN I WENT IN TO THE OFFICES OR THE MEETINGS, THE MEETINGS WITH DIFFERENT GROUPS, I'D WEAR THE HEARING PROTECTION -- WEAR THE HEARING AIDS.

Q. CAN YOU TELL THE COMMISSIONER, TRY AND GIVE HIM A FEEL FOR WHAT IT IS, WHAT KIND OF NOISES ARE WE TALKING ABOUT? IS IT LAWNMOWER NOISES?

A. NO, SIR. IT'S NOT LAWNMOWER NOISES. IT'S A

1 DIFFERENT GRINDING. YOU CAN -- WHEN YOU LEAVE
2 THERE, YOU STILL HEAR IT. IT'S JUST THAT CONSTANT
3 GRINDING NOISE FOR THE MILL -- THAT MILL RUNNING,
4 AND THE PEAK OF IT -- IT'S JUST -- JUST -- IT'S
5 HARD TO SIT HERE AND TELL YOU HOW LOUD IT IS 'CAUSE
6 YOU GET USED TO IT TO A CERTAIN EXTENT, BUT YOU CAN
7 ALWAYS HEAR -- WHEN YOU LEAVE THERE, YOU CAN ALWAYS
8 HEAR THAT HUMMING SOUND IN YOUR EARS.

9 Q. WITH THE AREA YOU WORKED IN, AND WE HAVE THE NOISE
10 STUDIES IN HERE THAT GIVE YOU AN IDEA WHAT KIND OF
11 NOISES YOU WERE EXPOSED TO, COULD YOU CARRY ON A
12 CONVERSATION LIKE WE ARE TODAY?

13 A. NO, NOT LIKE YOU'RE DOING IT IN HERE. NO, YOU
14 ALMOST HAVE TO HAVE -- I MEAN, AT EACH OTHER'S FACE
15 OR -- AND HAND SIGNALS TO COMMUNICATE WITH PEOPLE ON
16 THE FLOOR.

17 Q. AND THAT'S THE WAY IT WAS WHEN YOU LEFT OUT OF THERE
18 A YEAR AGO, AND IT WAS THAT WAY TEN YEARS AGO,
19 TWENTY YEARS AGO, THIRTY YEARS AGO?

20 A. YEAH, IT'S -- IT'S JUST NOISY.

21 Q. AND WHEN'S THE LAST TIME YOU'VE BEEN IN THE MILL?

22 A. I WENT BACK DECEMBER 2ND, 2014, AS A FACILITATOR.

23 Q. AND YOU'RE HELPING TO DO WHAT?

24 A. I WENT BACK IN THE ROLL SHOP AREA TO HELP THEM
25 ORGANIZE AND AUDIT THE SHOP TO BRING THEM UP TO

1 DATE, 'CAUSE AFTER THE TIME I LEFT HERE, THEY'D BEEN
2 THROUGH -- THIS IS THE THIRD SUPERVISOR THEY'VE HAD,
3 OR MANAGER, IN THAT AREA, AND THE GENERAL MANAGER
4 ASKED ME TO COME IN TO AUDIT THE SHOP AND MAKE SURE
5 WE SEE WHAT WE'VE GOT, SEE WHAT WE'RE MISSING, SEE
6 WHAT WE NEED, AND I DID THAT FOR FOUR MONTHS AT TWO
7 DAYS A WEEK.

8 Q. AND AS FAR AS AWAY FROM THE MILL, DO YOU HAVE NOISY
9 HOBBIES THAT YOU CAN THINK OF?

10 A. AFTER I RETIRED, I HAVE -- I DO CUT A FEW YARDS,
11 ABOUT FIVE OR SIX YARDS A WEEK, FOR SOME -- I DO IT
12 FOR MISSION WORK, SOME THEY PAY ME, BUT SINCE I'VE
13 RETIRED, I WAS KIND OF DOING THAT TO KILL THE TIME.

14 Q. WHAT ABOUT -- WE FILED THIS CLAIM AND PUT DOWN A
15 DATE OF MAXIMUM MEDICAL IMPROVEMENT IN DECEMBER OF
16 2014. PRIOR TO THAT, WHAT NOISY THINGS DID YOU DO
17 OUTSIDE THE MILL?

18 A. I HAD NO LOUD-NOISE HOBBIES. I DON'T HUNT. I DON'T
19 ---

20 Q. NOTHING OF THAT NATURE?

21 A. UH-UH.

22 Q. NOW, THE OTHER THING I'VE LEARNED KIND OF MORE FROM
23 THE UNION PEOPLE, BUT NOT FROM THE SUPERVISORS, MY
24 UNDERSTANDING IS YOU WORKED AS MANY HOURS A WEEK AS
25 ANYBODY.

1 BY MR. ROGERS:

2 OBJECT TO THE FORM OF THAT QUESTION.

3 BY MR. DUNCAN:

4 OKAY.

5 DIRECT EXAMINATION RESUMED BY MR. DUNCAN:

6 Q. HOW MANY HOURS DID YOU WORK A WEEK?

7 A. I PROBABLY WORKED WITHIN 60 HOURS A WEEK.

8 Q. AND THAT WAS STEADY ON FOR TEN YEARS ---

9 A. ABOUT 2003 -- ABOUT THE LAST TEN YEARS.

10 Q. AND OFTEN TIMES YOU'D LEAVE OUT FOR DINNER AND COME
11 BACK AFTERWARDS?

12 A. QUITE A FEW TIMES.

13 Q. AND WHAT KIND OF PROBLEMS ARE YOU HAVING NOW WITH
14 YOUR HEARING?

15 A. I JUST HAVE A HARD TIME HEARING, ESPECIALLY WHEN I'M
16 WITHOUT THE HEARING AIDS, AND I DON'T WEAR THEM
17 CONSTANTLY. I THINK THAT'S -- BUT WATCHING TV,
18 COMMUNICATING WITH MY WIFE, I JUST HAVE TROUBLE WITH
19 IT. IT'S -- I'M STARTING TO -- IT'S PRETTY BAD
20 RIGHT NOW.

21 Q. WHAT ABOUT WHEN YOU -- WHEN THERE'S BACKGROUND
22 NOISE?

23 A. WELL, YOU KNOW, YOU DON'T HEAR A LOT BECAUSE I DON'T
24 HEAR WHAT EVERYBODY ELSE IS HEARING, YOU KNOW, AND
25 MY WIFE TELLS ME ALL THE TIME, "YOU DON'T HEAR ALL

1 THIS." I SAID, "WELL, IT MIGHT BE GOOD THAT I CAN'T
2 HEAR IT. I'M TRYING TO HEAR IT. I WANT TO HEAR IT,
3 BUT I CAN'T HEAR IT."

4 Q. AND DO THE HEARING AIDS HELP?

5 A. OH, YES.

6 Q. NOW, TODAY WE'RE IN A ROOM THAT APPEARS TO BE THAT
7 THERE'S NO BACKGROUND NOISE, DOES THAT MATTER?

8 A. RIGHT. I DO PRETTY GOOD WITH NO BACKGROUND NOISE,
9 YEAH.

10 Q. WHAT IF THERE IS NO BACKGROUND NOISES, BUT YOU TOOK
11 THE HEARING AIDS OUT?

12 A. I'LL HAVE TO LOOK AT YOU AND READ YOUR LIPS. I
13 COULDN'T -- I -- WE COULDN'T CARRY ON A CONVERSATION
14 HERE, THE WAY WE'RE DOING IT RIGHT NOW, IF I HAD MY
15 HEARING AIDS OUT.

16 BY MR. DUNCAN:

17 THANK YOU, MR. WARD.

18 BY COMMISSIONER BECK:

19 MR. ROGERS?

20 BY MR. ROGERS:

21 THANK YOU, COMMISSIONER.

22 CROSS-EXAMINATION BY MR. ROGERS:

23 Q. MR. WARD, YOU SAID YOU'RE CUTTING GRASS NOW FIVE TO
24 SIX DAYS A WEEK?

25 A. NO, I DIDN'T SAY FIVE TO SIX DAYS. I SAID FIVE OR

- 1 SIX YARDS IN A WEEK.
- 2 Q. OKAY. SO YOU DO MORE THAN ONE A DAY?
- 3 A. MAYBE TWO AT THE MOST.
- 4 Q. ALL RIGHT. AND YOU'RE USING A RIDING MOWER OR PUSH
- 5 MOWER?
- 6 A. RIDING MOWER.
- 7 Q. OKAY. GAS-POWERED?
- 8 A. GAS-POWERED.
- 9 Q. IT MAKES NOISE?
- 10 A. IT DOES MAKE NOISE.
- 11 Q. ARE YOU USING A WEED EATER OR HEDGE TRIMMER OR
- 12 ANYTHING ELSE THAT MAKES NOISE?
- 13 A. I USE A TRIMMER, YES.
- 14 Q. AND GAS-POWERED?
- 15 A. GAS-POWERED.
- 16 Q. THAT MAKES A GOOD BIT A NOISE, AS WELL?
- 17 A. IT MAKES NOISE, YES.
- 18 Q. AND DO YOU WEAR HEARING PROTECTION NOW?
- 19 A. YES, I DO.
- 20 Q. YOU WEAR IT WHEN YOU OPERATE THOSE PIECES OF
- 21 MACHINERY?
- 22 A. WHEN I WEAR IT -- I'VE BEEN DOING THAT FOR 12 YEARS
- 23 NOW.
- 24 Q. ALL RIGHT.
- 25 A. TWELVE PLUS YEARS.

1 Q. I ASSUME YOU DO THAT BECAUSE YOU UNDERSTOOD AT SOME
2 POINT THAT THAT NOISE CAUSES DAMAGE TO YOUR HEARING?

3 A. CORRECT.

4 Q. OKAY. AND WHEN YOU STARTED AT THE MILL IN 1970, I
5 THINK YOU TOLD ME THAT -- AND I THINK YOU'VE
6 CONFIRMED WITH MR. DUNCAN, THERE WAS NO HEARING
7 PROTECTION AT ALL?

8 A. AT THAT TIME, THERE WASN'T AN ISSUE WITH WEARING
9 HEARING PROTECTION. IT WASN'T A POLICY OR NOTHING.

10 Q. NOBODY WORE IT?

11 A. NOT THAT I KNOW OF.

12 Q. AND THE MILL WAS EXTREMELY LOUD?

13 A. YEAH.

14 Q. AND I BELIEVE IN YOUR DEPOSITION YOU TOLD ME THAT
15 THAT WENT PROBABLY AT LEAST TEN YEARS BEFORE
16 SOMEBODY CAME TO THE CONCLUSION THAT WE NEEDED TO
17 START PROTECTING OUR HEARING.

18 A. EMPLOYEES HEARING, YES.

19 Q. SO FOR AT LEAST TEN YEARS, WHICH WOULD BE 1970 TO
20 ROUGHLY 1980, YOU WORE NO PROTECTION?

21 A. RIGHT.

22 Q. ALL RIGHT. AND ONCE IT WAS IMPLEMENTED THAT YOU HAD
23 TO WEAR PROTECTION, YOU'VE WORN IT EVERY DAY EVER
24 SINCE WHILE YOU'VE BEEN IN THAT MILL?

25 A. EXACTLY. IF IT'S A POLICY WHEN THEY TALKED ABOUT

1 FOR HEARING PROTECTION, YOU NEEDED HEARING
2 PROTECTION IN THAT AREA, YES, SIR.

3 Q. AND YOU SAID SPECIFICALLY IN 2003, IT BECAME VERY
4 STRICT?

5 A. WHEN WE OPENED BACK UP IN 2003, WHEN THIS
6 INTERNATIONAL STEEL GROUP TOOK OVER, THAT'S -- IT
7 WAS ALL -- IT WAS IN PLACE. EVERYTHING WAS IN
8 PLACE, AND THAT'S THE WAY IT WAS.

9 Q. AND WHEN ARCELORMITTAL TOOK OVER FROM INTERNATIONAL
10 STEEL GROUP, THAT STAYED IN PLACE, AS WELL?

11 A. EVERYTHING ON THAT POLICY STAYED IN PLACE, YES, SIR.

12 Q. SO FOR EVERY DAY THAT YOU'VE BEEN AT THAT MILL WHILE
13 IT'S BEEN OWNED BY ARCELORMITTAL, YOU HAVE ALWAYS
14 WORN HEARING PROTECTION?

15 A. YES, SIR. I WAS A MANAGER, AND I WORE IT.

16 Q. ALL RIGHT. NOW, YOU MENTIONED EARLIER IN 2007 I
17 GUESS IT BECAME APPARENT, ACCORDING TO YOU OR WHAT
18 YOUR WIFE TOLD YOU, YOU NEEDED TO GO SEE A DOCTOR
19 AND GET SOME HEARING AIDS.

20 A. YES, SIR.

21 Q. ALL RIGHT. BUT YOU UNDERSTOOD PRIOR TO THAT TIME
22 THAT YOUR HEARING WASN'T AS GOOD AS IT HAD BEEN,
23 CORRECT?

24 A. I COULD SEE A DECLINE IN MY HEARING, YES.

25 Q. AND THAT HAD BEEN GOING ON FOR HOW LONG?

1 A. A NUMBER OF YEARS.

2 Q. ALL RIGHT. WHEN YOU SAY A NUMBER ---

3 A. AFTER FOUR OR FIVE YEARS, I COULD START REALLY
4 TELLING A DIFFERENCE IN MY HEARING.

5 Q. OKAY. SO THAT WOULD BE SOMETIME AROUND 2000?

6 A. YEAH.

7 Q. SOMEWHERE IN THAT RANGE YOU STARTED TO NOTICE YOU
8 HAD SOME PROBLEMS?

9 A. I WOULD SAY THAT, YEAH.

10 Q. BUT YOU JUST DIDN'T GO SEE A DOCTOR OR DO ANYTHING
11 ABOUT IT?

12 A. AT THAT TIME, NO.

13 Q. DID YOU FEEL THAT IT WAS DUE TO YOUR NOISE AT THE
14 MILL?

15 A. YES.

16 Q. OKAY. AND, IN FACT, I THINK YOU TOLD ME IN YOUR
17 DEPOSITION THAT YOU BELIEVE THE HEARING LOSS
18 ACTUALLY PROBABLY STARTED IN THE 1970S?

19 A. THROUGH THE PROCESS, YES, EARLY -- EARLY GOING.

20 Q. ALL RIGHT. AND THEN IN 2007, YOU ACTUALLY FILED A
21 CLAIM AGAINST ARCELORMITTAL FOR YOUR HEARING LOSS,
22 DIDN'T YOU?

23 A. I DID NOT ACTUALLY FILE A CLAIM. I TOOK THE
24 PAPERWORK DOWN AFTER HAVING A HEARING TEST, AND AT
25 THE TIME, I SAID I WOULDN'T -- I DIDN'T WANT TO FILE

1 A CLAIM AT THIS TIME.

2 Q. WELL, DID YOU GO HIRE MR. DUNCAN?

3 A. NOT IN 2007.

4 Q. DO YOU KNOW WHETHER OR NOT MR. DUNCAN FILED A CLAIM
5 ON YOUR BEHALF?

6 A. AT THE TIME, NO.

7 Q. LET ME JUST SHOW YOU WHAT'S IN OUR APAS, TABBED
8 UNDER SECTION "C," ON PAGE 71. IT'S A COVER LETTER
9 FROM MR. DUNCAN REFERENCING YOU AS THE CLAIMANT, AND
10 THAT'S A FORM 50 ALLEGING HEARING LOSS TO BOTH OF
11 YOUR EARS AS OF FEBRUARY 21ST, 2007. DID YOU KNOW
12 THAT THIS HAD BEEN FILED ON YOUR BEHALF?

13 A. AT THAT TIME, NO.

14 Q. IN FACT, THIS ACTUALLY REQUESTED A HEARING ON THE
15 ISSUE. DID YOU GO TO A HEARING?

16 A. NO, I DID NOT.

17 Q. DID YOU KNOW A HEARING WAS SCHEDULED ON YOUR CASE?

18 A. NOT IN 2007.

19 Q. BUT DID YOU KNOW, IN FACT, THAT MR. DUNCAN HAD FILED
20 THIS CLAIM ON YOUR BEHALF?

21 A. NO.

22 Q. YOU DIDN'T GIVE HIM THE AUTHORITY TO DO THAT?

23 A. 'CAUSE I WASN'T GOING TO DO IT AT THIS TIME. I WAS
24 GOING TO WAIT UNTIL I -- AT THE END OF MY
25 RETIREMENT.

1 Q. WELL, YOU MUST HAVE GONE TO HIM AND TOLD HIM
2 SOMETHING ABOUT FILING A CLAIM, BECAUSE HE ACTUALLY
3 DID THIS ON YOUR BEHALF.

4 A. NO, I TOOK THE PAPERWORK -- WHEN I TOOK THE HEARING
5 TEST IN, I TOOK THE PAPERWORK TO HIS OFFICE, AND I
6 DID NOT -- FROM THAT STAGE ON, I DID NOT -- I WAS
7 NOT GOING TO PURSUE A CLAIM.

8 Q. YES, BUT YOU UNDERSTOOD AT THAT TIME THAT YOU HAD
9 HEARING LOSS AND YOU BELIEVED IT WAS DUE TO YOUR
10 TIME AT THE MILL?

11 A. RIGHT.

12 BY MR. ROGERS:

13 I BELIEVE THAT'S ALL THE QUESTIONS I HAVE,
14 COMMISSIONER.

15 BY COMMISSIONER BECK:

16 ANYTHING FURTHER?

17 BY MR. DUNCAN:

18 NO, NOTHING FURTHER. THAT'S THE CLAIMANT'S
19 CASE, YOUR HONOR.

20 BY COMMISSIONER BECK:

21 ALL RIGHT. ANY WITNESSES ON BEHALF OF THE
22 DEFENDANTS?

23 BY MR. ROGERS:

24 NO, SIR. NO WITNESSES.

25 BY COMMISSIONER BECK:

1 ALL RIGHT. THAT WILL CONCLUDE THIS PROCEEDING.

2 THANK YOU, GENTLEMEN.

3 (THERE BEING NO FURTHER QUESTIONS, THIS HEARING WAS
4 CONCLUDED AT THE HOUR OF 12:19 P.M.)

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BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 1321802

RODNEY WARD,	)	
	)	FULL COMMISSION HEARING
CLAIMANT,	)	PANEL B
vs.	)	
	)	COMMISSIONER BARDEN - CHAIR
ARCELOR-MITTAL	)	COMMISSIONER CAMPBELL
GEORGETOWN,	)	COMMISSIONER WILKERSON
	)	
EMPLOYER,	)	
AND	)	
	)	
NEW HAMPSHIRE INSURANCE	)	
COMPANY,	)	
	)	
CARRIER,	)	
DEFENDANTS.	)	
	)	

 COPY

THE WORKERS' COMPENSATION HEARING, TAKEN BEFORE
CORA ELLIS BRUTON, A NOTARY PUBLIC IN AND FOR THE
STATE OF SOUTH CAROLINA, COMMENCING AT THE HOUR OF
11:14 A.M., TUESDAY, NOVEMBER 17, 2015, SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION, 1333 MAIN STREET,
COLUMBIA, SOUTH CAROLINA 29202.

CORA ELLIS BRUTON
COURT REPORTER
131 BROWNING COURT
LEXINGTON, SOUTH CAROLINA 29073
803-397-0189

CORA ELLIS BRUTON COURT REPORTER
131 BROWNING COURT LEXINGTON, SOUTH CAROLINA 29073

1 cover all of them in ten minutes. They are Briefed
2 and so I would ask that you read that Brief --

3 THE COURT: We have it.

4 MR. ROGERS: -- in case there are things that I
5 don't get to. But first and foremost, the Form 30 by
6 the Appellant doesn't cover all these things he just
7 argued. If you'll read 67-701 it specifically says
8 what you are to do when you file an appeal.

9 THE COURT: Right. Well, you did not object
10 while he was --

11 MR. ROGERS: Well, I was going to object, but I
12 figured I didn't have the right to object.

13 THE COURT: You can object during his argument if
14 he speaks beyond --

15 MR. ROGERS: Well, then I'd note my objection for
16 all those, because he did not preserve any of those
17 issues for appeal.

18 THE COURT: Okay.

19 MR. ROGERS: Other than the King versus Knife
20 case that he mentioned and then possibly something
21 about when he knew or should have known that he had a
22 problem.

23 THE COURT: Then why don't you speak to those
24 things that are preserved.

25 MR. ROGERS: Well, the specific issues here, and

WACCAMAW SURGICAL ASSOCIATES

Terry L. Fry, MD, FACS

401 Marina Drive

Georgetown, SC 29440

(p) 843-546-7272

(f) 843-546-0277

December 11, 2014

Re: Rodney C. Ward

To Whom It May Concern:

Mr. Ward had an audiogram performed in February of 2007 which showed a bilateral sensorineural hearing loss compatible with industrial noise exposure. At that time his hearing impairment was rated at 23%. Unfortunately for Mr. Ward his audiogram of 03/04/14 shows that his SNHL has worsened and his impairment has increased from 23% to 31%.

It is felt that Mr. Ward's bilateral sensorineural hearing loss is due to his continued industrial noise exposure. He would certainly benefit from bilateral hearing amplification. My findings are based on a reasonable degree of medical certainty.

Sincerely,

A handwritten signature in black ink, appearing to read 'Terry L. Fry', with a stylized flourish at the end.

Terry L. Fry, MD



Physician's Statement

Claimant's Name: Rodney Ward

Employer's Name: ArcelorMittal Georgetown, Inc.

Physician's Name: Terry L. Fry, M.D.

Insurance Carrier: New Hampshire Insurance Company

Practice/Clinic: Waccamaw Surgical Associates

SCWCC File No: 1321802

Preparer's Name: Terry L. Fry, M.D.

Phone: (843) 546-7272

The undersigned physician has been authorized by the Employer/Carrier to treat this Claimant for his or her injury by accident pursuant to §§42-15-60, 42-1-172 or 42-11-10.

Date of Injury or Illness: 10/31/2013

Date of first office visit: 5/28/03

Date of last visit: 9/10/14

Diagnosis or nature of injury or illness: SENSORINEURAL HEARING LOSS

Body part(s) Injured: (L) ear

Body part(s) affected: (R) ear

Date of Maximum Medical Improvement: N/A

Based on the AMA Guidelines, the claimant has sustained a 29 % medical impairment to (R) ear injured body part(s) and a 39 % medical impairment to to (L) ear other affected body part(s).

31% Binaural hearing impairment

☒ The claimant is able to return to work without restriction.

☐ The claimant is able to return to work with the following restrictions:

☐ The claimant is unable to return to work at his or her current employment.

☐ Claimant possesses retained hardware casually related to this injury.

As of the date I last saw this patient, it is my professional medical opinion the claimant:

☐ will not need future medical care related to his or her work related injury or illness based on a reasonable degree of medical certainty (more likely than not).

☒ will need future medical care and treatment related to his or her work related injury or illness based on a reasonable degree of medical certainty (more likely than not) and that medical care and treatment including medication is as follows:

Recommend yearly hearing exam - and hearing aid (Bilateral) replacement every 2-3 years.

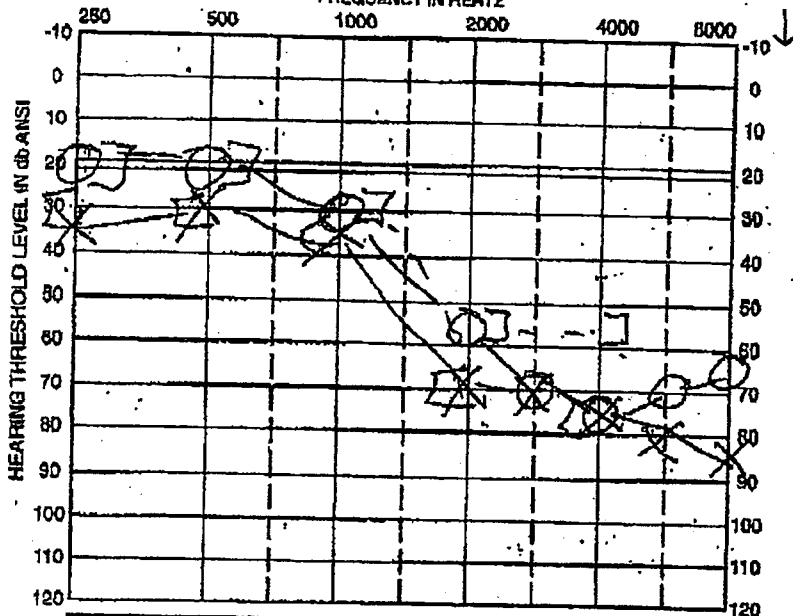
Treating Physician

Date

9/10/14

AUDIOLOGICAL EVALUATION

PURE-TONE AUDIOMETRY



PURE TONE AVERAGES		
EAR	FREQUENCY	
	Two	Three
Right		
Left		

Left	KEY	Right
X	AIR	O
□	AIR MASKED	Δ
<	BONE	>
	BONE MASKED	
N/A NO RESPONSE		

EAR	RIGHT	LEFT	BF
SRT	30	36	
Masking Level			
PBQ	48%	48%	%
PB Level			
Masking Level			
MCL			
UCL			

HEARING AID		
EAR	TYPE	

Terry L. Fry, M.D.
ENT - HEAD & NECK SURGERY
(843) 546-7272

Carol H. Davis, M.A., Aud.
CLINICAL AUDIOLOGIST
(843) 546-6872
401 Marina Drive
Georgetown, SC 29440

Hearing L R
Onset
Aid L R
Tinnitus L R
Drainage L R
Injury L R
Vertigo
F. H.

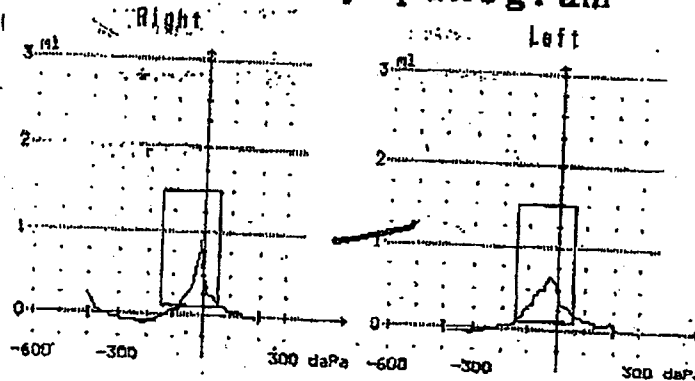
Noise Exposure - Type

Medications:

TONE DECAY		1K	2K	4K
	RE			
	LE			

TINNITUS MATCH		RIGHT	LEFT
	FREQ.		
	LEVEL		

226 Hz Tympanogram



Ear Volume 1.27 ml
Compliance 0.91 ml
Pressure -8 daPa
Gradient 30 daPa

Ear Volume 1.00 ml
Compliance 0.66 ml
Pressure -22 daPa
Gradient 91 daPa

Patient's Name Rodney C. Ward

Address

Age Date 3-4-14

Rodney Ward

6/29/07

3/4/14

American Academy of Otolaryngology
Guide for Evaluation of Hearing Handicap
Copyright 1979

Calculate from pure tone audiogram
Audiometer calibrated to ANSI S3.6-1969 standards

INDIVIDUAL EAR HANDICAP WORKSHEET 3/4/14

	RIGHT	3/4/14	LEFT	3/4/14
500 Hz	20	20	20	30
1000 Hz	30	30	30	35
2000 Hz	50	55	65	70
3000 Hz	55	70	70	70
TOTALS=	155	175	185	205
Divide by 4	39	44	46	51
	-25		-25	
TOTALS=	14	19	21	26

x 1.5%

x 1.5%

RIGHT %= 21 29 LEFT %= 32 39

THESE ARE INDIVIDUAL EAR HEARING IMPAIRMENT

BINAURAL HEARING HANDICAP

Better ear percentage:	21	29	
Multiply by 5	105	145	
Equals	105	145	
Plus poorer ear	+ 32	+ 39	
Equals	= 137	= 184	
Divide by 6	÷ 6	÷ 6	
Equals	23	31%	

= BINAURAL HEARING IMPAIRMENT

6/3/03 2.2 cm. Lower lip lesion exc. - Symp. margin

Closed to 5-0 v. a. 5-p. probing
Flu. + wk.

4/10/03 Healing fine - Sutures removed - JH

Potential Verrucous lesion

from Flu

removed
residual

9/16/14 Wife & work environment contacts of Dr.
Begen to H.A. in 2007. Worked @ Shell
Mill in noise & ear protection. Father
worked IP & had H.A. later in life

① Ears & TM's NL - (C H.A.)

Nose patent & cl

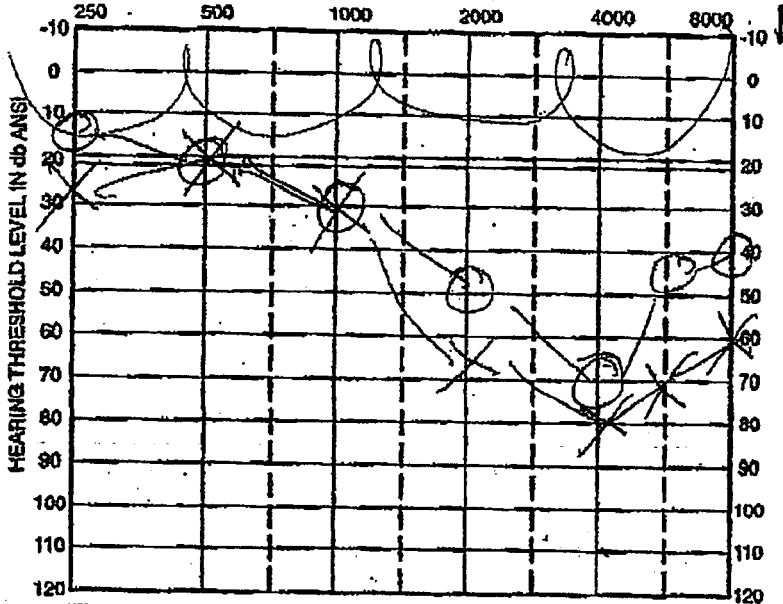
OP NL Ndc NL

② Audiologic Sym. bilat. SNHL + 48%
(C Sign drop in disc since 07)

③ Rec Bilat. H.A.'s + yearly
Audiologic exam.

AUDIOLOGICAL EVALUATION

PURE-TONE AUDIOMETRY



EAR	PURETONE AVERAGES	
	FREQUENCY	
	Two-	Three-
Right		
Left		

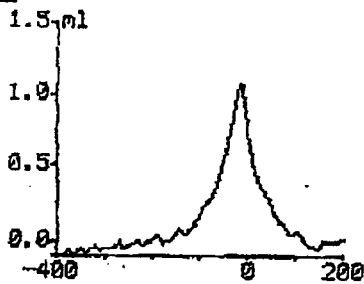
Left	KEY	Right
X	AIR	O
□	AIRMASKED	Δ
<	BONE	>
[	BONE MASKED	]

EAR	RIGHT	LEFT	SF
SRT	35	40	
Masking Level			
PBO	92%	88%	%
PB Level			
Masking Level			
MCL			
UCL			

HEARING AID	
EAR	TYPE

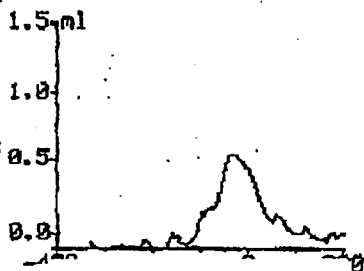
Temp: Sweep Right

ECU: 1.45 ml 1.5 ml
MEP: -15 daP
SC: 1.11 ml
Grad: 0.69 1.0
TW: 62 daP
Speed: 400 dP/S
Dir: Nes



Temp: Sweep Left

ECU: 1.21 ml 1.5 ml
MEP: -35 daP
SC: 0.56 ml
Grad: 0.66 1.0
TW: 77 daP
Speed: 400 dP/S
Dir: Nes



6

Terry L. Fry, M.D.
ENT - HEAD & NECK SURGERY
(843) 546-7272

Carol H. Davis, M.A., Aud.
CLINICAL AUDIOLOGIST
(843) 546-6872
401 Marina Drive
Georgetown, SC 29440

Hearing (C) (R)
Onset - gradual
Aid - L R
Tinnitus - (C) (R)
Drainage - No L R
Injury L R
Vertigo - NO
F.H. - No - Dad - HA - but IP
Noise Exposure - Type Steel Mills -
Military
Medications:

TONE DECAY		1K	2K	4K
	RE			
	LE			

TINNITUS MATCH		RIGHT	LEFT
	FREQ.	4000	
	LEVEL	Threshold	

GO PRO - AUTO T -

Patient's Name Rodney Ward
Address _____
Age _____ Date 2-21-07

TERRY L. FRY, M.D., F.A.C.S.

OTOLARYNGOLOGY, HEAD AND NECK SURGERY
FACIAL AND PLASTIC RECONSTRUCTION

Rodney Ward

Name

10-01-48

05-28-03

Referring Physician

DOB

Date

HISTORY: 2 mo. hx enlarg'd lesion lower lip.

Weight: 210 lbs.

Blood Pressure:

Past Hx: Bleeder DM MI Ca. HBP. PUD Seizure Temp: nt

Allergies: Nasal Asthma Skin G.I.Sx COPD

DRUG: Spn. Sulfa Mycin M.S. Cod.

Surgeries: heart cath i mo. ago,

Illnesses: 4 chol.

Rx: Pravachol

DTC = 3

General Appearance: WD WN

Tobacco 3

Communication: Clear

HEAD AND FACE:

Face/Skin: New raised lesion @ lower lip

Sinus Tenderness: Yes No

Salivary Glands: nt

Facial Strength: Sym

EARS, NOSE, MOUTH AND THROAT:

EAC's nt

TM: R nt

Pinnas nt

Nose: nt

L nt

Lips, Teeth and Gums nt

Oropharynx: Oral MM: nt

Tonsils: nt

Hard & Soft palates nt

Pharyngeal Walls nt

Post. Pharynx nt

Audio: 3

F/O: 3

NECK:

App: nt

Nodes: nt

Crepitus nt

Masses: 3

Thyroid: nt

EYES:

SKIN:

LYMPH:

RESP:

CV:

NEUROL:

(A) (C) lower lip lesion
(P) Allow 1 hr. for exc.

**OSHA REPORTS SOUND LEVEL
SURVEY**

0577

INTER-OFFICE MEMO

June 30, 1975

TO: H. Willars

FROM: L. Young

SUBJECT: SOUND LEVEL SURVEY

During the months of May and June, 1975 a sound level survey was taken throughout the plant. This survey was taken with an OSHA approved Bausch and Lomb model SPL 103 sound level meter.

The following decibel readings were found:

MELT SHOP - FURNACE AREA

#1 Furnace Control Room	86 - 88
#1 Furnace Control Panel	
First & Second Charge	- 104 - 108
#1 Furnace - Refining Period	- 92 - 94
#2 Furnace Control Room	- 88 - 90
#2 Furnace Control Panel	
First & Second Charge	- 106 - 110
#2 Furnace - Refining Period	- 93 - 95
#3 Furnace Control Room	- 87 - 89
#3 Furnace Control Panel	
First & Second Charge	- 105 - 107
#3 Furnace - Refining Period	- 90 - 92

Mechanics work bench wastend of furnace floor during high noise period 102 - 104

Note: Hearing protection is required on the furnace floor by all employees working there during an 8 hr. period.

MELT SHOP - CASTING

ConCast - while casting	
Casters	- 94 - 96
Slidegate operator	- 96 - 98
ConCast - Not casting	- 85 - 87
Pacor - While casting	
Casters	- 96 - 98
Slidegate operators	- 96 - 98
Pacor - Not casting	- 83 - 85
ConCast Hot Bed Operator	- 86 - 88
Pacor Hot Bed Operator	- 87 - 89

MELT SHOP - MASON AREA

During First & Second Charges on #1 Furnace		
At Mortar Mixer	-	95 - 97
At Tundish Repair Area	-	93 - 95
At Slidegate Repair Area	-	83 - 98
During Refining #1 Furnace		
At Mortar Mixer	-	84 - 86
At Tundish Repair Area	-	83 - 85
At Slidegate Repair Area	-	86 - 88

ROLLING MILL

OFU Furnace Feed Table Oper.	-	82 - 84
OFU Drum Switch Operator	-	84 - 86
OFU Peel Bar Operator	-	84 - 86
Roughing Mill	-	86 - 88
Stelmar Conveyor	-	88 - 90
Coil Compactor Strapping	-	86 - 88
Inspection Area-Coil Take Off	-	88 - 90
Tallyman - Coil Compactor	-	88 - 90

Note: Noise level of last four locations is elevated by high velocity fans. Employees exposed intermittently to this noise.

Hot Bed Area	-	80 - 85
--------------	---	---------

<u>SHIPPING & BILLET YARD</u>	-	Below 85
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STRAIGHTENING MACHINES

Operator - All 4 Machines

When running rebar	-	106 - 108
When running smooth round	-	94 - 96

Employee in Hole (Take Off)

When running on rebar		
North End	-	100 - 102
Center	-	96 - 98
South End	-	95 - 96

Employee at Hook Up Station	- Avg. -	92
-----------------------------	----------	----

Employee at Payoff Reels	-	90 - 92
--------------------------	---	---------

Noise level below 80 when machines are not running.

Note: Hearing protection required in entire Straightening area. This area being worked on to engineer the lowering of the noise level.

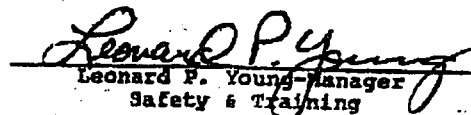
Mobile Equipment Mechanic Shop - Below 80

Machine Shop, Electrical Shops, Roll Shop, Guide
Repair Area - Below 80

Because of the possibility of averaging over 90 decibals in an 8 hour period the intermittent high noise areas were checked by an OSHA approved Bausch and Lomb Model 104-A Personal Noise Dosimeter. This Dosimeter was calibrated before each usage by an OSHA approved Bausch and Lomb Sound Level Calibrator. This Dosimeter is equipped with a digital counter which indicated full exposure or 90 decibal average when the counter reaches 1000 counts in an 8 hour period. This Dosimeter is attached to the belt of an employee with a microphone hooked to his shirt collar. The following readings were taken in the high noise and possible high noise areas.

	<u>DIGITAL READING</u> <u>8 HOUR PERIOD</u>	<u>APPROX.</u> <u>DECIBALS</u>
Melt Shop Furnace Area	1060	95.4
Concast - Casting Area	968	87.1
Concast - Hot Bed Operator	958	86.2
Pecor - Hot Bed Operator	970	87.3
Mason-Tundish Repair Area	975	87.7
Mortar Mixer	963	86.7
Slidegate Repair Area	985	88.6
Rolling Mill - Billet Pusher	840	75.6
Stelmar Conveyor	912	82.1
Coil Compactor	903	81.2
Straightening Machine Area	1022	92

This survey includes all areas in the plant that were considered to have a potential high noise level. Hearing protection must be enforced in all areas where the average noise level exceeds 90 DBA. The areas include the furnace area and straightning machines. Hearing protection is presently enforced in these areas.


Leonard P. Young - Manager
Safety & Training

GEORGETOWN STEEL CORPORATION
INTER-OFFICE MEMO

DATE July 1, 1983
 TO: File
 FROM: W. Martin
 SUBJECT: SOUND LEVEL SURVEY

A noise level evaluation survey was conducted during the month of June, 1983. This survey was taken with an OSHA approved Bousch and Lomb model SPL 103 sound level meter.

The following decibel readings were found:

Melt Shop

Furnace control during first charge	84 - 86
Outside on flooring during first charge	112 - 114
Inside controlroom during second charge	86 - 88
Outside controlroom during second charge	114 - 118
During third charge inside controlroom	84 - 86
During third charge outside controlroom	AVG. 106 - Peak 116
Inside controlroom during refine period	88 - 90
Outside controlroom during refine period	102 - 106

Casting

While casting at mold	92 - 94
Not casting	86 - 88
Pecor while casting at mold	94 - 96
Pecor not casting at mold	86 - 88

Refractory

During all furnace charges	92 - 94
----------------------------	---------

Rolling Mill

Roughing Mill	90 - 92
Finish Mill	94
East of furnace controlroom	96 - 98
Main walkway from coil collector to pulpit	90 - 92
Outside guide shop	90 - 92
On conveyor without fans	93
On conveyor with fans	98
On conveyor at coil collector	92
Coil collecting station downstairs	94
Hydraulic pulpit room	Below 85
Coil compactors	Below 85

Shipping and Billet Yard

Below 85

GEORGETOWN STEEL CORPORATION
INTER-OFFICE MEMO

DATE February 6, 1984
 TO: File
 FROM: W. Martin
 SUBJECT: SOUND LEVEL SURVEY



A noise level evaluation survey was conducted during the month of January 1984. This survey was taken with an OSHA approved Bausch and Lomb model SPL 103 sound level meter.

The following decibel readings were found:

<u>Melt Shop</u>	
Furnace control during first charge	84 - 86
Outside on flooring during first charge	112 - 114
Inside controlroom during second charge	86 - 88
Outside controlroom during second charge	114 - 118
During third charge inside controlroom	84 - 86
During third charge outside controlroom	AVG. 106 - PEAK 116
Inside controlroom during refine period	88 - 90
Outside controlroom during refine period	102 - 106
<u>Casting</u>	
While casting at mold	92 - 94
Not Casting	86 - 88
Recor while casting at mold	94 - 96
Recor not casting at mold	86 - 88
<u>Refractory</u>	
During all furnace charges	92 - 94
<u>Rolling Mill</u>	
<u>Roughing Mill</u>	
Finish Mill	90 - 92
East of furnace controlroom	94 - 96
Main walkway from coil collector to pulpit	96 - 98
Outside guide shop	90 - 92
On conveyor without fans	90 - 92
On conveyor with fans	93
On conveyor at coil collector	98
Coil collecting station downstairs	92
Hydraulic pulpit room	94
Coil compactors	Below 85
<u>Shipping and Billet Yard</u>	
	Below 85



Georgetown Steel Corporation

SAFETY and HEALTH DEPARTMENT

Inter-Office Memo

DATE: February 6, 1991
TO: File
FROM: W. Martin
SUBJECT: SOUND LEVEL SURVEY

A noise level evaluation survey was conducted during the month of January 1991. This survey was taken with Beusch and Lomb model SPL 103 sound level meter.

The following decibel readings were found:

Melt Shop

Furnace control room during first charge	84	-	88
Outside on flooring during first charge	112	-	114
Inside control room during second charge	88	-	88
Outside control room during second charge	114	-	118
Inside control room during refine period	88	-	90
Outside control room during refine period	102	-	108

Casting

While casting at mold	92	-	94
Not casting	88	-	88

Refractory

During all furnace charges	92	-	94
----------------------------	----	---	----

Rolling Mill

Roughing Mill	90	-	92
Finish Mill	94	-	
East of furnace control room	98	-	98
Main walkway from coil collector to pulpit	90	-	92
Outside guide shop	90	-	92
On conveyor without fans	93	-	
On conveyor with fans	98	-	
On conveyor at coil collector	92	-	
Coil collecting station downstairs	94	-	

wm/tw



Georgetown Steel Corporation

SAFETY and HEALTH DEPARTMENT

Inter-Office Memo

DATE: April 7, 1993
TO: File
FROM: W. Martin
SUBJECT: SOUND LEVEL SURVEY

A noise level evaluation survey was conducted during the month of April 1993. This survey taken with Bausch and Lomb model SPL 103 sound level meter.

The following decibel readings were found:

Melt Shop

Furnace control room during first charge	88	-	102
Outside on flooring during first charge	114	-	120
Inside control room during second charge	88	-	100
Outside control room during second charge	110	-	118
Inside control room during refine period	88	-	100
Outside control room during refine period	108	-	118

Casting

While casting at mold	98	-	102
Not casting	92	-	98

Refractory

During all furnace charges	94	-	98
----------------------------	----	---	----

Rolling Mill

Roughing Mill	90	-	92
Finish Mill	94	-	98
East of furnace control room	98	-	98
Main walkway from coil collector to pulpit	94	-	98
Outside guide shop	92	-	94
On conveyor without fans	98	-	
On conveyor with fans	102	-	110
On conveyor at coil collector	98	-	
Coil collecting station downstairs	94	-	

sls493.mem
wm/tw

NOISE STUDY

CONTROL ROOM TEAM

Minutes from first meeting
2-16-00

Present: Jack Bee Holmes
Gregory R. Morton *EB crew*
Jimmy T. Bromell
James Sanderson

1. Problem

- A. No escape exit
- B. Control Room too noisy
- C. Control Room too small
- D. Relocate Control Room
- E. Too much dust in Control Room

2. Solution

- A. Have an escape door mounted in back wall
- B. Have Bill Martin check noise level while we are running
- C. Have computer equipment brackets mounted to walls for more space and easy access
- D. Have double doors put in; it will help eliminate dust and noise level

NOISE STUDY

Mike Fox William Sargent Bill Martin Stan Sowa

CONTROL ROOM TEAM

May 23, 2000

HIGH NOISE LEVELS

On March 9, 2000 we began testing the noise level on the Melt Floor. We started at 2 level furnace where the noise level is extremely high. We found this out in the beginning of each heat, whether soft, medium or hard scrap was being used. We recorded higher noise levels than was required by OSHA.

OSHA says the noise levels should not exceed 90db. Our lowest was 92db. Each time the door was open for an operator to enter or exit, the noise level rose as high as 114db. This is now causing, and has been in the past a problem for all Furnace Operators. We have to yell loudly to each other in order to communicate. This also causes trouble communicating over the radio. The telephone calls from Casting or other furnaces are sometimes senseless.

The readings below are taken inside and outside the Control Room and also on the floor.

HEAT #27010 Acid Slag Soft Scrap

#2 Ladle Furnace A. Beginning of Heat 96db In Control Room
30 min into Heat 94db In Control Room
B. When door is open 114db
C. 114db on Floor in front of #2
25 min into Heat 104 - 106 db

HEAT #27107 7475 Hard Scrap

#2 Ladle Furnace A. Control Room 92db Beginning of Heat
40 minutes into Heat 84db
B. When door is open 115db
C. 110 db on the Floor in front of #2
25 minutes into Heat 102db

Heat #27190 8 Copper Soft Scrap

#2 Ladle Furnace A. Control Room 85-92 Beginning of Heat
B. Door open 105 - 110 db
C. 106 db in front of #2 on the Floor

Heat #27191 8 Copper Soft Scrap

#2 Ladle Furnace A. Control Room 92-94 Beginning of Heat
30 minutes later 80 db
B. Door open 105 - 110 db
C. 110 - 118 db in Front of #2 on Floor

Heat #27629 834K Hard Scrap

#2 Ladle Furnace A. Control Room 96 - 105 db Beginning of Heat
25 minutes later 80 - 82 db
B. Door open 114 db
C. 114 db in Front of #2 on Floor

Heat #27630 834 Hard Scrap

#2 Ladle Furnace A. Control Room 96 - 105 db Beginning of Heat
B. Door open 112 - 114 db
C. 112 - 116 db in Front of #2 on the Floor

Heat #27631 834 AK Hard Scrap

#2 Ladle Furnace A. Control Room 94 - 96 db
B. Door open 112 db
C. 110 - 112 db in Front of #2 Ladle Furnace

Thank you for taking the time to look over these readings and
those of us at the ladle furnace hope that the solution we gave can help
in the future.

Gregory R. Martin Jr.

**OSHA REPORTS WITH NOISE STUDIES,
SURVEYS AND CITATIONS TO
GEORGETOWN STEEL**

Notice of Alleged Safety or Health Hazards

Tue Aug 27, 2002 4:00pm

Report Copy

SEC 3312

Establishment Name:	Georgetown Steel		
Site Address:	S. Frazier St., Georgetown, SC 29440		
Site Phone:		Site FAX:	
Mailing Address:	1901 Rotbrough Rd., Suite 200, Charlotte, NC 28211		
Mailing Phone:		Mailing FAX:	
Management Official:	Bob Hacker		
Telephone:			
Type of Business:	Steel Mill		
HAZARD DESCRIPTION/LOCATION: Describe briefly the hazard(s) which you believe exist. Include the approximate number of employees exposed to or threatened by each hazard. Specify the particular building or work area where the alleged violation exists.			

DESCRIPTION:

(1) Rolling Mill cranes do not use warning sirens when they are moving or hauling material on cranes 5 & 7-on shipping side and 6 & 8 on billet and finishing mill side. Material is hauled over and around people without warning. This is very dangerous. The cranes move towards each other with no warning. Management, along with the union president noticed that the sirens were not being used, but nothing has been done.

(2) Employees are required to wear hearing protection. The protection is not adequate. Employees cannot hear the sirens. Employees would hold down the switch to make a harsh noise and then would bump it to make an occasional loud noise, now when they use it you can barely hear it.

(3) Employees in the office are complaining that the sirens are too loud. Employees in the past would hold the switch down to make a harsh noise to start then they would bump it to make an occasional loud noise.

LOCATION:
Rolling Mill

Citation and Notification of Penalty

Type of Violation(s)	Section Number
Other	03

The violation(s) described in this Citation are alleged to have occurred on or about the day the inspection was made unless otherwise indicated within the description given below.

3. Issuance Date 09/03/02	4. Inspection Number 100210980
5. Reporting ID 0464510	6. COIN ID T0768
7. Optional Report No. 0468-03	8. Page No. 1 of 1

10. Inspection Date(s):
09/03/02 - 09/27/02

11. Inspection Site:

420 S. Hazard St.
Georgetown, SC 29442

9. To:
Georgetown Steel Company LLC
P O Box 619
Georgetown, SC 29442

Pen
Are
WTS
Cals
Dep
Res
of T
Kali
Unit
Can

This
Key
Data
Bef
Post

THE LAW REQUIRES that a copy of this Citation be posted immediately in a prominent place at or near the location of the violation(s) cited below. This Citation must remain posted until the violations cited below have been corrected, or for 3 working days (excluding weekends and State holidays), whichever is longer. This Citation describes alleged Occupational Safety and Health violations in accordance with the provisions of Section 41-15-250, South Carolina Code of Laws, 1976, as amended. The penalty(ies) listed are based on these violations. You must correct the violations referred to in this Citation by the dates listed below and pay the penalties proposed, pursuant to the provisions of Section 41-15-300, South Carolina Code of Laws, 1976, as amended, unless within 20 calendar days from your receipt of this citation and penalty you mail a notice of PROTEST to the South Carolina Department of Labor, Licensing and Regulation at the address shown above, or request an INFORMAL Conference.

12. Item Number	13. Standard, Regulation or Section of the Act Violated	14. Description	15. Date by Which Violation Must Be Abated	16. Pen
1	SCRS Chapter 71, 1-1910.95(d)(1): Failed to develop and implement a monitoring program when information indicates that any employee's exposure may equal or exceed an 8-hour time-weighted average of 85 decibels, as follows: A. Initial monitoring for noise not provided for one roll mill crane operator exposed to noise at a level of 80.8 decibels over the 8-hour time weighted average of 85 decibels.		Immediately upon Receipt	

17. Signature (Compliance Manager)

Dorothy S. Leno

18.

NOTICE TO EMPLOYEES - The law gives an employee or his representative the opportunity to object to any abatement date set for a violation if he believes the date to be unreasonable. The PROTEST must be mailed to the South Carolina Department of Labor, Licensing and Regulation at the address shown above within 20 calendar days of the receipt by the employer of this citation and penalty.

EMPLOYER DISCRIMINATION UNLAWFUL - The law prohibits discrimination by an employer against an employee for filing a complaint or for exercising any rights under this Act. An employee who believes that he has been discriminated against may file a complaint no later than 30 days after the discrimination with the South Carolina Department of Labor, Licensing and Regulation at the address shown above.

To
Pen
for
Cite
Make
Copy
Check
Department
Licensing
and
Regulation
on
File

CASE FILE COPY

CITATION AND NOTIFICATION OF PENALTY

SCOSH-2 (Rev. 1/94)

SOUTH CAROLINA DEPARTMENT OF LABOR, INDUSTRIAL REGULATION
Office of Occupational Safety and Health
NARRATIVE - PART 2

EVALUATION OF SAFETY AND HEALTH PROGRAM

PROGRAM ELEMENTS	IN PLACE		EFFECTIVE	
	YES	NO	Y	N
1. Mgt. Commitment/Employee Involvement Clear Policy Goals Mgt. Commitment Employee Involvement Responsibility/Accountability	/	/	(Y)	N
2. Worksite Analysis Surveys <i>done monthly</i> Analyze Facilities/Process/Equip. Job Hazard Analysis Regular Inspections Employee complaints <i>open door</i> Accident investigation <i>Formal</i> Analyze Injury/Illness Trends <i>OSHA/IDEP</i>	/	/	(Y)	N
3. Hazard Prevention/Control Engineering Disciplinary System PPE <i>hard hats, safety shoes, eye pro, fire blanket</i> Adm. Controls Facility & Equip. Maintenance Emergency Plans First Aid <i>supplies, first aid kit, by Nurse on Site</i>	/	/	(Y)	N
4. Safety & Health Training Hazard Recognition Supervisor Responsibilities	/	/	(Y)	N
5. Does employer have written S & H Program?	/	/	(Y)	N
6. Does the Program Cover:	/	/		
Hazard Communication	/	/	Y	N
Lock out/Tagout <i>handled by OSHA</i>	/	/	Y	N
Hazardous Materials/Emergency Response	/	/	Y	N
Confined Space Entry <i>permits</i>	/	/	Y	N
Chemical Hygiene Plan	/	/	Y	N
Respiratory Program	/	/	Y	N
<i>Skidways</i>	/	/	Y	N

Safety & Health Program evaluated as:

☐ Effective ☒ Deficient ☐ No Program

Comments: FL cited for Noise monitoring and for Confined Space permit deficiencies.

DOSH-C-1C(S) 3/94

OSH COMPLIANCE WORKSHEET

NBR. 107108
 DATE 9-11-02
 LOCATION Rolling mill

REPORT NBR. 013-013 Page 2 of 2
 PHOTOGRAPH
 FRAME NO. 107108-013-03 v: deo
 ROLL NO. 0:01:22
 TRADE SECRET ()

TIME 7:00am - 3:00pm

What is hazard? Initial noise monitoring program for the Roll Mill Crane Operator exposed to noise at a level of 90.8 decibels over the 8hr TWA of 85 decibels. Condition has existed at least 2 yrs.
EE has been operating cranes for 32 yrs.

What process or equipment is creating hazard? (Do not complete if OSHA 91-S is attached.)

Material/substance involved: EE operates the #8 Roll Mill Crane. EE states that the Alarm/horn is mounted above the cab of the crane. Heavy protection is provided but not required to be worn.

Protective equipment type, model, etc. EE does not wear any Provided Yes

Used Yes Training Yes Aggravated Har No Mitigates Har Yes

Eng. controls N/A None None Type: None

Medical surveillance/Testing/Training None last 10 years / No / Yes

How Employees are exposed while operating crane moving steel and depending who has

Nbr. Exposed 1 Title Roll Mill Crane Op

Nbr. Exposed 1 Title Roll Mill Crane Op

Frequency 8 hrs/day 5 days/week

Proximity in hearing zone

How was Employee Exposure determined management comments + EE interviews

Employer/Rep Stated Yes CO/TH Observed Yes

Sampling Yes for noise on 9-11-02

Employer Knowledge Comments

EMP/REP acknowledged awareness of condition. Name Bill Martin

Comment We haven't sampled for noise in the crane cabs we was

Open/Obvious Condition Yes Close Supervision Yes

Custom & Usage in industry Yes

Condition Close to Working Area of Managing Agent Yes

Other EE doesn't wear ear pl

Employee Comments:

Sam M'Knight - I don't have

to wear earplugs while working

in the crane cab. Sometimes it

is loud b/c the horn is mounted

right above the cab. I don't

know of any noise monitoring

done in the cranes.

The severity of the illness is classified as serious _____ or other ✓ due to the presence or lack _____ of proper personal protective equipment.

Severity:

Most Reasonably Predictable Injury or Illness EE's may not know the level of noise they are exposed to; hearing loss
 (Health code) _____
 Severity Assessment: _____

High _____ Medium _____ Low _____ Minimal (O-T-S) _____
 Probability Assessment: High _____ Low ✓

Type of Violation:

- | | |
|----------------------|----------------------|
| () Failure to Abate | () Repeated Serious |
| () Imminent Danger | () Repeated Other |
| () Serious | (<u>✓</u>) Other |
| () Serious Grouped | () Other Grouped |
| () Willful | () De Minimis |
- IMIS 0

Citation No.	Item No.	Instance	Standard Violation	Penalty	No. Ex
	<u>1</u>	<u>A1</u>	<u>1910.95(d)(1)</u>	<u>0</u>	<u>1</u>
No. Instances	REC	Abatement Days	TRK?	Action Date	Ty
<u>1</u>	<u>C</u>	<u>immediate *</u>			
FAILURE TO ABATE ONLY			Citation No.-Item & Instance No.	No. of days over	Additional penalty
Substance codes	<u>8111</u>	<u>8110</u>			

AS FOLLOWS:

Initial monitoring for noise not provided for one
Ball mill crane operator exposed to noise at a level of
90.8 decibels over the 8-hour time weighted average
of 85 decibels.

* IN J. Tolson sampled for noise on 9-11-02

10768-013-03

1. Reporting ID: 454510 2. Inspection Number: 300270980 3. Sampling Number: 400009940

4. Establishment Name: Boysen in Steel 5. CSHQ ID: 10768 6. Survey Date: 7-11-02

7. Employee Name: Sam McKnight 8. Exposure Information: a. Number: 1 b. Duration: 32

9. Job Title: Crane Op. Doll Mill 10. Occupation Code: 29442 11. PPE Type and Effectiveness: No Heavy Protection (Says horn above crane cab)

12. Weather Conditions: 90° on Floor 13. SLM SN: 789

a. Time	b. dBA	c. dBC	d. Location of Test and Remarks
9:00am	88.1	90.8	Horn on Crane in Doll Mill
10:03am	82.3	87.8	Ready to take in Doll Mill MacCraws/Neely
11:00am	89.7	91.2	On Doll Mill Floor
11:10am			FE took Light
1:30pm	83.1	88.2	Ready in Doll Mill
			The Doll Mill went down around 10:30am so the crane moved more when animal shift.

17. Dosimeter SN: 3870 18. 80 dB: 90 19. 90 dB: 90

20. Cell No(s): 80 21. Readout SN: 90

22. Time On/Off: 6:54am 2:54pm 23. Total Time: 7:57:51

24. Readout %: 111.6 103.5 25. Equivalent dBA: 80 90.3 90

26. Exposure Summary

26. Substances	27. Smpl. Type	28. Exp. Type	29. Exposure Level	30. Units	31. PEL	32. Adj.	33. Severity	34. Citation Information
1. 8111	P	I	111.6	%	50		2.23	
2. 8110	P	I	103.5	%	100		1.04	

35. Total Number of Lines (24): 2

Case File Page: 1 of 1

Decimeter Calibration (Mfg. SN) **Quest 3870**

35. Battery Check ☐ Yes ☐ No	36. Location T & B. R. Note 1 70°	
37. Readout a. SN 3598	38. Cell No(s). 80 90	40. Readout % Pass 110.0 dB
b. Voltage Check ☐ Yes ☐ No		
41. Initials	42. Date/Time 9-10-02 4:09pm	

43. Battery Check ☐ Yes ☐ No	44. Location T & B. R. Note 1 70°	
45. Readout a. SN 3598	46. Cell No(s). 80 90	48. Readout % Pass 110.0 dB
b. Voltage Check ☐ Yes ☐ No		
49. Initials ST	50. Date/Time 9-10-02	

Sound Level Meter Calibration (Mfg. SN) **Quest 789**

51. Calibrator SN Q5407007	52. Location T & B. R. Note 1 70°																		
53. Results																			
<table border="1"> <tr> <th></th> <th>125</th> <th>250</th> <th>500</th> <th>1000</th> <th>2000</th> </tr> <tr> <td>a. dBA</td> <td></td> <td></td> <td></td> <td>114.1</td> <td></td> </tr> <tr> <td>b. dBC</td> <td></td> <td></td> <td></td> <td>113.9</td> <td></td> </tr> </table>			125	250	500	1000	2000	a. dBA				114.1		b. dBC				113.9	
	125	250	500	1000	2000														
a. dBA				114.1															
b. dBC				113.9															
54. Initials ST	55. Date/Time 9-10-02 4:35pm																		

56. Calibrator SN Q5407007	57. Location T & B. R. Note 1 70°																		
58. Results																			
<table border="1"> <tr> <th></th> <th>125</th> <th>250</th> <th>500</th> <th>1000</th> <th>2000</th> </tr> <tr> <td>a. dBA</td> <td></td> <td></td> <td></td> <td>114.1</td> <td></td> </tr> <tr> <td>b. dBC</td> <td></td> <td></td> <td></td> <td>113.9</td> <td></td> </tr> </table>			125	250	500	1000	2000	a. dBA				114.1		b. dBC				113.9	
	125	250	500	1000	2000														
a. dBA				114.1															
b. dBC				113.9															
59. Initials ST	60. Date/Time 9-10-02																		

61. Job Description, Operation, Work Location(s), Ventilation and Controls

	HTL	LTL		HTL	LTL
L-Avg	90.0	90.4	L-Avg	90.3	90.8
Quse	54.58	57.79	Quse	103.5	111.72
TWA	85.6	86.0	TWA	93.1	90.8
Peak	132.2		Peak	140.2	
Shower			Shower		
OL Time			OL Time		
Run Time	4:52:52		Run Time	7:57:51	
Pause Time	3:34		Pause Time	9:24	

Noise Source

- 1° Siren from Crown road above Lab
- 2° Rollmill Noises also Radio.
- 3° General Shop Noise

Noise Survey Report

U.S. Department of Labor
Occupational Safety and Health Administration

025-96

1. OSHA Case	2. Reporting ID	3. Inspection Number	4. Sampling Number
	454510	126475243	922261547 1
5. Establishment Name	6. OSHA ID		
GEORGETOWN STEEL CO.	C1652		
7. Person Performing Sampling (Signature)	8. Date	9. Time	10. Duration
Charles H. Stewart	1	2500	
11. Employee Name, Address, Telephone Number	12. Sampling Method	13. Weather Conditions	14. Noise Level
Charles Stewart P.O. Box 18011 Hemlock, AL 36849	SSA-5369	Indoor	9
15. Job Title	16. Occupation Code		
3rd Millwright			
17. PPE (Type and Manufacturer)			
Head (Muffs)			

18. Date	19. Time	20. dBA	21. dBC	22. Location of Test and Remarks	23. dBA (1/2)
7:28	85.8	92.93	1A Control Room 3, France #3 Room		
7:52	87	102	In " " " " " add new Chaps		
8:30	102	107	Cutting Pipe outside Control Room #3		
10:38	88.11	88	In Control Room #3, France #3 Room		
12:12	92	98	Outside Control Room #3, Checking France		
1:34	115	120	Outside Control Room #3, Putting France pipe in		

HR LTR
L-AL 71.53 75.35
Dose 118.37 908.7
TWA 71.53 75.37
HRA 126.3
Scarcity 119.2
A Time 5:22
Run Time 7:58.0
Break Time 1:34

24. Distribution Date	25. OSHA ID	26. X-100	27. X-100	28. PPE
	2443			
29. Call No.	30. Time Out	31. Time In	32. Time Out	33. Time In
80	67:24	7:00	2:34	2:34
34. PPE	35. PPE	36. PPE	37. PPE	38. PPE
208.7	126.37			
39. PPE	40. PPE	41. PPE	42. PPE	43. PPE
44. PPE	45. PPE	46. PPE	47. PPE	48. PPE
49. PPE	50. PPE	51. PPE	52. PPE	53. PPE
54. PPE	55. PPE	56. PPE	57. PPE	58. PPE
59. PPE	60. PPE	61. PPE	62. PPE	63. PPE
64. PPE	65. PPE	66. PPE	67. PPE	68. PPE
69. PPE	70. PPE	71. PPE	72. PPE	73. PPE
74. PPE	75. PPE	76. PPE	77. PPE	78. PPE
79. PPE	80. PPE	81. PPE	82. PPE	83. PPE
84. PPE	85. PPE	86. PPE	87. PPE	88. PPE
89. PPE	90. PPE	91. PPE	92. PPE	93. PPE
94. PPE	95. PPE	96. PPE	97. PPE	98. PPE
99. PPE	100. PPE	101. PPE	102. PPE	103. PPE

Pre-Runway		Post-Runway	
Engineer Certification (Alt. 50) <i>Alt. 50 2023</i> 30. Safety Check ☒ Yes ☐ No 31. Calibrator SN <i>2428</i> 32. Pressure a. SN 33. Voltage Check ☒ Yes ☐ No 34. Initials <i>JC</i> 35. Date/Time <i>11/29/96 9:37 am</i>		Engineer Certification (Alt. 50) <i>Alt. 50 2023</i> 40. Safety Check ☒ Yes ☐ No 41. Calibrator SN <i>2428</i> 42. Pressure a. SN 43. Voltage Check ☒ Yes ☐ No 44. Initials <i>JP</i> 45. Date/Time <i>11/29/96 4:15 pm</i>	
Second Level Weather Certification (Alt. 50) <i>Alt. 50 2023</i> 50. Calibrator SN <i>DE 4070111</i> 51. Location T & B R <i>Hotel Room 65°F</i> 52. Pressure 53. Voltage Check 54. Initials <i>JC</i> 55. Date/Time <i>11/29/96 9:37 am</i>		Second Level Weather Certification (Alt. 50) <i>Alt. 50 2023</i> 60. Calibrator SN <i>DE 4070111</i> 61. Location T & B R <i>Hotel Room 65°F</i> 62. Pressure 63. Voltage Check 64. Initials <i>JP</i> 65. Date/Time <i>11/29/96 4:15 pm</i>	

Monitors terrace conditions from Control Room, go out to terrace to add alloys, to lance, and maintain work zone.

- Control room insulated from noise, 88 db noise outside 110 db A scale

Primary noise source - Noise
 Secondary noise source - General mill noise
 Tertiary noise source - same as above

Noise Survey Report

U.S. Department of Labor
Occupational Safety and Health Administration

925-96

1. Date 1/25/96	2. Reporting ID 454510	3. Inspection Number 126475243	4. Sampling Number 92261546 3
5. Establishment Name GONNETOWN STEEL CO.			6. OSHA ID 1059
7. Person Performing Sampling (Signature) James R. Jones / Joseph H. Runko			8. Survey Date 11/2/95
9. Employee Name, Address, Telephone Number Lyle Jones P.O. Box 204 Amestown, SC 257-2165			10. Exposure Information a. Number 1 b. Duration 5 Days/11.6 c. Frequency Indones d. Period Failure 10
11. Job Title 2nd Castler			12. Occupation Code
13. PPE (Type and Manufacturer) None			

14. SLM	15. SLM ON
a. Time	b. dB
7:57 am	82
8:57 am	97
9:46 am	86
12:30 pm	99
1:17 pm	78
c. dB	d. Location of Job and Remarks
90	Casting Back Room
102	Castings - Machine Running Dorelli
91	Dorelli - machine Running
104	Castings
88	Castings Back Room

HTL LTL
 LA 79.2 75.39
 Dose 100.1 800.2
 TWA 79.5 95.13
 Peak 104.3
 Std Dev 102.2
 DL Time .35
 Run Time 1:40.26
 Pause Time 6:42

16. Call Number 80		17. Date and Time 1/25/96 7:10 am		18. Reported By HTC/LTC	
19. Time On/Off 7:10 am 2:51 pm		20. Time On/Off 7:10 am 2:51 pm		21. Reported By HTC/LTC	
22. Reported To 200.2		23. Reported To 186.11		24. Reported By HTC/LTC	
25. Exposure Summary					
26. Line	27. Subline	28. Date	29. Time	30. Level	31. Units
1	6110	P	T	186.11	2
2	6111	P	T	203.2	2
32. Total Number of Lines Only 2					
33. Case File Page 6 of 8					

Pre-Survey		Post-Survey	
Occupancy Certification 43. Battery Check ☒ Yes ☐ No 44. Calibrator EM 2428 45. Results 46. Voltage Check ☐ Yes ☒ No 47. Initials JC Date/Time 11/28/95 3:30 PM		Occupancy Certification 43. Battery Check ☒ Yes ☐ No 44. Calibrator EM 2428 45. Results 46. Voltage Check ☐ Yes ☒ No 47. Initials JP Date/Time 11/29/95 4:00 PM	
Sound Level Meter Calibration (Mfg. #) 48. Calibration SN GE4070111 49. Location T & R Hotel Room 85°F 50. Results 51. a. dBA 114.0 52. b. dBC 114.0 53. Initials JC Date/Time 11/28/95 3:30 PM		Sound Level Meter Calibration (Mfg. #) 48. Calibration SN GE4070111 49. Location T & R Hotel Room 65°F 50. Results 51. a. dBA 119.0 52. b. dBC 114.0 53. Initials JP Date/Time 11/29/95 3:55 PM	

Operates molds, maintains moldy covers, and plates, and maintains work area.

Controls - none.

Primary Noise Source - Furnaces
 Secondary Noise Source - General mill operations
 Tertiary Noise Source - General mill operations

Noise Survey Report

U.S. Department of Labor
Occupational Safety and Health Administration

025-96

1. Reporting ID: 454510 2. Inspection Number: 126475243 3. Sampling Number: 92261548 9

4. Establishment Name: General Steel Co. 5. Coded ID: C1459 6. Survey Date: 11/27/95

7. People Present (Name, Address, Telephone Number): James H. Conner / Joseph H. Bunker 8. Exposure Information: 9. Number: 1 10. Duration: 20 min

11. Employee Name, Address, Telephone Number: Kelly Ward 12. Weather Conditions: 13. Date/Time: 5 Date/Time 14. Rows: 5 15. Pages: 11

16. Job Title: 2nd Asster 17. Occupation Code: 221-5708

18. PPE (Type and Extent): 19. Location of Test and Remarks: 20. OSHA ID: JN 4070016

21. BLM	22. dBA	23. dBS	24. Location of Test and Remarks	25. OSHA ID
8:05 am	72	71-80	Concast office	JN 4070016
9:10 am	81	76	Concast office	
10:50 am	85	71-92	Concast	
12:27 pm	99	102	Concast	
1:15 pm	87	96	Concast, looking up acid Concast, observing operations	

	HTL	LTL
L AM	92.34	73.47
Dose	129.97	150.23
TWA	71.95	93.08
PEAK	123.3	
SLOW MAX	119.7	
OL TIME	.5	
RUN TIME	7:31.6	
PLUSE TIME	6:18	

26. Recorder Data: 27. Recorder SN: 2436 28. 80 dB: 90 29. 90 dB: 90

30. Cal Value: 80 31. Time On/Off: 7:15 am 32. 7:15 am 33. 2:47 pm 34. 2:47 pm 35. 152.33 36. 125.97

37. Recorder SN: 38. Test Time: 452 39. Exposure Date: 11/27/95 40. HTL/LTL

41. Exposure Summary: 42. Line: 8110 43. Subline: 8111 44. Type: P 45. T 46. Exposure: 129.77 47. %: 100 48. 50 49. 3.53 50. 3.53

51. Other Information: 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100. 101. 102. 103. 104. 105. 106. 107. 108. 109. 110. 111. 112. 113. 114. 115. 116. 117. 118. 119. 120. 121. 122. 123. 124. 125. 126. 127. 128. 129. 130. 131. 132. 133. 134. 135. 136. 137. 138. 139. 140. 141. 142. 143. 144. 145. 146. 147. 148. 149. 150. 151. 152. 153. 154. 155. 156. 157. 158. 159. 160. 161. 162. 163. 164. 165. 166. 167. 168. 169. 170. 171. 172. 173. 174. 175. 176. 177. 178. 179. 180. 181. 182. 183. 184. 185. 186. 187. 188. 189. 190. 191. 192. 193. 194. 195. 196. 197. 198. 199. 200. 201. 202. 203. 204. 205. 206. 207. 208. 209. 210. 211. 212. 213. 214. 215. 216. 217. 218. 219. 220. 221. 222. 223. 224. 225. 226. 227. 228. 229. 230. 231. 232. 233. 234. 235. 236. 237. 238. 239. 240. 241. 242. 243. 244. 245. 246. 247. 248. 249. 250. 251. 252. 253. 254. 255. 256. 257. 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2044. 2045. 2046. 2047. 2048. 2049. 2050. 2051. 2052. 2053. 2054. 2055

Pre-Survey		Post-Survey	
Customer Calibration (Adj. 2436) 24. Battery Check ☒ Yes ☐ No 25. Calibrator SN 2428 26. Readout A. 2436 27. Voltage Check ☐ Yes ☐ No 28. Initial JL 29. Date/Time 11/29/95 4:20 PM		Customer Calibration (Adj. 2436) 24. Battery Check ☒ Yes ☐ No 25. Calibrator SN 2428 26. Readout A. 2436 27. Voltage Check ☐ Yes ☐ No 28. Initial JL 29. Date/Time 11/29/95 4:20 PM	
30. Location T & R Hotel Room 85°F 31. Old Temp. 32. Precision % 110.0		30. Location T & R Hotel Room 65°F 31. Old Temp. 32. Precision % 110.2	
33. Calibrator SN QE 4070111 34. Location T & R Hotel Room 85°F 35. Readout 36. A. 2436 37. B. 2436 38. C. 2436 39. D. 2436 40. E. 2436 114.0 114.0 41. Initial JL 42. Date/Time 11/29/95 3:51 PM		33. Calibrator SN QE 4070111 34. Location T & R Hotel Room 65°F 35. Readout 36. A. 2436 37. B. 2436 38. C. 2436 39. D. 2436 40. E. 2436 114.0 114.0 41. Initial JL 42. Date/Time 11/29/95 3:51 PM	
43. Job Description, Operation, Work Location, Weather and Corrosion			

Operates molds, maintains molds, cones, and Photos. Required to maintain work area.

Controls - none

Primary noise source - Furnace
 Secondary noise source - General mill operations
 Tertiary noise source - General mill operations

Date

U.S. GOVERNMENT PRINTING OFFICE: 1984-431

Noise Survey Report

U.S. Department of Labor
Occupational Safety and Health Administration

025-96

1. Reporting ID 754510		2. Inspection Number 126475243		3. Sampling Number 921816203	
4. Establishment Name GEORGETOWN STEEL CO		5. OSHA ID C 1757		6. Survey Date 11/30/85	
7. Noise Monitoring Sampling Equipment Vibro-Acoustics Model 4100		8. Operator Handy Tates		9. Exposure Information 25 years	
10. Employee Name, Address, Telephone Number 241 Phillip Loop Georgetown SC 29140 546-7040		11. Occupation Code CONVERTER		12. Exposure Information Indoors	
13. PPE (Type and Manufacturer) Ear Plugs, Foam, Luxonice 29		14. Occupation Date		15. Weather Conditions Rain	
16. SLR A. Time 7:05 7:33 8:46 10:22 11:20 1:50 PM		B. dBA 97 97 95 97 94 99		C. DEC 102 103 102 102 101 103	
D. Location of Test and Remarks Rolling mill, Co-sque. Stained...					
HTL LTL L-Avg 8.75 7.85 Dose 68.9 67.1 TWA 91.25 87.37 Peak 118.5 SRA/RA 110.2 OL Time .2 RAN TBC 7.24.2 Pause Time 16:44					
17. Date of Test 80		18. Duration of Test 2:25 PM		19. Results 76.25 76.37	
20. Test Results 7:00 AM 2:25 PM		21. Test Results 7:00 AM 2:25 PM		22. Test Results 7:00 AM 2:25 PM	
23. Test Results 239.6		24. Test Results 235.4		25. Test Results 235.4	
26. Exposure Summary					
27. Test Results 810	28. Test Results P	29. Test Results T	30. Test Results 235.4	31. Test Results 80	32. Test Results 116
33. Test Results 811	34. Test Results P	35. Test Results T	36. Test Results 239.6	37. Test Results 80	38. Test Results 50
39. Test Results 2		40. Test Results 4 / 8			

Notes Survey Report

U.S. Department of Labor
Occupational Safety and Health Administration

025-76

1. Survey Date 1-1-76	2. Reporting ID 454510	3. Inspection Number 126475243	4. Sampling Number 921816187
5. Employer Name GUTHRIE'S FISH CO		6. OSHA ID C1757	7. Survey Date 11/3/96
8. Facility Address 1020 Whitford Street Greenville SC 29604		9. Operator Information GARY HUGHES	10. Sampling Information 25 years
11. Job Title Fisherman		12. Sampling Method Indirect	13. Sampling Frequency 5 days/yr
14. PPE Type and Condition Gloves, Boots, Safety Glasses		15. Compliance Check Pass	

16. Time	17. dBA	18. dBC	19. Location of Test and Remarks	20. REM dB
7:31	97	102	Cowage	JN 4070016
8:47	94	100	Cowage	
10:02	96	101	Cowage	
11:03	93	98	Cowage	
1:53	102	106	Barrel (Face Blowing)	
HTL LTL L. Avg 77.1 97.7 O. Avg 77.1 97.7 TWA 77.1 97.7 Peak 125.2 SD 11.5 OL Time 1.8 Run Time 7.282 Pause Time 14:55				

21. Survey Date 1-1-76		22. Reporting ID 454510		23. Inspection Number 126475243		24. Sampling Number 921816187	
25. Time of Day 6:59 AM		26. Time of Day 6:59 AM		27. Time of Day 6:59 AM		28. Time of Day 6:59 AM	
29. Weather 77.1		30. Weather 77.1		31. Weather 77.1		32. Weather 77.1	
33. Wind Speed 2		34. Wind Speed 2		35. Wind Speed 2		36. Wind Speed 2	

Pest Survey				Pest Survey			
Substrate Collection (44p. 22) <u>Quist 2425</u> 43. Energy Check ☒ Yes ☐ No 44. Collector ID <u>2428</u> 45. Location T & R <u>Hotel Room 65°F</u> 46. Result <u>112.8</u> 47. Date/Time <u>11/24/85 4:13 PM</u>				Substrate Collection (44p. 22) <u>Quist 2425</u> 43. Energy Check ☒ Yes ☐ No 44. Collector ID <u>2429</u> 45. Location T & R <u>Auto 60°F</u> 46. Result <u>110.2</u> 47. Date/Time <u>11/24/85 5:30 PM</u>			
Second Later Substrate Collection (44p. 22) <u>Quist JR 797001</u> 43. Collector ID <u>QE 407011</u> 44. Location T & R <u>Hotel Room 65°F</u> 45. Result <u>114.8</u> 46. Date/Time <u>11/24/85 4:22 AM</u>				Second Later Substrate Collection (44p. 22) <u>Quist JR 797001</u> 43. Collector ID <u>QE 407011</u> 44. Location T & R <u>Auto 60°F</u> 45. Result <u>114.8</u> 46. Date/Time <u>11/24/85 5:32</u>			
48. Job Description, Operation, What Location, Method and Control <u>Cuts noise and fail off hi. ps and puts it on stand</u> <u>Engineering analysis - Isolation Mts</u> <u>Primary noise source - four bearing machines, Pump fan (overhaul)</u> <u>Secondary noise source - General mill operations</u> <u>Tertiary noise source - General mill operations</u>							

RETURN THIS FORM TO:

SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING & REGULATION
OFFICE OF OCCUPATIONAL SAFETY & HEALTH
P.O. BOX 1128
COLUMBIA, SOUTH CAROLINA 29211
FAX: (803) 734-9773

DATE FORM DUE: 3/25/96 OPTIONAL REPORT NUMBER: 1207-96

THE ALLEGED VIOLATIONS (ITEM NUMBERS LISTED BELOW) THAT WERE OBSERVED ON
DURING AN OCCUPATIONAL SAFETY & HEALTH INSPECTION WERE CORRECTED ON THE DATE(S) SHOWN BELOW:

COMPANY: GEORGETOWN STEEL CORPORATION

LOCATION: P.O. BOX 519, GEORGETOWN, SOUTH CAROLINA 29442

ITEM NO. FROM VIOLATION	ABATEMENT DATE	DATE ON WHICH VIOLATION WAS CORRECTED	DETAILED DESCRIPTION OF HOW VIOLATIONS WERE CORRECTED
1-1			
1-A	03/23/96	03/27/96	All employees were notified disciplinary action would be taken for anyone caught in this area without hearing protection.
1-B	03/23/96		Vacated
1-C	07/22/96		Additional testing is being conducted in this area.
1-D	07/22/96		Additional testing is being conducted in this area.
1-E	07/22/96		Additional testing is being conducted in this area.
1-F	07/22/96		Additional testing is being conducted in this area.
1-G	07/22/96		Grouped on one additional testing is being conducted in this area.
1-H	07/22/96		Grouped together on one additional testing is being conducted in this area.
1-I	07/22/96		Grouped to other than various - Additional testing is being conducted in this area.
1-J	07/		Vacated

APPROXIMATE COST OF COMING INTO COMPLIANCE: \$

SIGNATURE: William H. Smith
TITLE: Off. Safety & Health
DATE: 3/25/96

NOTE: If additional space is needed, please complete the Description on a separate sheet of paper and attach it to this form.

Form OSHA 301-1, Rev. 10/85

South Carolina Department of Labor, Licensing and Regulation
Office of Occupational Safety and Health
 P.O. Box 11289
 Columbia, S.C. 29211

Citation and Notification of Penalty

The violation(s) described in the Citation are alleged to have occurred on or about the day the inspection was made unless otherwise indicated within the description given below.

3. Inspection Date 03/20/96	4. Inspection Number 198473343
5. Reporting ID D454810	6. COOP ID C1869
7. Current Permit No. 12077-96	8. Page No. 1 of 10

10. Inspection Dates:
10/17/88 - 01/12/96

9. Serious	01
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11. Inspection Site:

S. Fraser St.
 Georgetown, SC 29440

Georgetown Steel Corporation
 2608 Rockborough Road
 Charlotte, NC 28226

THE LAST REQUIREMENT that a copy of this Citation be posted immediately in a prominent place at or near the location of the violation(s) cited herein. This Citation must remain posted until the violations cited below have been corrected, or for 3 working days (excluding weekends and State holidays), whichever is longer.
 This Citation describes alleged Occupational Safety and Health violations in accordance with the provisions of Section 41-15-300, South Carolina Code of Laws, 1976, as amended. The penalty(ies) listed and to be paid on these violations. You must correct the violations referred to in this Citation by the dates listed below and pay the penalty(ies) pursuant to the provisions of Section 41-15-300, South Carolina Code of Laws, 1976, as amended, within thirty (30) calendar days from your receipt of this citation and penalty you will a notice of PROTEST to the South Carolina Department of Labor, Licensing and Regulation at the address shown above, or request an INTERVIEW, Charleston.

12. Item Number 13. Section, Regulation or Portion of the Act Violated	14. Description	15. Date by Which Violation Must Be Abated	16. Penalty
1	SCCH Chapter 71, 1-1910.96(1)(2): Failed to ensure that hearing protectors are worn (i) by an employee who is required by paragraph (1)(1) of this section to wear personal protective equipment; and (ii) by any employee who is exposed to an 8 hour time-weighted average of 80 decibels or greater, and who (A) has not yet had a baseline audiogram established pursuant to paragraph (1)(5)(iii); or (B) has experienced a standard threshold shift, as follows: A. Use of hearing protectors not enforced at the establishment where employees were exposed to noise levels ranging from 83.08 to 92.38 decibels exposure as an eight hour time weighted average above the permissible exposure limit of 90 decibels. B. Use of hearing protectors not enforced in salt shop and roll mill of the establishment where employees who had suffered a standard threshold shift were exposed to 8 hour time weighted average noise levels ranging from 88.00 to 97.38 decibels above the action limit of 80 decibels.	03/23/96	\$250

NOTES TO EMPLOYER - The law gives an employer or his representative the opportunity to object to any citation and ask for a hearing 90 days after the date of the citation. The PROTEST must be mailed to the South Carolina Department of Labor, Licensing and Regulation at the address shown above within 30 calendar days of the receipt by the employer of this citation and penalty.

EMPLOYEE INFORMATION UNLAWFUL - The law prohibits discrimination by an employer against an employee for filing a complaint or for exercising any right under this Act. An employee who believes that he has been discriminated against may file a complaint no later than 30 days after the date of the act with the South Carolina Department of Labor, Licensing and Regulation at the address shown above.

CITATION AND NOTIFICATION OF PENALTY

The severity of the illness is classified as serious ☒ or other ☐ due to the presence or lack of proper personal protective equipment.

Severity:

Most Reasonably Predictable Injury or Illness PD 71-190.95(5) Penetration

(Health code) HE

Severity Assessment:

High ☐ Medium ☒ Low ☐ Minimal (O-T-S) ☐

Probability Assessment:

High ☒ Low ☐

Type of Violation:

- | | |
|---|---|
| ☐ Failure to Abate | ☐ Repeated Serious |
| ☐ Imminent Danger | ☐ Repeated Other |
| ☒ Serious | ☐ Other |
| ☐ Serious Grouped | ☐ Other Grouped |
| ☐ Willful | ☐ De Minimis |

Citation No.	Item No.	Instance	Standard Violation	Penalty	No. Reported
	1	A	1910.95(2)(2)	26-25	1000 05

No. Instances	REQ	Abatement Days	TRF	Action Date	Type
1		1	X		

FAILURE TO ABATE ONLY

Citation No.-Item & Instance No.

No. of days over

Additional penalty

Substance code	8110				
----------------	------	--	--	--	--

AS FOLLOWS: HEARING PROTECTIVE EQUIPMENT NOT ENFORCED AT THE CRIMINAL COURT. LITIGATION ENFORCED WILL ENFORCE TO HAVE LITIGATION RANGING FROM 93.08 TO 94.38 DOLLARS. ENFORCED AS AN EIGHT-HOUR TIME WORKING AVERAGE ABOVE THE AVERAGE. ENFORCE LIMIT OF 90 DOLLARS.

Imia Case 05

Drs. Farrell and McKay Ears, Nose and Throat

Howard A. Farrell, M. D. Shawn P. McKay, M. D.

1594 Freedom Blvd., Suite 206

Florence, SC 29505

Phone: (843)665-2900 Fax: (843)629-8122 Web: www.FarrellMcKayent.com

9/12/2014

F. Drake Rogers III

Young Clemet Rivers, LLP

25 Calhoun Street, Suite 400

PO box 983

Charleston, SC, 29402

Re: Rodney Ward

DOB: 10/01/1948

Age: 65 years

WCC file number 1321802

Accident date 10/31/2013

YCR file no. 902-20140689

Dear Mr. Rogers,

I had the pleasure of seeing Rodney Ward for an Independent Medical Evaluation today. Following is a summary of today's visit and my recommendation(s).

Chief Complaint/Reason for visit:

This 65 year old male presents with decreased hearing -adult.

History of Present Illness

1. decreased hearing -adult

The patient reports noticeable decreased hearing and tinnitus since 2007. He was employed at Georgetown steel from 10/2/70-2003. ArcelorMittal Steel 2004-10/20/2003. He did have loud noise exposure at Georgetown Steel and ArcelorMittal Steel. In his early days at Georgetown Steel ear sound protection was encouraged but not mandatory. In the 1980's ear protection was strictly enforced. He wore ear protection at all times while employed at ArcelorMittal Steel. He denies any history of military exposure. He is not a Hunter. His only nonoccupational loud noise exposure is some limited exposure to power tools while not using ear protection.

The hearing loss is moderate and is unchanged. Patient has a history of hearing aid use since 2007. There is no history of chemotherapy, ear infections, ear or head trauma, family history of hearing loss, or IV antibiotic therapy (no ototoxic medicine exposure). The patient is experiencing tinnitus. The patient denies ear drainage, vertigo and vomiting. His past medical history is significant for high blood pressure and high cholesterol.

Notable findings during today's visit are:

All normal unless otherwise noted.

Ears: Ears are normal on exam bilaterally. A small amount of wax was removed from each ear canal.

Hearing testing -500Hz Rt 25dB, Lt 25dB; 1000Hz Rt 35dB, Lt 40dB; 2000Hz Rt 60dB, Lt 65dB; 3000Hz Rt 65 dB, left 65 db. (see audiogram)

Assessment/ Plan

Sensorineur Loss Comb Typ (389.18)

Mr. Rodney Ward is a 65 year old male who reports having a hearing loss. He reports that it has progressively worsened over several years. He has used hearing aids since 2007. He worked for George town Steel in the roll shop from 10/2/70 to 2003. He then worked at ArcelorMittal Steel from 2004- 10/20/2003. He was exposed to

Ward, Rodney 10/01/1948

1/2

loud noise while employed at ArcelorMittal Steel but reports using hearing protection at all time while employed at the plant. Hearing protection policy was strictly enforced well at ArcelorMittal Steel. He had loud noise exposure at Georgetown Steel. In his early years at Georgetown steel hearing protection was encouraged but was not strictly enforced until the 1980's. He denies any family history of hearing loss. He has had no ototoxic drug exposure. He has had no ear infections or ear trauma. He has had minimal loud noise exposure in his non work time. He did not have military noise exposure.

On exam his ears are normal. The tympanic membranes are intact and look normal. There is no middle ear effusion or abnormality. We did do a hearing test today performed by Tara Jordan, Certified Oto Technician. It was performed on the Madsen Auricle Audiometer. Calibration was last done on 10/11/2013. The test was felt to be reliable. Hearing exam reveals right ear: 500 Hz 25dB, 1000Hz 35dB, 2000Hz 60dB, 3000Hz 66dB. Left ear: 500 Hz 25 dB, 1000Hz 40 dB, 2000 Hz 65dB, 3000Hz 66dB. His speech audiometry was abnormal with a speech reception threshold of 30 db on the right and 35dB on the left. Word discrimination is 76% in the right and 80% in the left ear at 70 and 75 dBs.

Calculating his hearing handicap according to the American Academy of Otolaryngology Guide for Evaluation of hearing Handicap he has a 31.88% loss in the right ear and 35.63% loss in the left ear with a 32.51% bilateral loss.

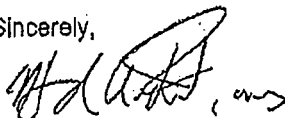
I have reviewed his work hearing testing from both Georgetown Steel and ArcelorMittal Steel. His hearing testing reveals significant hearing loss in both ears as early as 10/19/1983 while at Georgetown Steel. His hearing tests at that time are not notably different than his current tests with bilateral nerve hearing loss. His hearing loss predates his employment at ArcelorMittal Steel. His hearing loss has been stable while at ArcelorMittal Steel with no significant decline on his work testing.

Mr. Ward does have hearing impairment. He does have a bilateral high frequency nerve hearing loss. On the American Academy of Otolaryngology Hearing handicap calculation he has a 31.88% right ear impairment and a 35.63% left ear impairment with a total bilateral impairment of 32.61%.

The causation of this hearing loss is unclear. His hearing loss may have been from loud noise exposure in his early years at Georgetown Steel when hearing protection was encouraged but not enforced. Presbycusis may also be a factor. I do not believe that his hearing loss is in any way due to his time at ArcelorMittal Steel. Hearing protection was strictly enforced. His hearing was also been stable during the ArcelorMittal years. His hearing loss predated his employment at ArcelorMittal. I do believe with reasonable degree of medical certainty that his hearing loss is not the result of his employment at ArcelorMittal Steel.

Thank you for allowing us to participate with this patient's care. Please feel free to contact me with any questions.

Sincerely,



Howard A. Farrell MD

electronically signed 09/14/14



Georgetown Steel Company LLC

SAFETY & HEALTH DEPARTMENT
HEARING CONSERVATION PROGRAM
843/546-2525 EXT 265

P.O. Box 619
Georgetown, S.C. 29442

Medical and Audiological Referral

Employee: **WARD, RODNEY CARROLL**
8/21/02

Date:

Test Results

	<--Low Pitches--			--High Pitches-->			
	500Hz	1KHz	2KHz	3KHz	4KHz	6KHz	8KHz
Right Ear:	35	20	40	60	60	50	30
Left Ear:	35	25	45	55	65	75	65

For your information: Normal Hearing: 0-25dB
Mild Hearing Loss: 30-40dB
Moderate Hearing Loss: 45-65dB
Severe Hearing Loss: 70-85dB
Profound Hearing Loss: 90db and above

After reviewing the results of your last hearing test, it is recommended that you be seen by an Audiologist for a complete hearing evaluation. This will enable you to receive more specialized information regarding your hearing. An Audiologist will be able to discuss all of the options available for you to improve your hearing.

It is also recommended that you be evaluated by an ear specialist. Physicians that specialize in the treatment of ears are called Otologist and can be found under ENT (Ear, Nose, and Throat) in the yellow pages of your phone book. This evaluation will determine the proper medical treatment.

The company is not responsible for the cost of this visit and it is not mandatory that you make the appointment. However, if you do choose to seek further evaluation, please ask that a report of the test results be sent to the safety department. Your cooperation is appreciated.

Thank you!

Signature

Date

You may go a physician or Audiologist of your choice.

Date Mailed: 08/28/02

PLEASE PRINT!!!!

FULL NAME: Rodney Carroll Ward DATE: 8/21/02SSN: 250-844123 AGE: 53 SHIFT: 1ST 2ND 3RDEMPLOYER: DSCJOB CLASSIFICATION: Roll Shop SupervisorSignature: X Rodney C. Ward Date: 8/21/02

PLEASE ANSWER THE FOLLOWING QUESTIONS

Have you been around loud noise in the last 8 hours?

Yes No ☒

Have you been wearing hearing protection today?

Yes No ☒Type of Protection: Earplugs ☒ Earbuds ☐

Do you wear hearing protection at work?

Yes ☒ No ☐

Have you had any problems with your ears in the last year?

Yes ☐ No ☒

If yes, please describe

Do you have any noisy hobbies? NO Hunting ☐ Chainsaws ☐ Power tools ☐

Other

Do you wear hearing aids? Right Ear ☐ Left Ear ☐ Year Fit ☐Have you ever had ear surgery? Date: ☐ Describe: ☐

COMMENTS:

FOR OFFICE USE ONLY
OTOSCOPIC EXAMINATION

EARS ARE CLEAR BILATERALLY UNLESS OTHERWISE INDICATED.

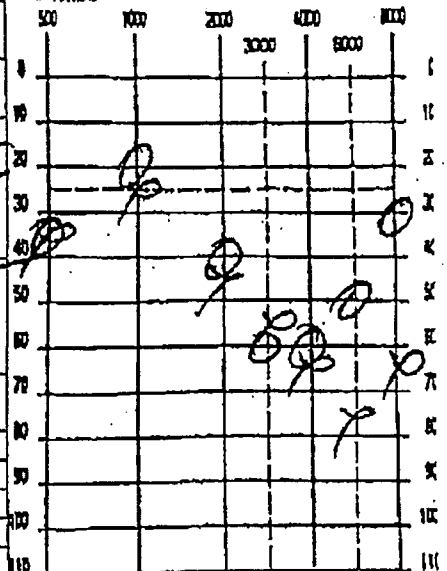
RIGHT: F P DNT CNT

LEFT: F P DNT CNT

PATH: ☐PATH: ☐

Bonnie Dempsey, M. Aud. SC Lic. #247 NC Lic. #1434

FOR OFFICE USE ONLY

TIME: 6:03 pm # 123
Audiometer: Maico

KEY

EAR	COLOR	SYMBOL	NO RESP.	REVERSE SYMBOLS
R	Red	O	☒	☐
L	Blue/Black	X	☒	☐

EXAMINER

 Baseline R ☐ L ☐
 B 2 3 4 5 6 7 8 9 10 11 12 13 14 15

AUDIOLINGUAL NOISE CONSERVATION

HEARING

Name:
Date Tested:

RODNEY C. WARD
8/21/2002 (Georgetown Steel)

	RIGHT	LEFT
500 Hz	35	35
1000 Hz	20	25
2000 Hz	40	45
3000 Hz	60	55
Total	155	160
	÷4	÷4
Average	38.75	40
Less 25	- 25	- 25
	13.75	15
	X 1.5	X 1.5
Individual Rating	20.625	22.5

Lowest Rating	20.625
	X 5
Subtotal	103.125
Add Highest Rating	22.5
Subtotal	125.625
	÷6

20.9375 % BINAURAL HEARING IMPAIRMENT

Calculated by Young Clement Rivers, LLP

Examnetics

EMPLOYEE HEARING TEST REPORT

Company: ARCELORMITTAL

Cg. Code: MIT

Name: RODNEY WARD

Dept:

Job: ROD MILL MGR

Plant: ARCELOR

Plant Code: L03

ID#: 28018

State: SC

Test Date: 08/01/12

Test Time: 08:52

Birth Date: 10/01/48

Hire Date: 10/02/70

Sex: M

Shift:

Current Test dBA TWA: 999

Right Ear Left Ear

No Apparent Problem No Apparent Problem

Results of looking in your ears with an otoscope (earlight):

Hearing Status for high pitch sounds (3k,4k,6k): (whistles; birds; turn signals; some speech sounds)

Moderate

Severe

Hearing Status for speech range (500,1k,2k,3k): (most voices; most everyday sounds)

Mild

Moderate

Change in hearing from baseline test. STS (2k, 3k, 4k) - With Age Adjustment:

No

No

Possible Recordable Shift (2k,3k,4k):

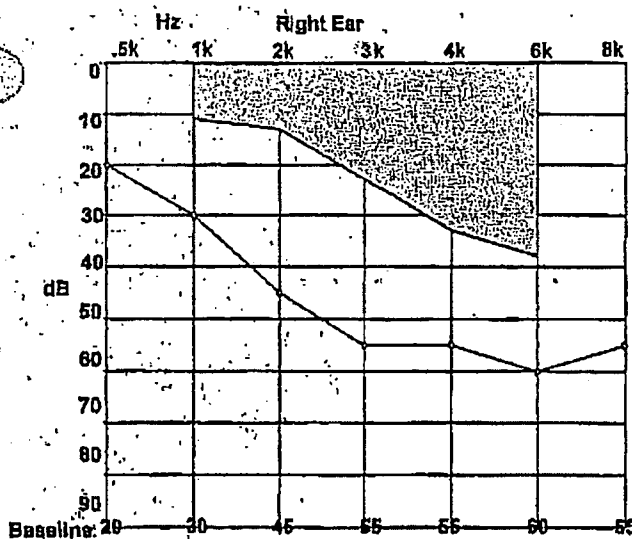
No

No

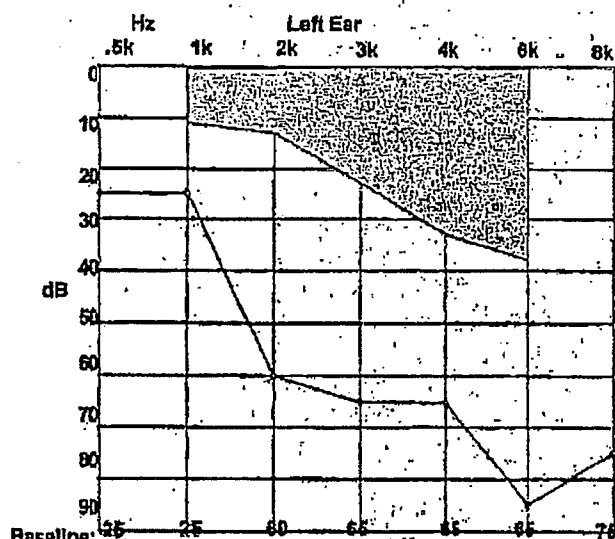
This was your baseline test so no comparison was made

IT IS EXTREMELY IMPORTANT THAT YOU ALWAYS WEAR HEARING PROTECTION WHENEVER YOU ARE EXPOSED TO LOUD NOISE, BOTH ON AND OFF THE JOB.

Graph of Hearing Test Results (Audiogram)



Age 55 Base 08/01/12



Age 55 Base 08/01/12

Audiometer: Make: MONITOR - MI5000

Serial No.: 01971

Annual Calibration Date: 09/16/11

Tester: Van 617 Tech: JIMENEZ, RAUL / Cert. # 456344

1. RW I have been trained in 1) The effects of noise on hearing; 2) purpose of the hearing test; and 3) purpose of hearing protectors, type available, attenuation and their fit and care.

2. RW I have been trained and fitted with hearing protectors. RW Demo Only

3. RW I have received a copy of this report.

Employee Signature

Date

Name:
Date Tested:

RODNEY C. WARD
8-1-2012 (ArcelorMittal)

	RIGHT	LEFT
500 Hz	20	25
1000 Hz	30	25
2000 Hz	45	60
3000 Hz	55	65
Total	150	175
	÷4	÷4
Average	37.5	43.75
Less 25	- 25	- 25
	12.5	18.75
	X 1.5	X 1.5
Individual Rating	18.75	28.125

Lowest Rating	18.75
	X 5
Subtotal	93.75
Add Highest Rating	28.125
Subtotal	121.875
	÷6

20.3125 % BINAURAL HEARING IMPAIRMENT

Calculated by Young Clement Rivers, LLP

DUNCAN, CROSBY & MARING, LLC

1001 FRONT STREET
GEORGETOWN, SOUTH CAROLINA 29440

(843) 546-1212
FACSIMILE: (843) 546-0177
E-MAIL: dcmlw@dmcl.com

WILLIAM STUART DUNCAN
JOE M. CROSBY
ROBERT W. MARING
RAYMOND C. FISCHER (OF COUNSEL)

MAILING ADDRESS:
POST OFFICE DRAWER 738
GEORGETOWN, SOUTH CAROLINA 29442

May 21, 2007

S.C. Workers' Compensation Commission
Post Office Box 1715
1612 Marion Street
Columbia, South Carolina 29202-1715

RE: Rodney Ward vs. Mittal Steel USA
Date of Accident: February 21, 2007

Dear Sir or Madam:

Please find enclosed herewith the original and one (1) copy of the Form 50 Employee's Notice of Claim and/or Request for Hearing, in regards to the above matter. If you would, please file the original and return a clocked copy to me in the enclosed self-addressed stamped envelope.

By copy of this letter and a certificate of service dated May 21, 2007, I am hereby serving a copy of the Form 50 upon Zurich American Insurance Company, as the Carrier for Mittal Steel USA.

I appreciate your assistance in this matter. Should you have any questions, please do not hesitate to call. With kindest regards, I am

Very truly yours,

William S. Duncan

William Stuart Duncan

/mvj
Enclosures

cc: Mr. Rodney Ward
Mittal Steel USA

South Carolina Workers' Compensation Commission
P.O. Box 1715 1612 Marion Street
Columbia, South Carolina 29202-1715
(803) 737-5700

WCC File #: 0706525
Carrier File #: _____
Carrier Code #: _____
Employer FEIN: _____

Rodney Ward 250-84-4123
Claimant's Name SSN No. _____
435 Walnut Ave., Georgetown, SC 29440
Address _____

Mittal Steel USA
Employer's Name _____
P.O. Box 810, Georgetown, SC 29442
Address _____
Zurich American Insurance Company
Insurance Carrier _____

Home Phone # _____ Work Phone # _____
William Stuart Duncan, Post Office Box 738, Georgetown, SC 29442 (843) 648-1212

Preparer's Name _____ Address _____ Phone # _____

Complete each information blank. To request a hearing, check box 13b, indicate the kinds of benefits claimed by checking the box(es) 6, 7, 8, and 9, and file this form in duplicate.

A claim for worker's compensation benefits is made based on the following ground:

- 1a. The Claimant sustained an accident injury to Hearing loss in both ears on 2/21/07 in
part of body part South Carolina County, State of Georgetown month Date year
- 1b. Describe briefly how the accident occurred Repetitive Trauma-Hearing Loss
2. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of the injury.
3. The relationship of employer and employee existed at the time of injury.
4. At the time of the injury the claimant was performing services arising out of and in the course of employment.
5. Notice of the accidental injury was given to the employer 5/21/07
in the following manner: This form 50 serves as notice of injury to the employer.
- DQ8. Due to injury, the claimant is in need of (check one):
[X] (a) medical examination and treatment for Hearing loss in both ears
[] (b) additional medical examination and treatment for _____
17. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of: _____
- DQ8. Due to the injury, the claimant has permanent disability of the following nature and extent: (check one)
[] (1) General Disability: [] Total [] (2) Specific Disability: [] Total
[] Partial [] Partial
- Body part(s) affected are: Hearing loss in both ears
19. Due to the injury, the claimant has a serious bodily disfigurement consisting of _____
- 10a. At the time of injury, the claimant was paid weekly wages of \$ _____; and demands accounting of days worked and wages earned as provided by law.
- 10b. Give names and addresses of all employers for whom the claimant has worked since the date of the accident
- 11a. Further grounds of claim: Claimant's injury arose out of and in the course of his employment. Claimant's injury is the result of a repetitive trauma rather than a single identifiable event. Claimant was employed with Georgetown Steel from 1970 through 10/21/03
- 11b. List names and addresses of all physicians or other medical specialists who have seen or treated the claimant as a result of the accident: Dr. Terry Fry, 401 Marina Drive, Georgetown, SC 29440
- 11c. To the best of your knowledge, did you have any prior permanent disability? No
if yes, describe: _____
12. Appropriate benefits as provided in the Act for the above grounds and other relief as the Worker's Compensation Commission may direct as just and proper.
- [] 13a. I am filing a claim. I am not requesting a hearing at this time.
- [X] 13b. I am requesting a hearing at this time.

William S. Duncan
Signature of Claimant/Representative

Date: May 21, 2007

Refer to R.67-205, R.67-206, R.67-207, and R.67-601 through R.67-815. Questions about the use of this form may be direct to the Commission's Judicial Department.

WCC FORM #50 Rev. Date 9/80

50 Employee's Notice of Claim and/or Request for Hearing.

SCWCC

MAY 30 2007

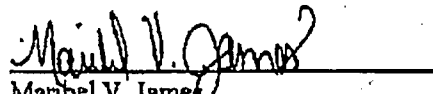
JUDICIAL

CERTIFICATE OF SERVICE

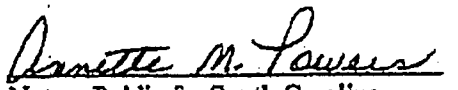
I, the undersigned secretary for the Law Offices of Duncan Crosby & Maring, LLC, attorney for the Claimant, do hereby certify that I have served, the carrier for Mittal Steel USA, a copy of the Form 50 by certified mail in the matter of:

Rodney Ward vs. Georgetown Steel Corporation

Served On: Zurich American Insurance Company
Post Office Box 195008
Charlotte, NC 28219


Maribel V. James
Secretary

Sworn to and subscribed before me
this 21st day of May, 2007


Notary Public for South Carolina
My Commission Expires: 6/01/10

DUNCAN, CROSBY & MARING, LLC

1001 FRONT STREET
GEORGETOWN, SOUTH CAROLINA 29440

(843) 546-1212
FACSIMILE: (843) 546-0177
E-MAIL: dcm1awfirm@aol.com

WILLIAM STUART DUNCAN
JOE M. CROSBY
ROBERT W. MARING
RAYMOND C. FISCHER (OF COUNSEL)

MAILING ADDRESS:
POST OFFICE DRAWER 736
GEORGETOWN, SOUTH CAROLINA 29442

August 2, 2007

Honorable J. Alan Bass
S.C. Workers' Compensation Commission
Post Office Box 1715
1612 Marion Street
Columbia, South Carolina 29202-1715

RE: Rodney Ward vs. ISG Georgetown, Inc. etal.
Date of Accident: February 21, 2007
WCC File No.: 0706525

Dear Commissioner Bass:

Please be advised the above case has been set before you on September 11, 2007 at 9:00 a.m. to determine issues set forth in the 50 and 51. At this time, I would like to withdraw the 50 in this matter, therefore a hearing is no longer necessary.

By copy of this letter, I am advising opposing counsel Buster Holland of the same. With kind regards, I am

Very truly yours,

Bill

William Stuart Duncan

WSD:jem

cc: Mr. Rodney Ward
Wallace G. Holland, Esquire

ORDER

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 07016525

Employee: Rodney Ward Employer: ISG Georgetown, Inc.
Mittal Steel USA, Inc.
Carrier: American Zurich Insurance Co.

I. ☒ The hearing in this matter was not held because:

- ☐ Claimant and/or claimant's attorney ☐ Defense attorney was unable to appear
for ☐ legal ☐ non-legal reasons;
☐ Appointment of Guardian ad Litem is necessary;
☐ Claimant desires an opportunity to retain counsel;
☐ The hearing is premature due to need for additional discovery;
☒ Form 50 or 52 voluntarily withdrawn;
☐ Form ☐ 15, ☐ 16, or ☐ Agreement and Final Release (put on the record) proposed for voluntary
settlement of the claim;

IT IS ORDERED THAT:

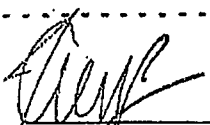
- ☐ This file be retained in the Commissioner's office awaiting receipt for approval of settlement.
☐ This file be returned to the Judicial Department and rescheduled for hearing on or before _____.
☒ This file be returned to central files and rescheduled for hearing upon request of either party.
☐ Claimant referred for evaluation to Dr. _____ pursuant to 42-15-80.
☐ Fines _____

II. ☐ This claim was heard before the undersigned Commissioner. The issues have been heard and the following
decision rendered.

- a. ☐ The record is closed.
b. ☐ The record shall remain open for _____ days from the date of this order for purposes of filing:
☐ deposition of _____
☐ medical report of _____ ☐ other _____
c. ☐ Settlement agreement put on the record.
d. ☐ _____

IT IS ORDERED THAT:

Counsel for the ☐ Claimant ☐ Employer/Carrier shall file in this Commissioner's office and serve all
parties a proposed order within _____ days of the date of this Order. (If counsel is unable to file and serve a
proposed order within the period set forth above, please contact this Commissioner's office.)



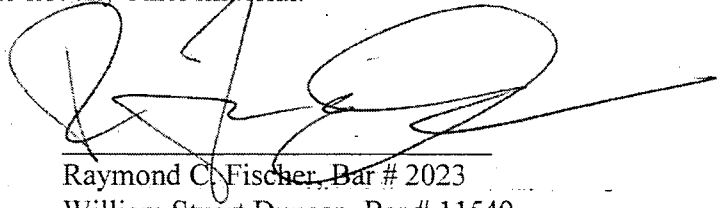
Commissioner

Dated at Columbia, South Carolina on 7 September 2007

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

Georgetown, SC
November 7, 2016



Raymond C. Fischer, Bar # 2023
William Stuart Duncan, Bar # 11549
Law Offices of William Stuart Duncan, PA
PO Box 736
Georgetown, SC 29442
843-546-1212
Attorneys for Appellant

RECEIVED
NOV 23 2016
SC Court of Appeals