

**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: 2016-000507

Jack Woodard, Claimant,

Appellant,

v.

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

Respondents.

RECORD ON APPEAL

**Mr. William Stuart Duncan, Esquire
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Georgetown, SC 29442**

**Mr. Raymond C. Fischer, Esquire
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**Mr. Francis Drake Rogers, III, Esquire
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**Ms. Catherine Holland Chase, Esquire
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**Mr. Stephen Lynwood Brown, Esquire
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BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC FILE NUMBER 1315152

JACK WOODWARD,

Claimant,

vs.

ARCELORMITTAL GEORGETOWN, INC.,

Employer,

DECISION & ORDER

NEW HAMPSHIRE INSURANCE COMPANY,

Carrier/
Defendants.

HEARING:

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

APPEARANCES:

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

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

PURPOSE OF HEARING:

To determine issues as set forth on the Forms
50 and 51.

DECISION & ORDER BY:

T. Scott Beck, Commissioner.

DATE FILED:

August 4, 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 \$1,037.67 resulting in a compensation rate of \$743.72, the maximum compensation rate for the calendar year 2013.
4. That venue for this hearing was proper in Horry County, South Carolina.

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 Associates	4/6/06-11/19/14	1-8
(2)	Arthur M. LaBruce, M.D., Otolaryngology	6/29/06	9-13
(3)	Individual Hearing Evaluation Letters	9/25/04, 9/21/05	14-15
(4)	Georgetown Steel Corp. Hearing Program Records	12/3/75-9/3/76	16-17
(5)	Job Classification Records	6/24/75-10/21/03	18-20
(6)	OSHA Reports Sound Level Survey	6/30/75-4/7/93	21-28
(7)	Noise Study	2/16/00-5/23/00	29-32
(8)	OSHA Reports with Noise Studies, Surveys, and Citations to Georgetown Steel	11/28/95-10/3/02	33-52

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>
(9)	Dr. Howard Anthony Farrell/ENT	12/27/13	53-57

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

(A)	Georgetown Steel Audiograms/Calculations	9/3/76, 12/3/75	58-61
(B)	ISG/ArcelorMittal Audiograms/Calculations	12/10/07, 10/27/06, 9/16/05, 9/9/04	62-70
(C)	SCWCC# 0326648 captioned Jack Woodward v. Georgetown Steel (D/A: 10/21/03):		
	-Pre-Hearing Brief on behalf of claimant	5/25/07	71-76
	-Memorandum of Law on behalf of claimant	5/25/07	77-87
	-Clincher & Form 19 for settlement with Georgetown Steel/Capital City	9/14/07	88-92
	-Consent Order dismissing ArcelorMittal	11/5/14	93-98
	-Commissioner McCaskill's order directives	2/2/15	99-101
	-Transcript of hearing on 10/23/14		102-115
(D)	Transcript of deposition of Jack Woodward taken in WCC# 0326648	5/31/06	116-137

CLAIMANT BIOGRAPHICAL

DATE OF BIRTH: 6/22/1954

SEX: Male

EDUCATION: High School graduate/Horry-Georgetown Technical College graduate

WORK HISTORY: Georgetown Steel Mill from 1975 through 3/31/2015

STATEMENT OF THE CASE

The above case came to be heard before the undersigned Commissioner in Aynor, South Carolina, on April 28, 2015, pursuant to a Form 50 request for hearing filed by the Claimant on November 1, 2013, and pursuant to notice timely and properly given to

all parties of record. The Claimant alleges he sustained hearing loss to both ears as a result of repetitive trauma suffered during his employment at the Georgetown steel-making facility, currently known as ArcelorMittal Georgetown, Inc. The Employer/Carrier denied the claim, asserting that the Claimant cannot satisfy his burden of proving a compensable injury by repetitive trauma as well as asserting multiple defenses including notice, statute of limitations, and the doctrine of *laches*. Therefore, the issues for determination at the hearing were when the Claimant discovered or should have discovered he qualified to receive benefits for medical care, treatment, or disability due to his alleged hearing loss; whether the Claimant gave timely notice of a claim once he knew or should have known he had one; whether the claim is barred by the statute of limitations; whether the Claimant's alleged hearing loss occurred prior to his employment with ArcelorMittal and is, therefore, the responsibility of some other employer/carrier; whether the 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; if compensable, what amount of hearing loss is a result of occupational exposure at ArcelorMittal and what amount of hearing loss is due to non-occupational exposure and/or occupational exposure at prior employers; and whether the claim is barred by the equitable doctrine of *laches*.

EVIDENCE OF THE CASE

The Claimant was the only witness to testify at the hearing. He testified that he is 60 years of age and worked in the steel mill in Georgetown for 39 years, 8 months, retiring on March 31, 2015. He performed jobs including maintenance, air-conditioning and electric work, and worked all over the mill but mainly on the melt floor, which he testified was the noisiest part of the mill. He testified the working conditions were extremely loud.

He testified as to his current hearing problems but also testified that his hearing problems never disabled him from performing his job. Finally, the Claimant testified that it is his belief that working in the steel mill gradually caused his hearing loss.

On cross-examination, the Claimant testified that there was no hearing protection in use when he started working at the steel mill in June, 1975, and that he probably worked the first eight to ten years without any hearing protection. He testified that hearing protection gradually became available and required, that the wearing of hearing protection was much more strictly required by the time ArcelorMittal took over the plant, and that he always wore hearing protection once he started working for ArcelorMittal. The Claimant testified he started to realize at some point "way back when" that his hearing was not as good as it had been, but he never thought to seek medical attention or do anything about it. The Claimant testified that he filed a claim against Georgetown Steel sometime around 2003 and that ArcelorMittal was included in that claim. The Claimant agreed that ArcelorMittal was dismissed from that 2003 claim and that the claim was settled with one of the employers or carriers in 2007 whereby he was paid some money for hearing loss -- the same claim in which ArcelorMittal had been a defendant.

The Employer/Carrier presented no witnesses but relied on cross-examination of the Claimant and the evidence contained within the APA submissions and exhibits. Specific notice was made by the undersigned that the Claimant testified that ArcelorMittal did not become involved with the steel mill in Georgetown until after 2003. Specifically, according to the evidence submitted by the Employer/Carrier, the Claimant was given a baseline hearing test by ArcelorMittal in September of 2004, the point in time at which it began operating the steel mill facility.

Finally, the previously outlined APA submissions and exhibits were reviewed by this Commissioner. The submitted reports include sound level surveys dated June 30, 1975, July 1, 1983, February 6, 1984, February 6, 1991, and April 7, 1993 (APA #6, pgs. 21-28), all of which pre-date ArcelorMittal's ownership of the steel mill; copies of Employer meeting notes regarding noise levels in the mill dated February 16, 2000, and May 23, 2000 (APA #7, pgs. 28-32); and copies of OSHA reports to the steel mill regarding noise levels dated from November 28, 1995, through October 3, 2002 (APA #8, pgs. 33-52), all of which pre-date ArcelorMittal's ownership of the mill. The records submitted by the Claimant also include a physician's statement completed by Terry L. Fry, M.D., on December 23, 2013, in which Dr. Fry indicated the Claimant reached maximum medical improvement on July 3, 2006, and sustained a 28% medical impairment to the right ear and a 23% medical impairment to the left ear. (APA #1, p. 2).

The records submitted by the Defendants include results of a hearing test performed on September 9, 2004, indicating the Claimant had a moderate loss of hearing in both his left and right ears resulting in a 19.0625% binaural hearing impairment. (APA D, pgs. 68-70). The Defendants' submissions also include a report from Dr. Howard A. Farrell dated December 27, 2013, which documents that the Claimant always used ear plugs while employed at ArcelorMittal but did not use ear protection consistently while employed at the steel mill from June, 1975, through 2003. Dr. Farrell stated that the Claimant has a bilateral high-frequency sensorineural hearing loss that is consistent with loud noise exposure but further stated his opinion, within a reasonable degree of medical certainty, that the Claimant's hearing damage occurred prior to his employment with ArcelorMittal Georgetown, LLC. (APA #9, pgs. 53-55).

The Defendants' submissions also include a copy of a Pre-Hearing Brief prepared by the Claimant in WCC File No. 0326648 in which he indicates he suffered an injury consisting of hearing loss in both ears as a result of accidents that occurred on October 21, 2003, and from 2004 through the present time (the present time then being May 25, 2007, the date the Pre-Hearing Brief was served on the Commission and opposing counsel). ArcelorMittal was a party to that claim at that time. The submitted records also include a copy of a Consent Order dismissing ArcelorMittal and its carrier, American Zurich Insurance Company, from WCC File No. 0326648 on November 5, 2014. (APA C, pgs. 93-98).

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 witness, the undersigned Commissioner makes the following Findings of Fact based upon the preponderance of the evidence:

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. The Claimant's average weekly wage is \$1,037.67, with a resulting compensation rate of \$743.72.
3. On November 1, 2013, the Claimant filed a Form 50 request for hearing alleging that he sustained an injury in the form of hearing loss on April 4, 2013, as a result of the repetitive trauma of his work at ArcelorMittal Georgetown, LLC.

4. The within matter is clearly a repetitive trauma claim and will, therefore, be analyzed as repetitive trauma.

5. Since the Defendants have raised notice and statute of limitations defenses in this matter, it is necessary to analyze when the proverbial clock started to tick.

6. The October 19, 2011, Court of Appeals opinion in the case of King v. International Knife and Saw and S.C. Code Ann. § 42-15-20(C) are controlling law.

7. The relevant test is when the Claimant discovered or should have discovered he qualified to receive benefits for medical care, treatment, or disability due to his condition.

8. The Claimant started working at the Georgetown Steel Mill in June of 1975 and retired on March 31, 2015.

9. When the Claimant started working at the Georgetown Steel Mill, hearing protection was not required and he worked in the Steel Mill without hearing protection for the first 8 to 10 to 15 years.

10. Once the Claimant started working for ArcelorMittal Georgetown, Inc., he always wore hearing protection.

11. Sometime around 2003, the Claimant filed claims for hearing loss in both ears as a result of the repetitive trauma of his work at the Georgetown Steel Mill while employed with Georgetown Steel Corporation and ArcelorMittal Georgetown, Inc., alleging dates of accidents of October 21, 2003, and 2004 through the present time (the present time then being May 25, 2007, the date the Claimant's Pre-Hearing Brief was served on the Commission and opposing counsel).

12. The Claimant's claims against Georgetown Steel Corporation for hearing loss in WCC File Nos. 0326647 and 0326648 were settled via Order approved and filed with the South Carolina Workers' Compensation Commission on September 14, 2007.

13. ArcelorMittal Georgetown, Inc., was voluntarily dismissed from the Claimant's claim against ArcelorMittal Georgetown, Inc., and Georgetown Steel (WCC File No. 0326648) via Consent Order filed and served on November 5, 2014.

14. On September 25, 2004, the Claimant was advised that, based on his hearing test performed on September 9, 2004, he had moderate loss of hearing in both ears and he should see a hearing specialist if he had not already done so.

15. The Claimant was advised again on September 21, 2005, that, based on his hearing test performed on September 16, 2005, he had a moderately severe loss of hearing in both ears and he should see a hearing specialist if he had not already done so.

16. On June 29, 2006, the Claimant was advised by Dr. Arthur LaBruce that he had bilateral hearing loss due to industrial noise trauma over so many years with inadequate ear protection.

17. On July 3, 2006, the Claimant was advised by Dr. Terry Fry that he had hearing loss due to industrial noise exposure and that bilateral hearing aid amplification was recommended.

18. The issue of the Claimant's alleged hearing loss was already litigated in WCC File Nos. 0326647 and 0326648 and resolved on August 23, 2007.

19. Defendant ArcelorMittal Georgetown, Inc., was named as a party defendant in WCC File No. 0326648 and subsequently dismissed via Consent Order dated

November 5, 2014. As such, it is clear that the Claimant was aware of a compensable condition by at least August 23, 2007.

20. As it relates to an alleged date of repetitive trauma injury of April 4, 2013, the Claimant is misguided in relying on a last date of injurious exposure analysis.

21. The Claimant did not give notice of or file a claim for benefits as a result of the alleged subject repetitive trauma hearing loss until filing his Form 50 notice of claim with the South Carolina Workers' Compensation Commission on November 1, 2013.

22. The Claimant did not provide timely notice of his claim, notice within 90 days of the date he discovered or could have discovered by exercising reasonable diligence that his alleged condition was compensable, and his request for benefits is therefore barred.

23. The Claimant did not file his claim for benefits with the South Carolina Workers' Compensation Commission within two (2) years after he knew or should have known that his injury was compensable, so his request for benefits is barred.

24. The Claimant neglected for an unreasonable and unexplained length of time under circumstances requiring diligence to do what should have been done, so his claim for benefits is, therefore, barred under the doctrine of *laches*.

25. The Claimant failed to prove causation sufficient to entitle him to any benefits as a result of injuries allegedly sustained while working for ArcelorMittal Georgetown, Inc.

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.”
2. S.C. Code Ann. § 42-15-20(C) governs notice to employer of repetitive trauma.
3. S.C. Code Ann. § 42-15-40 governs the time for filing a claim for benefits as a result of a “repetitive trauma injury.”
4. King v. International Knife & Saw – Florence (S.C. App. 2011), 395 S.C. 437, 718 S.E.2d 227, addresses the question “in the case of a repetitive trauma injury, what event triggers an injured employee’s obligation to report and commences the 90-day reporting period established in § 42-15-20(C)?”
5. The “doctrine of *laches*” is based upon the maxim that equity aids the vigilant and not those who slumber on their rights. It is defined as the neglect for an unreasonable and unexplained length of time under circumstances permitting diligence to do what in law should have been done.

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 Claimant Jack Woodward’s claim for benefits under the South Carolina Workers' Compensation Act is denied and dismissed with prejudice;

IT IS FURTHER ORDERED that Claimant Jack Woodward is not entitled to and the Defendants shall have no liability for any benefits under the South Carolina Workers' Compensation Act.

AND IT IS SO ORDERED.

S.C. 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 4, 2015

By: Shawn DeBruhl, Administrative Assistant to Commissioner Beck

DECISION AND ORDER
BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC FILE NUMBER 1315152

JACK WOODWARD,
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 4, 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 August 17, 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 4, 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:

1. All parties to this proceeding are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act.
2. The Claimant's average weekly wage is \$1,037.67, with a resulting compensation rate of \$743.72.
3. On November 1, 2013, the Claimant filed a Form 50 request for hearing alleging that he sustained an injury in the form of hearing loss on April 4, 2013, as a result of the repetitive trauma of his work at ArcelorMittal Georgetown, LLC.
4. The within matter is clearly a repetitive trauma claim and will, therefore, be analyzed as repetitive trauma.
5. Since the Defendants have raised notice and statute of limitations defenses in this matter, it is necessary to analyze when the proverbial clock started to tick.
6. The October 19, 2011, Court of Appeals opinion in the case of King v. International Knife and Saw and S.C. Code Ann. § 42-15-20(C) are controlling law.
7. The relevant test is when the Claimant discovered or should have discovered he qualified to receive benefits for medical care, treatment, or disability due to his condition.

8. The Claimant started working at the Georgetown Steel Mill in June of 1975 and retired on March 31, 2015.
9. When the Claimant started working at the Georgetown Steel Mill, hearing protection was not required and he worked in the Steel Mill without hearing protection for the first 8 to 10 to 15 years.
10. Once the Claimant started working for ArcelorMittal Georgetown, Inc., he always wore hearing protection.
11. Sometime around 2003, the Claimant filed claims for hearing loss in both ears as a result of the repetitive trauma of his work at the Georgetown Steel Mill while employed with Georgetown Steel Corporation and ArcelorMittal Georgetown, Inc., alleging dates of accidents of October 21, 2003, and 2004 through the present time (the present time then being May 25, 2007, the date the Claimant's Pre-Hearing Brief was served on the Commission and opposing counsel).
12. The Claimant's claims against Georgetown Steel Corporation for hearing loss in WCC File Nos. 0326647 and 0326648 were settled via Order approved and filed with the South Carolina Workers' Compensation Commission on September 14, 2007.
13. ArcelorMittal Georgetown, Inc., was voluntarily dismissed from the Claimant's claim against ArcelorMittal Georgetown, Inc., and Georgetown Steel (WCC File No. 0326648) via Consent Order filed and served on November 5, 2014.
14. On September 25, 2004, the Claimant was advised that, based on his hearing test performed on September 9, 2004, he had moderate loss of hearing in both ears and he should see a hearing specialist if he had not already done so.
15. The Claimant was advised again on September 21, 2005, that, based on his hearing test performed on September 16, 2005, he had a moderately severe loss of hearing in both ears and he should see a hearing specialist if he had not already done so.
16. On June 29, 2006, the Claimant was advised by Dr. Arthur LaBruce that he had bilateral hearing loss due to industrial

noise trauma over so many years with inadequate ear protection.

17. On July 3, 2006, the Claimant was advised by Dr. Terry Fry that he had hearing loss due to industrial noise exposure and that bilateral hearing aid amplification was recommended.
18. The issue of the Claimant's alleged hearing loss was already litigated in WCC File Nos. 0326647 and 0326648 and resolved on August 23, 2007.
19. Defendant ArcelorMittal Georgetown, Inc., was named as a party defendant in WCC File No. 0326648 and subsequently dismissed via Consent Order dated November 5, 2014. As such, it is clear that the Claimant was aware of a compensable condition by at least August 23, 2007.
20. As it relates to an alleged date of repetitive trauma injury of April 4, 2013, the Claimant is misguided in relying on a last date of injurious exposure analysis.
21. The Claimant did not give notice of or file a claim for benefits as a result of the alleged subject repetitive trauma hearing loss until filing his Form 50 notice of claim with the South Carolina Workers' Compensation Commission on November 1, 2013.
22. The Claimant did not provide timely notice of his claim, notice within 90 days of the date he discovered or could have discovered by exercising reasonable diligence that his alleged condition was compensable, and his request for benefits is therefore barred.
23. The Claimant did not file his claim for benefits with the South Carolina Workers' Compensation Commission within two (2) years after he knew or should have known that his injury was compensable, so his request for benefits is barred.
24. The Claimant neglected for an unreasonable and unexplained length of time under circumstances requiring diligence to do what should have been done, so his claim for benefits is, therefore, barred under the doctrine of *laches*.
25. The Claimant failed to prove causation sufficient to entitle him to any benefits as a result of injuries allegedly sustained while working for ArcelorMittal Georgetown, Inc.

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."
2. S.C. Code Ann. § 42-15-20(C) governs notice to employer of repetitive trauma.
3. S.C. Code Ann. § 42-15-40 governs the time for filing a claim for benefits as a result of a "repetitive trauma injury."
4. King v. International Knife & Saw -- Florence (S.C. App. 2011), 395 S.C. 437, 718 S.E.2d 227, addresses the question "in the case of a repetitive trauma injury, what event triggers an injured employee's obligation to report and commences the 90-day reporting period established in § 42-15-20(C)?"
5. The "doctrine of *laches*" is based upon the maxim that equity aids the vigilant and not those who slumber on their rights. It is defined as the neglect for an unreasonable and unexplained length of time under circumstances permitting diligence to do what in law should have been done.

ORDER

Based on the foregoing, it is hereby ordered that Claimant Jack Woodward's claim for benefits under the South Carolina Workers' Compensation Act is denied and dismissed with prejudice;

IT IS FURTHER ORDERED that Claimant Jack Woodward is not entitled to and the Defendants shall have no liability for any benefits under the South Carolina Workers' Compensation Act.

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 2005, 2006 or 2007?

EVIDENCE OF THE CASE

The Claimant is 60 years of age and worked in the steel mill in Georgetown for 39 years, 8 months, retiring on March 31, 2015. He performed jobs including maintenance, air-conditioning and electric work, and worked all over the mill but mainly on the melt floor, which he testified was the noisiest part of the mill. He testified the working conditions were extremely loud. He testified as to his current hearing problems but also testified that his hearing problems never disabled him from performing his job. Finally, the Claimant testified that it is his belief that working in the steel mill gradually caused his hearing loss.

On cross-examination, the Claimant testified that there was no hearing protection in use when he started working at the steel mill in June, 1975, and that he probably worked the first eight to ten years without any hearing protection. He testified that hearing protection gradually became available and required, that the wearing of hearing protection was much more strictly required by the time ArcelorMittal took over the plant, and that he always wore hearing protection once he started working for ArcelorMittal. The Claimant testified he started to realize at some point "way back when" that his hearing was not as good as it had been, but he never thought to seek medical attention or do anything about it. The Claimant testified that he filed a claim against Georgetown Steel sometime

around 2003 and that ArcelorMittal was included in that claim. The Claimant agreed that ArcelorMittal was dismissed from that 2003 claim and that the claim was settled with one of the employers or carriers in 2007 whereby he was paid some money for hearing loss – the same claim in which ArcelorMittal had been a defendant.

The Claimant testified that ArcelorMittal did not become involved with the steel mill in Georgetown until after 2003. The Claimant was given a baseline hearing test by ArcelorMittal in September of 2004, the point in time at which it began operating the steel mill facility.

Finally, the Single Commissioner reviewed APA submissions and exhibits in the record including sound level surveys dated June 30, 1975, July 1, 1983, February 6, 1984, February 6, 1991, and April 7, 1993 (APA #6, pgs. 21-28), all of which pre-date ArcelorMittal's ownership of the steel mill; copies of Employer meeting notes regarding noise levels in the mill dated February 16, 2000, and May 23, 2000 (APA #7, pgs. 28-32); and copies of OSHA reports to the steel mill regarding noise levels dated from November 28, 1995, through October 3, 2002 (APA #8, pgs. 33-52), all of which pre-date ArcelorMittal's ownership of the mill. Dr. Terry Fry prepared a report on December 23, 2013, in which Dr. Fry indicated the Claimant reached maximum medical improvement on July 3, 2006, and sustained a 28% medical impairment to the right ear and a 23% medical impairment to the left ear. (APA #1, p. 2).

The Claimant underwent a hearing test performed on September 9, 2004, indicating the Claimant had a moderate loss of hearing in both his left and right ears resulting in a 19.0625% binaural hearing impairment. (APA D, pgs. 68-70). The Defendants' submissions also include a report from Dr. Howard A. Farrell dated December

27, 2013, which documents that the Claimant always used ear plugs while employed at ArcelorMittal, but did not use ear protection consistently while employed at the steel mill from June, 1975, through 2003. Dr. Farrell stated that the Claimant has a bilateral high-frequency sensorineural hearing loss that is consistent with loud noise exposure but further stated his opinion, within a reasonable degree of medical certainty, that the Claimant's hearing damage occurred prior to his employment with ArcelorMittal Georgetown, LLC. (APA #9, pgs. 53-55).

The Defendants' submissions also include a copy of a Pre-Hearing Brief prepared by the Claimant in WCC File No. 0326648, in which the Claimant alleged he suffered an injury consisting of hearing loss in both ears as a result of accidents that occurred on October 21, 2003, and from 2004 through the present time (the present time then being May 25, 2007, the date the Pre-Hearing Brief was served on the Commission and opposing counsel). ArcelorMittal was a party to that claim at that time. The submitted records also include a copy of a Consent Order dismissing ArcelorMittal and its carrier, American Zurich Insurance Company, from WCC File No. 0326648 on November 5, 2014. (APA C, pgs. 93-98).

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 (Cl. 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 was advised on September 25, 2004, that, based on his hearing test performed on September 9, 2004, he had moderate loss of hearing in both ears and he should see a hearing specialist if he had not already done so. On June 29, 2006, the Claimant was advised by Dr. Arthur LaBruce that he had bilateral hearing loss due to industrial noise trauma over so many years with inadequate ear protection. Therefore, the "90-day reporting clock" started at the earliest, on September 25,

2004, and at the latest, on June 29, 2006. However, he did not give notice of the present claim until eight years later on when he filed a Form 50 hearing request on November 1, 2013. Accordingly, the Single Commissioner's finding that the Claimant did not provide timely notice of a repetitive trauma injury is 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. To the extent 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 advised on

September 25, 2004, that, based on his hearing test performed on September 9, 2004, he had moderate loss of hearing in both ears and he should see a hearing specialist if he had not already done so. On June 29, 2006, the Claimant was advised by Dr. Arthur LaBruce that he had bilateral hearing loss due to industrial noise trauma over so many years with inadequate ear protection. But, he did not file the present claim until 2013. 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. Furthermore, the Claimant was told in 2006 that both Dr. LaBruce and Dr. Terry Fry believed his hearing loss was work-related. The Claimant cannot reasonably contend that he was unaware of this claim until less than two years before the date he filed in in 2014. Therefore, the Single Commissioner's decision that the claim is barred by the statute of limitations is 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 (Cl. 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 2003 that his hearing loss was related to his employment with the Employer. He alleged compensable hearing loss and filed a hearing request in 2007 and settled that case. He was advised on September 25, 2004, that, based on his hearing test performed on September 9, 2004, he had moderate loss of hearing in both ears and he should see a hearing specialist if he had not already done so. On June 29, 2006, the Claimant was advised by Dr. Arthur LaBruce that he had bilateral hearing loss due to industrial noise trauma over so many years with inadequate ear protection. Dr. Terry Fry also opined in 2006 that the Claimant's hearing loss work-related. The Claimant previously pursued a claim in 2006 and 2007, which he subsequently settled. Thereafter, the Claimant did not pursue the present claim until 2013. This six-year 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 six-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 pursued a claim in 2006 and 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 December 23, 2013 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. The Claimant's average weekly wage is \$1,037.67, with a resulting compensation rate of \$743.72.
3. On November 1, 2013, the Claimant filed a Form 50 request for hearing alleging that he sustained an injury in the form of hearing loss on April 4, 2013, as a result of the repetitive trauma of his work at ArcelorMittal Georgetown, LLC.
4. The within matter is clearly a repetitive trauma claim and will, therefore, be analyzed as repetitive trauma.
5. Since the Defendants have raised notice and statute of limitations defenses in this matter, it is necessary to analyze when the proverbial clock started to tick.
6. The October 19, 2011, Court of Appeals opinion in the case of King v. International Knife and Saw and S.C. Code Ann. § 42-15-20(C) are controlling law.
7. The relevant test is when the Claimant discovered or should have discovered he qualified to receive benefits for medical care, treatment, or disability due to his condition.

8. The Claimant started working at the Georgetown Steel Mill in June of 1975 and retired on March 31, 2015.

9. When the Claimant started working at the Georgetown Steel Mill, hearing protection was not required and he worked in the Steel Mill without hearing protection for the first 8 to 10 to 15 years.

10. Once the Claimant started working for ArcelorMittal Georgetown, Inc., he always wore hearing protection.

11. Sometime around 2003, the Claimant filed claims for hearing loss in both ears as a result of the repetitive trauma of his work at the Georgetown Steel Mill while employed with Georgetown Steel Corporation and ArcelorMittal Georgetown, Inc., alleging dates of accidents of October 21, 2003, and 2004 through the present time (the present time then being May 25, 2007, the date the Claimant's Pre-Hearing Brief was served on the Commission and opposing counsel).

12. The Claimant's claims against Georgetown Steel Corporation for hearing loss in WCC File Nos. 0326647 and 0326648 were settled via Order approved and filed with the South Carolina Workers' Compensation Commission on September 14, 2007.

13. ArcelorMittal Georgetown, Inc., was voluntarily dismissed from the Claimant's claim against ArcelorMittal Georgetown, Inc., and Georgetown Steel (WCC File No. 0326648) via Consent Order filed and served on November 5, 2014.

14. On September 25, 2004, the Claimant was advised that, based on his hearing test performed on September 9, 2004, he had moderate loss of hearing in both ears and he should see a hearing specialist if he had not already done so.

15. The Claimant was advised again on September 21, 2005, that, based on his hearing test performed on September 16, 2005, he had a moderately severe loss of hearing in both ears and he should see a hearing specialist if he had not already done so.

16. On June 29, 2006, the Claimant was advised by Dr. Arthur LaBruce that he had bilateral hearing loss due to industrial noise trauma over so many years with inadequate ear protection.

17. On July 3, 2006, the Claimant was advised by Dr. Terry Fry that he had hearing loss due to industrial noise exposure and that bilateral hearing aid amplification was recommended.

18. The issue of the Claimant's alleged hearing loss was already litigated in WCC File Nos. 0326647 and 0326648 and resolved on August 23, 2007.

19. Defendant ArcelorMittal Georgetown, Inc., was named as a party defendant in WCC File No. 0326648 and subsequently dismissed via Consent Order dated November 5, 2014. As such, it is clear that the Claimant was aware of a compensable condition by at least August 23, 2007.

20. As it relates to an alleged date of repetitive trauma injury of April 4, 2013, the Claimant is misguided in relying on a last date of injurious exposure analysis.

21. The Claimant did not give notice of or file a claim for benefits as a result of the alleged subject repetitive trauma hearing loss until filing his Form 50 notice of claim with the South Carolina Workers' Compensation Commission on November 1, 2013.

22. The Claimant did not provide timely notice of his claim, notice within 90 days of the date he discovered or could have discovered by exercising reasonable

diligence that his alleged condition was compensable, and his request for benefits is therefore barred.

23. The Claimant did not file his claim for benefits with the South Carolina Workers' Compensation Commission within two (2) years after he knew or should have known that his injury was compensable, so his request for benefits is barred.

24. The Claimant neglected for an unreasonable and unexplained length of time under circumstances requiring diligence to do what should have been done, so his claim for benefits is, therefore, barred under the doctrine of *laches*.

25. The Claimant failed to prove causation sufficient to entitle him to any benefits as a result of injuries allegedly sustained while working for ArcelorMittal Georgetown, Inc.

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."
2. S.C. Code Ann. § 42-15-20(C) governs notice to employer of repetitive trauma.
3. S.C. Code Ann. § 42-15-40 governs the time for filing a claim for benefits as a result of a "repetitive trauma injury."

4. King v. International Knife & Saw – Florence (S.C. App. 2011), 395 S.C. 437, 718 S.E.2d 227, addresses the question “in the case of a repetitive trauma injury, what event triggers an injured employee’s obligation to report and commences the 90-day reporting period established in § 42-15-20(C)?”

5. The “doctrine of *laches*” is based upon the maxim that equity aids the vigilant and not those who slumber on their rights. It is defined as the neglect for an unreasonable and unexplained length of time under circumstances permitting diligence to do what in law should have been done.

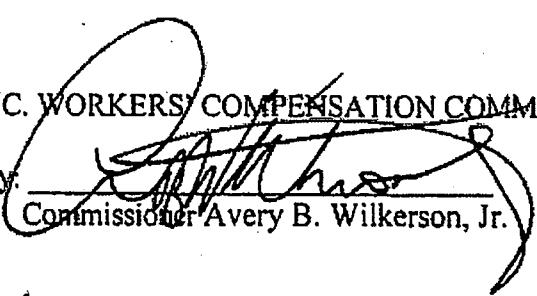
Based upon the Evidence of the Case, and the above Findings of Fact, and Conclusions of Law, the following Order is made:

ORDER

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

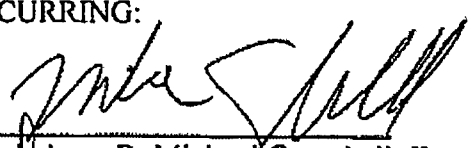
No hearing costs or penalties are assessed in this matter.

S.C. WORKERS' COMPENSATION COMMISSION

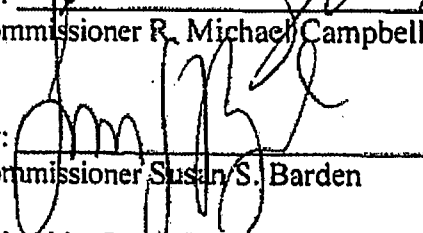
By: 

Commissioner Avery B. Wilkerson, Jr.

CONCURRING:

By: 

Commissioner R. Michael Campbell, II

By: 

Commissioner Susan S. Barden

Columbia, South Carolina



WCC File #: **1315152 & 0326648**
Carrier File #: **000756-027360-WC-01**
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: Jack Woodward SSN: 248-98-5461 Employer's Name: ArcelorMittal Georgetown, LLC
Address: 411 Whites Bridges Address: P.O. Box 619
City: Georgetown State: SC Zip: 29440 City: Georgetown State: SC Zip: 29442
(843) 907 - 6553 Work Phone: () -
Home 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

A claim for workers' compensation benefits is made based on the following grounds: Date of Injury or Illness: 04/04/2013 & 10/21/2003

☐ Injury ☐ Illness ☒ Repetitive Trauma ☐ Occupational Disease ☐ Physical Brain Injury ☐ Concurrent Jurisdiction

1. The claimant sustained an injury to both ears (hearing loss) (Part(s) of Body Injured) on 04/04/2013 & 10/21/2003 (Month/Day/Year) in Georgetown county, state of SC.
2. Body part(s) affected are: both ears
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 11/01/2013 & 10/21/2003 (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 \$1,037.67, 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:
ArcelorMittal Georgetown, LLC, P.O. Box 619, Georgetown, SC 29442

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? No
If yes, describe: _____

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: 1 hour

☒ 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.

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 11th day of June 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
Preparer's Signature

Attorney for Claimant
Title

wsdlaw1@aol.com
Email

06/11/2014
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.

Amended 50

Jack Woodward 248-98-5461

Claimant's Name SSN

411 Whites Bridges, Georgetown, SC 29440

Address City State Zip

Home Phone: () Work Phone: ()

Date of Injury: 4/4/2013

ArcelorMittal Georgetown, LLC

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: 4/4/2013

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 an injury by accident 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 the 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 only responsible 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. 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. 67-1801.
- ☐ 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.

Preparer's Signature:

Attorney for Employer/Carrier
Title

drogers@vcrlaw.com
Email

November 27, 2013
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.

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 #: _____

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Claimant's Name: Jack Woodward SSN: 248-98-5461 Employer's Name: Arceformital Georgetown, LLC
Address: 411 Whites Bridges Address: 420 S. Hazard Street
City: Georgetown State: SC Zip: 29440 City: Georgetown State: SC Zip: 29440
Home Phone: 843-907-6553 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: 4/4/2013

☐ Injury ☐ Illness ☒ Repetitive Trauma ☐ Occupational Disease ☐ Physical Brain Injury ☐ Concurrent Jurisdiction

1. The claimant sustained an injury to hearing loss (Part(s) of Body Injured) on 4/4/2013 (Month/Day/Year) in
Georgetown county, state of SC. Body part(s) affected are: ears

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 11/1/2013 (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 \$ 1,037.67, 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 Marine 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: 45 minutes

☒ 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.

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to New Hampshire Insurance Company c/o Charis Claims, Inc.
address P.O. Box 4230, Alpharetta, GA 30023 on the 1st day of November 2013, 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.

Preparer's Signature: William Stuart Duncan Title: Attorney for Claimant Email: wedlaw1@aol.com Date: 11/1/13

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

50

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

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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 #: 1315152
Carrier File #: _____
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: Jack Woodward SSN: 248-98-5461 Employer's Name: ArcelorMittal Georgetown, LLC
Address: 411 Whites Bridges Address: 420 S. Hazard Street
City: Georgetown State: SC Zip: 29440 City: Georgetown State: SC Zip: 29440
Home Phone: 843-907-6553 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: 4/4/2013
☐ Injury ☐ Illness ☒ Repetitive Trauma ☐ Occupational Disease ☐ Physical Brain Injury ☐ Concurrent Jurisdiction

1. The claimant sustained an injury to hearing loss (Part(s) of Body Injured) on 4/4/2013 (Month/Day/Year) in Georgetown county, state of SC. Body part(s) affected are: ears
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 11/1/2013 (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 \$ 1,037.67 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: 45 minutes
- ☒ 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.

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to see attached Certificate of Service
address P.O. Box 993, Charleston, SC 29402 on the 23rd day of October 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.

Preparer's Signature: [Signature] Attorney for Claimant: wsdlaw1@aol.com 10/23/14
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

Jack Woodward xxx-x8-5461
Claimant's Name SSN
411 Whites Bridges, Georgetown, SC 29440
Address City State Zip
Home Phone: () Work Phone: ()
Date of Injury: 4/4/2013

ArcelorMittal Georgetown, LLC
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: 4/4/2013

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 an injury by accident 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 the 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 only responsible 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. 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. 67-1801.
☐ 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.

Preparer's Signature

Attorney for Employer/Carrier
Title

drogers@vcrlaw.com
Email

November 17, 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.

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 #: **1315152**
Carrier File #: _____
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: Jack Woodward SSN: 248 - 98 - 5461 Employer's Name: ArcelorMittal Georgetown, Inc.
Address: 411 White Bridges Address: P.O. Box 619
City: Georgetown State: SC Zip: 29440 City: Georgetown State: SC Zip: 29442
Home Phone: (843) 543 - 1112 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: 04/04/2013
(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 2005, 2006 or 2007?

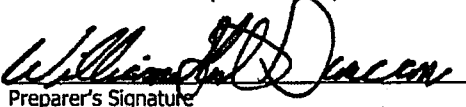
(Check one) Oral argument ☒ is ☐ is not requested. Appellant's request for oral argument is waived if not indicated on this form.

☐ 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 Post Office Box 993, Charleston, SC 29402 on the 17th day of August 2015, by X first class postage certified mail personal service.


Preparer's Signature

Attorney for Claimant
Title

wslaw1@aol.com
Email

08/17/2015
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: Jack Woodward Employer's Name: ArcelorMittal Georgetown, Inc.
Address: 411 White Bridges Address: P.O. Box 619
City: Georgetown State: SC Zip: 29440 City: Georgetown State: SC Zip: 29442
Home Phone: (843) 907-6553 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: \$1,037.67 Date of Injury: 04/04/2013
3. Type of Injury and body part(s): Repetitive trauma hearing loss
4. Facts in controversy: Whether the Claimant sustained repetitive hearing loss to both ears during his employment at the Georgetown steel making facility currently known as ArcelorMittal Georgetown, Inc. Claimant provided notice to employer on 11/1/13 however, employer knew of Claimant's hearing loss through hearing test which were periodically performed during his 38 years exposure to the loudest areas of the mill while performing his mechanic duties.
5. Legal issues involved: §42-1-172; §42-9-30
6. Unusual aspects: None
7. Witnesses (designate if expert):* Claimant, Jack Woodward
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., Waccamaw Surgical Associates, 401 Marina Drive, Georgetown, SC 29440; ENT - Head and Neck Surgery
11. Impairment rating(s); body part(s); physician and date of opinion: Dr. Terry L. Fry - 29% binaural hearing impairment - September 10, 2013
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 / Jcw Email: wsdlaw1@aol.com
Date of hearing: April 28, 2015 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.

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500
P. O. Box 1715
Columbia, SC 29202-1715
(803) 737-5739 www.wcc.sc.gov

PRE-HEARING BRIEF
WCC File No.: 1315152

Claimant's Name: Jack Woodward
Address: 411 Whites Bridges 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: \$ 1,332.44 Date of Injury: 4/4/2013
 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 the 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 9/3/76, 12/3/75; (B) ISG/ArcelorMittal Audiograms/Calculations 12/10/07, 10/27/06, 9/16/05, 9/9/04; (C) SCWCC# 0326648 Jack Woodward v. Georgetown Steel (D/A 10/21/03): Pre-Hearing Brief filed on behalf of claimant dated 5/25/07, Memorandum of Law filed on behalf of claimant dated 5/25/07; Clincher & Form 19 for settlement with Georgetown Steel/Capitol City dated 9/14/07; Consent Order dismissing ArcelorMittal dated 11/5/14; Commissioner McCaskill's order directives issued 2/2/15, Transcript of hearing 10/23/2014; (D) Transcript of deposition of Jack Woodward taken 5/31/06 WCC# 0326648. Transcript of claimant's deposition taken 1/6/2014 may be submitted at the hearing.
 9. Medical evidence: (indicate report pursuant to R.67-612; deposition or appearance):
(9) Dr. Howard Anthony Farrell/ENT dated 12/27/2013
 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:
9/9/2004 - ISG Georgetown/Mittal baseline binaural hearing test is 19.06%.
12/27/2013 - Dr. Farrell determined binaural impairment is 19.06%
 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: _____
Date of hearing: 4/28/2015

Email: drogers@ycrlaw.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.

Addendum to Pre-Hearing Brief on behalf of Employer/Carrier

Binaural Hearing Impairment Chart

Testing Facility	Date	Right	Left	Binaural Hearing Impairment
Georgetown Steel	12/3/1975	3.75	0	00.625
Georgetown Steel	9/3/1976	13.125	15.00	13.4375
Georgetown Steel	10/21/03			Plant closed
ISG	9/9/2004	18.75	20.625	19.06
Mittal	9/16/2005	18.75	20.625	19.06
Mittal	10/27/2006	18.75	18.75	18.75
Mittal	12/10/2007	18.75	18.75	18.75
Dr. Farrell	12/27/2013	18.75	20.62	19.06

STATE OF SOUTH CAROLINA
BEFORE THE SOUTH CAROLINA
WORKERS COMPENSATION COMMISSION
WCC FILE NO.: 1315152

JACK WOODWARD,

Claimant,

-versus-

ARCELORMITTAL GEORGETOWN,
LLC,

Employer,

and

NEW HAMPSHIRE INSURANCE
COMPANY,

Carrier/Defendant.

MEMORANDUM OF
LEGAL ISSUES

A. FACTUAL BACKGROUND

Jack Woodward (herein Claimant) worked at the Georgetown Steel making facility for over 38 years. He began his tenure at the mill in the casting area where he remained as a quality control technician for 12 years, then worked throughout the mill as an electrician in the maintenance department for the next 20 years. (APA 16 - 18). During his last 6 years with ArcelorMittal he worked exclusively in the melt shop - the noisiest portion of the mill.

As his periodic hearing tests indicate, he started working at the mill with nearly perfect hearing (APA 14, June 24, 1975 hearing test .625% binaural hearing loss) and ended with significant binaural hearing loss (APA 2, September 10, 2013, 29.00%). A side-by-side comparison of the two audiological evaluations of Claimant at the same office between 2006 and 2013, the Claimant's

binaural audiograms show a loss of 23.83% in 2006 and falling to 29.00% in 2013, during which time he was solely employed by ArcelorMittal in the melt shop.

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, 100 Hz, 200 Hz, and 300 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 yield 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.

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.

DISCUSSION

I. REPETITIVE TRAUMA

Repetitive trauma injuries differ from injuries which occur on a specific date because they 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 a 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 April 4, 2013 Claimant filed his claim on November 1, 2013, 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-

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)

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.

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 unto Woodward 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

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

court apparently placed the burden on the employer to prove the injury was expected. In the present case, there is no evidence Jack Woodward anticipated or expected that he would be injured by exposure 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 Jack Woodward’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. Woodward’s case, is our Supreme Court has decided a Claimant such as Mr. Woodward 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? The obvious answer is no.

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

Workers' Compensation must adopt a standard for persons affected by repetitive trauma 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 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. Woodward, should he try to work in some other job where hearing is more important.

Claimant returned to work at the Steel Mill, now under ArcelorMittal management. ArcelorMittal had constructive, if no actual, knowledge of Claimant's hearing loss at the time he returned to work in the mill. As was previously noted, Claimant had a binaural hearing loss of 23.38% in 2006. Upon his retirement in 2013 his hearing loss had increased to 29%.

Employees, situated as Mr. Woodward, 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 Svcs*, 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]laimants' present injury was properly considered in combination with his preexisting impairment, to determine eligibility for benefits. See also, *Butts v. C.R. England Trucking*, 2008WL 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. ALLOCATION OF LIABILITY

ISSUE PRESENTED: Whether the Claimant's claim for occupational hearing loss should be allocated among the various owners of the Georgetown Steel Mill and their insurance carriers.

ANSWER: Where the employee has specific quantifiable injury liability must be assigned to the specific employer and carrier.

V(A). HISTORICAL ANALYSIS: Employees often work for several employers, engaged in the same work activities, during their careers. Frequently, an employee works for the same employer who, over the years, is covered by multiple workers' compensation carriers. In such situations, where the employee becomes disabled and the date of the disabling injury is unknown or unascertainable, the "last injurious exposure" rule is applied. The "last injurious exposure" rule, simply stated, places full liability upon the carrier covering the risk at the time of the most recent

⁶Interpreting §42-9-400(a)

injury having a causal relation to the disability. Larson's Workers' Compensation Law, Lexis-Nexis, 2003, §153.02[1]. An earlier edition of Larson's states the Rule more succinctly: "When a disability develops gradually, or when it comes as the result of a succession of accidents, the insurance carrier covering the risk at the time of the most recent injury or exposure bearing a causal relation to the disability is usually liable for the entire compensation." Larson, Workmen's Compensation Law, § 95 (1978). The Rule is often applied in occupational diseases, as well as accidental injuries. *Id.* In at least three cases, South Carolina Courts have applied the "last injurious exposure" rule. All three have been in occupational disease cases. *Reese v. CCI Construction Co.*, 334 S.C. 600, 514 S.E. 2d 144 (Ct. App. 1999); *Hanks v. Blair Mills, Inc.*, 286 S.C. 378, 335 S.E. 2d 91 (Ct. App. 1985); and *Glenn v. Columbia Silica Sand Co.*, 236 S.C. 13, 112 S.E. 2d 711 (1960).

In all three cases, the employee had worked for multiple employers or was covered by multiple carriers. Additionally, their disabilities resulted from occupational diseases common to their employers' industries. Most importantly, there was no evidence which would allow the Commission (or the Courts) to determine the level of disability during each employment period. Consequently, the Courts applied the "last injurious exposure" rule to place liability on the last employer/carrier. The Court in *Glenn* said the last injurious exposure rule is not embodied South Carolina law. However, in *Glenn*, *Hanks*, and *Reese*, the Courts application of the law was identical to the last injurious exposure rule, as defined in Larson's *supra*. In both *Glenn* and *Hanks*, the rule was applied to place liability on "the carrier who was on the risk when the disease resulted in disability..." *Hanks* at 286 S.C. 385, 335 S.E.2d 96.⁷

A careful reading of *Glenn* reveals the reason for such a rule is because of the difficulty of

⁷This rule is often referred to as the *Glenn* Rule. *Glenn v. Columbia Silica Sand Co.*, 236 S.C. 13, 112 S.E. 2d 711 (1960).

fixing liability among employers and carriers. "In the search for an identifiable instant in time which can perform such necessary functions as to start claim periods running, establish claimant's right to benefits, and fix the employer and insurer liable for compensation, the date of disability has been found the most satisfactory." *Glenn* at 112 S.E.2d 714.

Without the uncertainties voiced above, the *Glenn* Rule and "last injurious exposure" rule serve no purpose and should not be applied where liability is capable of being allocated. The rationale in applying the rule is "to set a definite and certain time for liability to attach and thus avoid the often difficult task of determining which of a series of injuries caused the disability or which of a series of exposures caused the disabling disease." *Singer Co. v. Smith*, 362 So. 2d 590, 593 (Miss. 1978). The court, in *Singer*, went on to say, "In the absence of difficulty in locating a definite and certain time, the rule has no application. *Id.* (Emphasis added). (See also, *Mid-South Insulation Co., v. Buckley*, 396, S. 2d 7 (Miss. 1981).

The Ohio Supreme Court followed the same rationale when it rejected the "last injurious exposure" rule in an occupational asthma case. *State Ex Rel. Erieview Metal Treating Co. v. Ind. Comm. of Ohio*, 846 N.E.2d 515 (2006). There, the claimant had undergone pulmonary function tests with his previous employer. The court concluded it was "possible to determine with some degree of accuracy which exposure was responsible for [claimant's] disability." *Id.* at 517, and thereby concluded the pulmonary function test evidence was sufficient to allocate liability to claimant's former employer. Here too, Claimant's periodic hearing tests make it possible to determine with some degree of accuracy, the liability of each employer and carrier. Accordingly, each employer and insurer here is responsible for their corresponding impairment as specifically found in Claimant's prior audiogram.

V(B). Liability for Claimant's Hearing Loss is Capable of Allocation Among Employers and Carriers.

As stated above, the "last injurious exposure" rule and the *Glenn* Rule are employed where there is difficulty or impossibility in determining when an employee suffered an impairment. Here, the evidence in the record establishes various levels of hearing impairment measured during the employee's tenure. The Employer administered (or commissioned) periodic hearing tests on the employee. (APA 231-234). Those hearing tests indicate progressive hearing loss during the employee's tenure. From the evidence, it is possible to determine the level of impairment during the coverage period of each employer and each carrier. From that evidence, it is a matter of calculating and allocating the *pro rata* liability of each carrier involved. Just as in the *Erievue* case, *supra*, the uncertainties, usually associated with allocating liability, have been removed and replaced with periodic hearing test results which allow allocation with some degree of accuracy.

On examination of Claimant's prior Employer designated hearing tests, Claimant tested 0.6% in 1975 during St. Paul Travelers Insurance company and 13% in 1976 during Korf Industries Company. The Commission should employ the Claimant's periodic hearing tests to determine an allocation of liability among the various employers and carriers. (See attached Georgetown Steel Coverage Chart).

CLAIMANT'S ALTERNATIVE THEORY: LAST INJURIOUS EXPOSURE

V(C). Geathers vs. 3V, Inc.

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

V(D). 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. Brucoli, 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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Georgetown, South Carolina
April 27, 2015

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**STATE OF SOUTH CAROLINA
BEFORE THE SOUTH CAROLINA
WORKERS COMPENSATION COMMISSION
WCC FILE NO.: 1315152**

JACK WOODWARD,

Claimant/Appellant,

-versus-

**ARCELORMITTAL GEORGETOWN,
LLC,**

Employer,

and

**NEW HAMPSHIRE INSURANCE
COMPANY,**

Carrier/Defendant.

APPELLANT'S BRIEF

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 March 31, 2014

Jack Woodward (herein Claimant) worked at the Georgetown steel making facility for over 38 years. He began his tenure at the mill in the casting area where he remained as a quality control technician for 12 years, then worked throughout the mill as an electrician in the maintenance department for the next 20 years. (APA 16 - 18). During his last 6 years with ArcelorMittal, he worked exclusively in the melt shop - the noisiest portion of the mill.

As his periodic hearing tests indicate, he started working at the mill with nearly perfect

hearing (APA 14, June 24, 1975 hearing test .625% binaural hearing loss) and ended with significant binaural hearing loss (APA 2, September 10, 2013, 29.00%). In a side-by-side comparison of the two audiological evaluations of Claimant at the same office between 2006 and 2013, the Claimant's binaural audiograms show a loss of 23.83% in 2006 and falling to 29.00% in 2013, during which time he was solely employed by ArcelorMittal in the melt shop.

The case was heard by the Honorable T. Scott Beck on April 28, 2015. Commissioner Beck signed the Decision and Order on August 4, 2015, denying the claim. Claimant filed a Form 30, Request for Commission Review appealing the Decision and Order on August 17, 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 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.

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.

(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.

3. Whether the Single Commissioner erred when he ruled Appellant's claim was barred by the equitable doctrine of *laches*.
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 Claimant 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. Woodward's case, is our Supreme Court has decided a Claimant such as Mr. Woodward 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

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

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 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. Woodward, should he try to work in some other job where hearing is more important.

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

Employees, situated as Mr. Woodward, 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.

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.

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). Here, ArcelorMittal, who purchased the Georgetown steel mill, is imputed with knowledge of audiograms performed on employees by former owners/employers. 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 Claimant. ArcelorMittal administered periodic hearing tests and knew of the Claimant's hearing loss before the Claimant 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 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 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 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).

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 *Curriel v. Environmental Management Svcs*, 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.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 Claimant 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 settled through mediation. 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 5% 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 53-57), it must be kept in mind that Dr. Fry has been Appellant's ENT for at least eight years. She has

⁵ Interpreting §42-9-400(a)

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.

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 November 19, 2014. (APA 1). In her letter, Dr. Fry states Appellant's binaural hearing loss increased from 24% to 29% in seven years. It is November 19, 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

6

§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.

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.

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. (See also Appellant’s argument in Section 1 at p. 6-7). 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 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 November 19, 2014 to have a 29% 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 Jack Woodward accordingly.

*****SIGNATURE ON NEXT PAGE*****

Respectfully submitted,

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Georgetown, South Carolina
October 9, 2015

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Jack Woodward,
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 Georgetown, SC, on April 28, 2015, pursuant to notice timely and properly given to all parties of record. The Claimant filed a Form 50 on October 23, 2014, asserting binaural hearing loss as a result of repetitive trauma in his employment. The Employer/Carrier filed a timely Form 51 on November 17, 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*.

In an Order issued on August 4, 2015, Commissioner Beck determined that the Claimant had not sustained his burden to prove a compensable repetitive trauma injury in his 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 August 17, 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 condition was compensable in 2005, 2006, or 2007.

STATEMENT OF THE FACTS

The Claimant is 60 years of age and worked in the steel mill in Georgetown for 39 years, 8 months, retiring on March 31, 2015. He performed jobs including maintenance, air-conditioning and electric work, and worked all over the mill but mainly on the melt floor, which he testified was the noisiest part of the mill. He testified the working conditions were extremely loud. He testified as to his current hearing problems but also testified that his hearing problems never disabled him from performing his job. Finally, the Claimant testified that it is his belief that working in the steel mill gradually caused his hearing loss.

On cross-examination, the Claimant testified that there was no hearing protection in use when he started working at the steel mill in June, 1975, and that he probably worked the first eight to ten years without any hearing protection. He testified that hearing protection gradually became available and required, that the wearing of hearing protection was much more strictly

required by the time ArcelorMittal took over the plant, and that he always wore hearing protection once he started working for ArcelorMittal. The Claimant testified he started to realize at some point "way back when" that his hearing was not as good as it had been, but he never thought to seek medical attention or do anything about it. The Claimant testified that he filed a claim against Georgetown Steel sometime around 2003 and that ArcelorMittal was included in that claim. The Claimant agreed that ArcelorMittal was dismissed from that 2003 claim and that the claim was settled with one of the employers or carriers in 2007 whereby he was paid some money for hearing loss -- the same claim in which ArcelorMittal had been a defendant.

Specific notice was made by the Single Commissioner that the Claimant testified that ArcelorMittal did not become involved with the steel mill in Georgetown until after 2003. Specifically, according to the evidence submitted by the Employer/Carrier, the Claimant was given a baseline hearing test by ArcelorMittal in September of 2004, the point in time at which it began operating the steel mill facility.

Finally, the Single Commissioner reviewed APA submissions and exhibits in the record including sound level surveys dated June 30, 1975, July 1, 1983, February 6, 1984, February 6, 1991, and April 7, 1993 (APA #6, pgs. 21-28), all of which pre-date ArcelorMittal's ownership of the steel mill; copies of Employer meeting notes regarding noise levels in the mill dated February 16, 2000, and May 23, 2000 (APA #7, pgs. 28-32); and copies of OSHA reports to the steel mill regarding noise levels dated from November 28, 1995, through October 3, 2002 (APA #8, pgs. 33-52), all of which pre-date ArcelorMittal's ownership of the mill. The records submitted by the Claimant also include a physician's statement completed by Terry L. Fry, M.D., on December 23, 2013, in which Dr. Fry indicated the Claimant reached maximum medical improvement on July 3,

2006, and sustained a 28% medical impairment to the right ear and a 23% medical impairment to the left ear. (APA #1, p. 2).

The records submitted by the Defendants include results of a hearing test performed on September 9, 2004, indicating the Claimant had a moderate loss of hearing in both his left and right ears resulting in a 19.0625% binaural hearing impairment. (APA D, pgs. 68-70). The Defendants' submissions also include a report from Dr. Howard A. Farrell dated December 27, 2013, which documents that the Claimant always used ear plugs while employed at ArcelorMittal but did not use ear protection consistently while employed at the steel mill from June, 1975, through 2003. Dr. Farrell stated that the Claimant has a bilateral high-frequency sensorineural hearing loss that is consistent with loud noise exposure but further stated his opinion, within a reasonable degree of medical certainty, that the Claimant's hearing damage occurred prior to his employment with ArcelorMittal Georgetown, LLC. (APA #9, pgs. 53-55).

The Defendants' submissions also include a copy of a Pre-Hearing Brief prepared by the Claimant in WCC File No. 0326648 in which he indicates he suffered an injury consisting of hearing loss in both ears as a result of accidents that occurred on October 21, 2003, and from 2004 through the present time (the present time then being May 25, 2007, the date the Pre-Hearing Brief was served on the Commission and opposing counsel). ArcelorMittal was a party to that claim at that time. The submitted records also include a copy of a Consent Order dismissing ArcelorMittal and its carrier, American Zurich Insurance Company, from WCC File No. 0326648 on November 5, 2014. (APA C, pgs. 93-98).

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 2003, according to his testimony; therefore, the "90-day reporting clock" started on that date. The Claimant was aware that he had a

compensable claim when he hired a lawyer and filed a Form 50 hearing request in 2007. However, he settled this 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 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). Here, the Claimant was aware his hearing had declined as early as 2003 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 2003 that he had hearing loss that was caused by his employment. Moreover, he actually retained an attorney and filed a claim in 2007, which he settled. 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 2003 that his hearing loss was related to his employment with the Employer. He alleged compensable hearing loss and filed a hearing request in 2007 and settled that case. 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 2003. Furthermore, contemporaneous witnesses such as the Claimant's co-workers and supervisors from 2003 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 December 23, 2013, 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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Charleston, South Carolina

Dated: October 26, 2015.

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
COLUMBIA, SOUTH CAROLINA
WCC FILE NO. 1315152

EMPLOYEE/CLAIMANT: JACK WOODWARD

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 12:39 P.M., IN
MONCKS CORNER, SOUTH CAROLINA, BEFORE THE HONORABLE SCOTT T. BECK,
ATTENDED BY COUNSEL AS FOLLOWS:

HOLLY K. GLEASON
VERBATIM REPORTER

JAN L. WHITWORTH
COURT REPORTING SERVICES
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ROEBUCK, S.C. 29376

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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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JACK WOODWARD:

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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, IN AYNOR, SOUTH
4 CAROLINA.

5 * * * * *

6 BY COMMISSIONER BECK:

7 ALL RIGHT. TODAY'S DATE IS APRIL 28, 2015.
8 THIS IS WORKERS' COMPENSATION FILE NUMBER 1315152.
9 THE CLAIMANT IN THIS MATTER IS JACK WOODWARD,
10 REPRESENTED TODAY BY ATTORNEY BILL DUNCAN AND
11 RAYMOND FISHER. THE EMPLOYER IS -- YOU'RE GOING TO
12 HAVE TO DO THIS FOR ME AGAIN. I AM HAVING THE
13 HARDEST TIME PRONOUNCING THE NAME.

14 BY MR. DUNCAN:

15 ARCELORMITTAL.

16 BY COMMISSIONER BECK:

17 ARCELORMITTAL GEORGETOWN, L.L.C. THE CARRIER
18 IS NEW HAMPSHIRE INSURANCE COMPANY, BOTH REPRESENTED
19 TODAY BY ATTORNEY DRAKE ROGERS. DATE OF ACCIDENT IN
20 THIS MATTER IS APRIL 4, 2013. AVERAGE WEEKLY WAGE
21 IS \$1,037.67, YIELDING A COMPENSATION RATE OF
22 \$743.72. WE ARE HERE TODAY ON CLAIMANT'S FORM 50.
23 I'VE RECEIVED APAS FROM BOTH THE CLAIMANT AND THE
24 DEFENDANT AS WELL AS A MEMORANDUM OF LEGAL ISSUES
25 SUBMITTED ON BEHALF OF THE CLAIMANT.

1 ARE THERE ANY OBJECTIONS TO APAS, JURISDICTION,
2 VENUE, OR ANY OTHER MATTERS? MR. DUNCAN?

3 BY MR. DUNCAN:

4 NO, SIR.

5 BY COMMISSIONER BECK:

6 MR. ROGERS?

7 BY MR. ROGERS:

8 NO, SIR.

9 BY COMMISSIONER BECK:

10 ALL RIGHT. WITHOUT OBJECTION, THE COMMISSION
11 FILE BECOMES A PART OF THE RECORD WITH THE EXCEPTION
12 OF SELF-SERVING DECLARATIONS AND UNSTIPULATED
13 MEDICAL REPORTS. ALSO, DURING THE PREHEARING
14 CONFERENCE IN THIS MATTER THE RESPECTIVE POSITIONS
15 OF BOTH PARTIES WAS DISCUSSED. FROM THE STANDPOINT
16 OF THE CLAIMANT, HE ASSERTS HE HAS ACHIEVED MAXIMUM
17 MEDICAL IMPROVEMENT ON NOVEMBER 19, 2014.

18 HE'S HERE SEEKING A FINDING OF COMPENSABILITY
19 OF REPETITIVE TRAUMA HEARING LOSS IN BOTH EARS,
20 SEEKING MEDICAL CARE CONSISTING OF HEARING AIDS AND
21 ASSOCIATED MEDICAL VISITS AND ASSERTS AN ENTITLEMENT
22 TO PERMANENT PARTIAL DISABILITY TO BOTH EARS AT A 29
23 PERCENT BINAURAL IMPAIRMENT RATING.

24 MR. DUNCAN, ANYTHING IN ADDITION TO THAT WITH
25 REGARD TO THE CLAIMANT'S POSITION THAT YOU'D LIKE TO

1 PUT ON THE RECORD OR ANY OTHER MATTER YOU'RE HERE TO
2 LITIGATE?

3 BY MR. DUNCAN:

4 NO, SIR.

5 BY COMMISSIONER BECK:

6 OKAY. WITH REGARD TO THE DEFENDANTS' POSITION,
7 THEY DENY COMPENSABILITY TO THIS CLAIM IN ITS
8 ENTIRETY ON A NUMBER OF GROUNDS. THEY ARE ASSERTING
9 A NOTICE DEFENSE, A STATUTE OF LIMITATIONS DEFENSE,
10 A LACHES DEFENSE, ASSERT THAT ANY HEARING LOSS WOULD
11 BE THE RESPONSIBILITY OF A PRIOR EMPLOYER, THAT THE
12 CLAIMANT LACKS ANY CAUSATION WITH THIS EMPLOYER, AND
13 THAT THERE IS NO ADDITIONAL HEARING LOSS WITH THIS
14 EMPLOYER, THAT ALL OF THE PRIOR HEARING LOSS WAS
15 WITH PRIOR EMPLOYERS.

16 MR. ROGERS, ANYTHING IN ADDITION TO THAT WITH
17 REGARD TO THE DEFENDANTS' POSITION YOU'D LIKE TO PUT
18 ON THE RECORD OR ANY OTHER MATTER YOU ARE HERE TO
19 LITIGATE TODAY?

20 BY MR. ROGERS:

21 I THINK THE ONLY THING I WANT TO POINT OUT,
22 COMMISSIONER, AND YOU MAY HAVE COVERED THIS, BUT
23 THAT WOULD BE THAT THE EVIDENCE UPON WHICH THEY WERE
24 RELYING TO SHOW EXCESS NOISE, O.S.H.A. STUDIES, ET
25 CETERA, ARE ALL PRIOR TO MY TAKING OVER THAT STEEL

1 MILL. THEY RUN FROM THE 1970s TO THE EARLY 2000s,
2 AND WE DIDN'T TAKE THE MILL OVER UNTIL 2005. SO
3 THAT GOES TO OUR CAUSATION ARGUMENT. I JUST WANTED
4 TO POINT THAT OUT.

5 BY COMMISSIONER BECK:

6 MR. DUNCAN, YOUR FIRST AND I BELIEVE ONLY
7 WITNESS TODAY IS MR. WOODWARD. MR. WOODWARD, WOULD
8 YOU RAISE YOUR RIGHT HAND, SIR,

9 JACK WOODWARD

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

11 BY COMMISSIONER BECK:

12 ALL RIGHT. PLEASE STATE YOUR FULL NAME FOR THE
13 RECORD.

14 BY THE WITNESS:

15 JACK WOODWARD.

16 BY COMMISSIONER BECK:

17 ALL RIGHT. MR. WOODWARD, YOU'VE GOT A LITTLE
18 BIT OF A LOW VOICE. I'M GOING TO ASK THAT YOU TRY
19 TO KEEP YOUR VOICE UP. THE COURT REPORTER HAS TO
20 HEAR EVERYTHING THAT YOU'RE SAYING, AND THESE
21 RECORDING DEVICES HAVE TO BE ABLE TO PICK YOU UP, AS
22 WELL, OKAY?

23 BY THE WITNESS:

24 OKAY.

25 BY COMMISSIONER BECK:

1 LET ME LOOK AT YOU. I DON'T MEAN TO BE A PAIN.

2 BY MR. ROGERS:

3 NO PROBLEM. NO PROBLEM AT ALL.

4 CROSS-EXAMINATION BY MR. ROGERS:

5 Q. NOW, WHAT YEAR DID YOU START WORKING AT THE STEEL
6 MILL?

7 A. WHAT YEAR?

8 Q. YES, SIR.

9 A. JUNE OF '75.

10 Q. AND I BELIEVE YOU TOLD ME IN YOUR DEPOSITION THAT
11 WHEN YOU GOT THERE, THERE WAS NO HEARING PROTECTION?

12 A. OH, NO.

13 Q. IT WASN'T REQUIRED AND NOBODY USED IT?

14 A. NO, AND IF IT WAS, IT WAS MINIMAL.

15 Q. AND I THINK YOU SAID THAT PROBABLY THE FIRST EIGHT
16 TO TEN YEARS, YOU WORKED OUT THERE WITHOUT ANY
17 HEARING PROTECTION?

18 A. AND THAT'S JUST A GUESS, BUT, YEAH.

19 Q. OKAY. SO IT WASN'T UNTIL SOMETIME IN THE 1980s THAT
20 IT BECAME A REQUIREMENT THAT YOU HAD TO WEAR HEARING
21 PROTECTION?

22 A. WELL, THAT -- THAT WAS THE GRADUAL PROCESS AS
23 MANAGEMENT CHANGED. YOU KNOW, IT WAS AN ONGOING
24 PROCESS JUST LIKE THE HEARING LOSS WAS, I GUESS.

25 Q. OKAY. AND SO BY THE TIME IT BECAME ARCELORMITTAL'S

1 PLANT, IT WAS VERY STRICT THAT YOU HAD TO WEAR
2 HEARING PROTECTION?

3 A. IT WAS MORE STRICT THAN THIS -- DEFINITELY MORE
4 STRICT.

5 Q. MORE STRICT THAN IT HAD EVER BEEN IN THE PAST?

6 A. I.S.G. WAS -- WAS PRETTY STRICT, BUT BEFORE THEN IT
7 JUST -- NOBODY CARED.

8 Q. OKAY. AND SO WE CALL THOSE, BASICALLY, THE
9 GEORGETOWN STEEL DAYS?

10 A. YEAH.

11 Q. SO YOU COULD WEAR IT IF YOU WANTED TO. IF YOU
12 DIDN'T WEAR IT ---

13 A. AND I MEAN, PART OF THE -- THE LAST PART OF
14 GEORGETOWN, THEY -- THEY DID BETTER, BUT, YOU KNOW,
15 EVEN IF YOU WORE THE EARPLUGS, OR WHATEVER SOME OF
16 THEM HAD, IN MY OPINION, I DON'T THINK THAT IT
17 PROTECTED YOU AGAINST THE NOISES THAT WERE SO LOUD.

18 Q. BUT IN ANY EVENT, ONCE YOU STARTED ---

19 A. BUT I DIDN'T KNOW THAT AT THE TIME.

20 Q. ONCE YOU STARTED WORKING FOR ARCELORMITTAL, THOUGH,
21 YOU ALWAYS WORE THE PROTECTION?

22 A. YEAH.

23 Q. NOW, YOU -- MR. DUNCAN'S REFERENCED A WHOLE BUNCH OF
24 STUDIES AND HEARING TESTS AND O.S.H.A. CITATIONS
25 THAT HE'S PUT IN TO EVIDENCE. DID YOU PROVIDE THESE

1 TO HIM?

2 A. I MAY HAVE GIVEN HIM MY HEARING TESTS.

3 Q. OKAY. BUT ALL THESE OSHA TESTS AND CITATIONS, WHERE
4 DID THOSE COME FROM?

5 A. I DON'T KNOW.

6 Q. DOES THE UNION KEEP THESE TYPES OF THINGS?

7 A. I DON'T KNOW.

8 Q. OKAY. YOU'RE A MEMBER OF THE UNION, AREN'T YOU?

9 A. YEAH.

10 Q. HAVE YOU EVER GONE TO THE UNION TO DISCUSS WITH YOUR
11 UNION HEARING LOSS?

12 A. THE UNION KNOWS ABOUT MY HEARING LOSS.

13 Q. OKAY. HAS THE UNION EVER GIVEN YOU ANY O.S.H.A.
14 CITATIONS OR STUDIES OR REPORTS ---

15 A. I DON'T KNOW ---

16 Q. --- AFTER -- LET ME FINISH THE QUESTION NOW, AFTER
17 2002 THAT WOULD SHOW HEARING LEVELS IN THE PLANT?

18 A. I DON'T KNOW IF THEY HAVE ACCESS TO THAT REALLY. I
19 DON'T KNOW.

20 Q. SO THE ANSWER WOULD BE, NO, THEY HAVEN'T GIVEN IT TO
21 YOU?

22 A. NO.

23 Q. ALL RIGHT. SO ALL OF THIS INFORMATION THAT YOU'VE
24 PUT INTO EVIDENCE FOR YOUR CASE, DO YOU HAVE
25 ANYTHING WITH YOU THAT IS AFTER 2002?

1 A. JUST THE HEARING TESTS.

2 Q. OKAY. AND, SPECIFICALLY, DO YOU HAVE ANYTHING FROM
3 2005 TO NOW?

4 A. JUST THE HEARING TESTS.

5 Q. ALL RIGHT. AND THE HEARING TESTS WERE DONE
6 PERIODICALLY THROUGHOUT YOUR TIME AT THE MILL,
7 CORRECT?

8 A. CORRECT.

9 Q. AND I THINK YOU TOLD ME IN YOUR DEPOSITION, AT SOME
10 POINT ALONG THE LINE, PROBABLY WAY BACK WHEN, YOU
11 STARTED TO REALIZE YOUR HEARING WAS NOT AS GOOD AS
12 IT HAD BEEN?

13 A. RIGHT.

14 Q. DID YOU EVER THINK THEN TO SEEK SOME MEDICAL
15 ATTENTION OR DO ANYTHING ABOUT IT?

16 A. NO.

17 Q. AND I THINK WE DISCUSSED, AS WELL, THAT WHEN
18 ARCELORMITTAL TOOK OVER THE MILL, BEFORE YOU CAME IN
19 TO THERE, THEY DID A BASELINE TEST ON YOU TO SEE
20 WHAT YOUR LOSS WAS?

21 A. THEY -- THERE AGAIN, AS WELL AS I CAN REMEMBER, I
22 THINK THEY DID A BASELINE TEST, BUT IT WAS DONE IN
23 VAIN BECAUSE IT WAS DONE AT THE GREENHOUSE AND
24 NOTHING WAS SOUNDPROOF. IT WAS JUST -- IT WAS JUST
25 IN AN OFFICE WHERE YOU COULD HEAR EVERYTHING GOING

1 ON DOWN THE HALL, OUTSIDE, AND EVERYTHING ELSE.

2 Q. OKAY.

3 A. SO -- SO EVERYONE THAT WENT THROUGH THAT TEST, IT
4 ENDED UP BEING NO GOOD.

5 Q. ALL RIGHT. DID YOU EVER CHECK THE RESULTS OF THAT
6 TEST?

7 A. NO, THEY NEVER SHOWED US ANY OF THE TEST RESULTS.

8 Q. DID YOU EVER CHECK THE RESULTS OF ANY OF YOUR TESTS
9 PRIOR TO THAT?

10 A. THEY NEVER SHOWED THEM TO US.

11 Q. OKAY.

12 A. THEY'D PUT THEM IN A FILE AND FORGET THEM.

13 Q. DID YOU EVER GET A LETTER THAT SAID THERE HAD BEEN A
14 SHIFT IN YOUR THRESHOLD HEARING?

15 A. (WITNESS SHAKES HEAD SIDE TO SIDE)

16 Q. YOU NEVER GOT ANYTHING LIKE THAT?

17 A. NOT THAT I RECALL.

18 Q. OKAY. IN ANY EVENT, YOU FILED A CLAIM AGAINST
19 GEORGETOWN STEEL BACK IN 2003; IS THAT RIGHT?

20 A. I'M NOT SURE OF THE DATE, BUT, YEAH.

21 Q. OKAY. AND ARCELORMITTAL GOT INVOLVED OR GOT
22 INCLUDED IN THAT SUIT; DID THEY NOT?

23 A. YEAH.

24 Q. ALL RIGHT. AND BACK IN NOVEMBER, YOU AGREED THROUGH
25 YOUR ATTORNEY TO RELEASE ARCELORMITTAL AND DISMISS

1 THEM FROM THAT CASE, DIDN'T YOU?

2 A. I DON'T KNOW. AND I MEAN, I DON'T KNOW WHAT YOU'RE
3 REFERRING TO.

4 Q. OKAY. I'LL JUST LET YOU LOOK AT THIS TO MAKE SURE
5 WE'RE ON THE SAME PAGE.

6 A. I MEAN, I'M NOT DISPUTING IT. I JUST DON'T
7 REMEMBER.

8 Q. IN OUR APAS, PAGE 93, THERE IS A CONSENT ORDER.
9 JACK WOODWARD AGAINST ARCELORMITTAL GEORGETOWN STEEL
10 INDUSTRIES, ALL FROM THE 2003 CASE THAT YOU BROUGHT;
11 DO YOU AGREE WITH ME THERE? AND THAT'S A CONSENT
12 ORDER, AND IN THAT CONSENT ORDER, YOU AGREED IN
13 PARAGRAPH ONE THAT ARCELORMITTAL AND THEIR INSURANCE
14 CARRIER COULD BE DISMISSED FROM THIS CASE; DID YOU
15 KNOW THAT?

16 A. UH-UH.

17 Q. THAT'S A NO, YOU DID NOT KNOW THAT?

18 A. I -- I DON'T -- IF I DID, I DON'T REMEMBER.

19 Q. OKAY. WELL, YOU UNDERSTAND NOW AFTER LOOKING AT
20 THAT DOCUMENT?

21 A. I SEE WHAT YOU'RE SHOWING ME, YEAH.

22 Q. THAT ARCELORMITTAL WAS IN THAT CASE, AND THEY WERE
23 DISMISSED, CORRECT?

24 A. THAT'S WHAT THE PAPER STATES.

25 Q. AND BACK IN 2003 -- OR 2007, I GUESS, IT WAS

1 ACTUALLY 2007, YOU SETTLED PART OF THAT CASE WITH
2 ONE OF THE EMPLOYERS OR THE CARRIERS; IS THAT RIGHT?

3 A. I THINK SO.

4 Q. OKAY. THEY PAID YOU SOME MONEY FOR HEARING LOSS?

5 A. YEAH.

6 Q. AND THEN THAT WAS THE SAME CASE THAT ARCELORMITTAL
7 WAS A DEFENDANT, RIGHT?

8 A. I GUESS.

9 Q. YOU TOLD ME AT ONE POINT IN YOUR DEPOSITION THAT YOU
10 UNDERSTOOD THAT YOU WOULD NEED HEARING AIDS BASED ON
11 WHAT SOMEBODY WHO HAD GIVEN YOU THE TEST HAD TOLD
12 YOU; DO YOU RECALL THAT?

13 A. YEAH, A GUY THAT GAVE US THE TEST IN A MOBILE TRUCK.
14 AND THE ONLY REASON I FOUND OUT IS BECAUSE I ASKED,
15 BECAUSE THEY DON'T VOLUNTEER ANY INFORMATION.

16 Q. AND WAS THAT TEST -- HOW LONG AGO WAS THAT TEST?

17 A. A WHILE -- I DON'T REMEMBER WHAT YEAR IT WAS.

18 Q. I MEAN, IT WAS BACK IN THE GEORGETOWN STEEL DAYS?

19 A. I'M NOT SURE.

20 Q. OKAY. BUT, I MEAN, IT WAS A LONG TIME AGO? IT
21 WASN'T SOMETHING RECENT?

22 A. NO, IT WASN'T RECENT.

23 BY MR. ROGERS:

24 I BELIEVE THOSE ARE ALL THE QUESTIONS I HAVE,
25 COMMISSIONER.

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BEFORE THE

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 0326648

Jack Woodward,)

Claimant,)

vs.)

Georgetown Steel,)
Employer,)

and)

Travelers Casualty)
Surety Company,)
Carrier,)

Defendants.)

TRANSCRIPT OF PROCEEDINGS

October 23, 2014

This hearing was held before

Commissioner Gene McCaskill, reported by

Kimberly T. Power, Court Reporter and Notary

Public in and for the State of South Carolina;

said proceedings were held at the South

Carolina Workers' Compensation Commission, New

Horry County Courthouse, 1301 Second Avenue,

Conway, South Carolina, on Thursday, October

23, 2014, commencing at the hour of 2:00 p.m.

1 APPEARANCES

2
3 ATTORNEYS FOR THE CLAIMANT4 LAW OFFICES OF WILLIAM STUART DUNCAN
5 BY: WILLIAM STUART DUNCAN, ESQUIRE
6 1001 Front Street
7 Georgetown, South Carolina 294408 ATTORNEYS FOR THE DEFENDANT
9 TRAVELERS CASUALTY SURETY COMPANY/AETNA10 WARD LAW FIRM, LLC
11 BY: F. REID WARDER, JR., ESQUIRE
12 3 Oak Forest Drive
13 Charleston, South Carolina 2940714 ATTORNEYS FOR THE DEFENDANT
15 KORF16 COLLINS & LACY
17 BY: ASHLEY KIRKHAM, ESQUIRE
18 1330 Lady Street
19 Columbia, South Carolina 29201
20
21
22
23
24

1 THE COURT: Today's date is
2 October 23, 2014. This is Workers'
3 Compensation Commission File Number 0326648.
4 This is the case of Jack Woodward vs.
5 Georgetown Steel. The claimant is represented
6 today by William Stuart Duncan and Reid Warder
7 is here today representing, according to the
8 face sheet, Travelers Casualty Surety Company.

9 MR. WARDER: As I understand it, the
10 Commission's records notate that Aetna Casualty
11 Surety is the paper it is written on. I think
12 we're all on microfilm at this point. I don't
13 think there's an actual policy.

14 THE COURT: All right. That is not
15 what this says.

16 MR. DUNCAN: Commissioner, attached
17 to my legal memorandum at the very last page of
18 the Georgetown cover sheet from the Commission,
19 it has the proper names of the parties or,
20 excuse me, the carriers.

21 THE COURT: Well, that just tells me
22 one department is not talking to the other
23 because that's not what the paper says.

24 MR. WARDER: Years ago there was a
25 cover report issued and that's how we all got

1 named.

2 THE COURT: I'll just note that in
3 my Order, so let's see if we can get it all
4 straight in the system here.

5 Ashley Kirkham is here representing
6 Korf. Drake Rogers was present, but I think by
7 stipulation of the parties he's being dismissed
8 from this claim. Is that correct?

9 MR. DUNCAN: Yes, sir.

10 MR. WARDER: Yes, Your Honor.

11 THE COURT: Now, he did hand up
12 APAs. Do we need to retain those for the
13 record? I know in some of these cases --
14 because we try hard not to duplicate, there is
15 something he handed up that one of y'all needs
16 to --

17 MR. WARDER: I think we do. Some of
18 them may not have been put in if they hadn't
19 been in his like the deposition transcript and
20 some documents.

21 THE COURT: Mr. Duncan, do you have
22 an objection to --

23 MR. DUNCAN: No objection.

24 THE COURT: -- his APAs becoming a
25 part of the record?

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 1315152

JACK WOODWARD,	)	
	)	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.	)	
	)	

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
11:44 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

1 loss in the next six years when he worked around that,
2 the noisiest part of the mill and --

3 MR. ROGERS: I'd like to object to an argument
4 along these lines. That was not a basis for the
5 appeal on the Form 30. The Form 30 was limited to the
6 issue of King versus International Knife on Notice,
7 42-15-20(c) claim, and then another grounds it says
8 where the Commissioner committed error, whether the
9 Claimant knew or should have known the condition was
10 compensable and in '05, '06 or '07. There is no
11 specific appeal to do anything with Laches or specific
12 appeal with the Statute of Limitations either.

13 THE COURT: All right. Do you want to respond to
14 that?

15 BY MR. DUNCAN: Absolutely. It's -- it's my
16 position when we said, hey, we were late because we
17 should have brought in 2005, 2006 and 2007. That's
18 the Laches argument. How in the world could they not
19 have Notice with that? The MUSC case that we have,
20 White versus MUSC says when you come up there and put
21 them on notice this is it, by both saying, hey, you
22 misapplied the King versus International Knife case,
23 it tells them on the Notice issue and when we say,
24 hey, we didn't -- we should have brought these claims
25 in 2005, 2006 and 2007 that certainly is the Statute

1 of Limitations and the Laches argument. It tells the
2 Court -- or tells the Employer exactly what we would
3 be arguing. There's no surprises to them either.

4 THE COURT: Well, just stick to the grounds of
5 your appeal which would be the Notice issue. Go
6 ahead.

7 MR. DUNCAN: Well, I believe -- I believe they
8 are -- and without -- do you want me to skip --

9 THE COURT: I know they're tentacles and they're
10 peripheral issues, but --

11 MR. DUNCAN: And -- and more importantly when we
12 look at all these together, even though it's all
13 happened under one roof and we had either five or six
14 different Employers under the Geathers versus 3V
15 Chemical case, the -- the last Employer here,
16 ArcelorMittal, the Claimant here -- Employer rather
17 here, full liability on the Employer where the recent
18 injury occurred which bears a causal relationship to
19 the disability. Here he had a threshold shift of at
20 least six percent -- with a greater than six percent
21 and that brings them where they're responsible for the
22 entire shooting match here under the last injurious
23 exposure rule for repetitive trauma under the Geathers
24 versus 3V Chemical. In addition to that on the
25 causation issue the Employer here the -- the testimony

1 --
2 MR. ROGERS: I'm going to have to object again on
3 the causation issue. There's absolutely no grounds
4 for appeal on that Form 30 that makes any mention of a
5 causation issue. There's a specific Finding of Fact,
6 Fact Number 25 in the Order. The Claimant failed to
7 prove causation sufficient that entitled him to any
8 benefits that resulted in injuries alleged or
9 sustained when working for ArcelorMittal. There is no
10 appeal on that. That's got to be the law of the case.
11 I would object to any arguments being made about
12 causation --

13 THE COURT: All right. Your objection is
14 sustained.

15 MR. DUNCAN: Thank you, Commissioner. Unless
16 there's any questions I'll sit down.

17 THE COURT: Thank you, sir. Mr. Rogers.

18 BY MR. ROGERS: Thank you, ma'am. May it please
19 the Commission. This is obviously a hearing loss
20 issue involved Mr. Woodward similar to the cases we
21 have argued before this same Panel. Mr. Woodward
22 worked at the plant for a long time. He testified
23 under oath in his deposition and at the hearing that
24 he began there in the 1970s and for the first ten to
25 15 years he wore absolutely no hearing protection

WACCAMAW SURGICAL ASSOCIATES

Terry L. Fry, MD, FACS
401 Marina Drive
Georgetown, SC 29440
(p) 843-546-7272
(f) 843-546-0277

November 19, 2014

Re: Jack Woodward

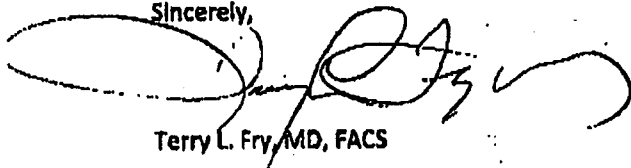
To Whom It May Concern:

ADDENDUM TO LETTER OF 07/03/2006

Mr. Woodward had an audiogram performed on 09/10/13 which illustrated the same type of hearing loss compatible with Industrial noise exposure as his 2006 audiogram. Unfortunately for Mr. Woodward, his hearing loss has worsened since 2006. His binaural hearing impairment has increased from 24% in 2006 to 29% in 2013. Mr. Woodward reports working on the Melt Floor and being exposed to explosions in which causes impairment to hearing even while using protection.

As stated in my previous letter Mr. Woodward's hearing loss is due to his exposure to industrial noise. He would certainly benefit from bilateral hearing amplification. And as always, 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 large, stylized flourish extending to the right.

Terry L. Fry, MD, FACS

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



Physician's Statement

Claimant's Name: Jack Woodward

Employer's Name: ArcelorMittal Georgelown, LLC

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

Insurance Carrier: New Hampshire Insurance Company

Practice/Clinic: Waccamaw Surgical Associates

SCWCC File No: 1315152

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: 4/4/2013

Date of first office visit: 07/03/06

* DOCTORS: 07/03/06

* LAST AUDIOGRAM: 9-10-13

Diagnosis or nature of injury or illness: Bilateral mid to high frequency sensorineural hearing loss

Body part(s) injured: Both inner ears Body part(s) affected: 7

Date of Maximum Medical Improvement: 07/03/06

Based on the AMA Guidelines, the claimant has sustained a 28 % medical impairment to the Right Ear injured body part(s) and a 23 % medical impairment to the Left Ear other affected body part(s).

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

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

Hearing Protection

☐ 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:

Mr. Woodward is a good candidate for bilateral hearing aids. His pattern of hearing loss is consistent with noise trauma. The only source of noise trauma for this patient was explosive noises at Georgetown Mill.

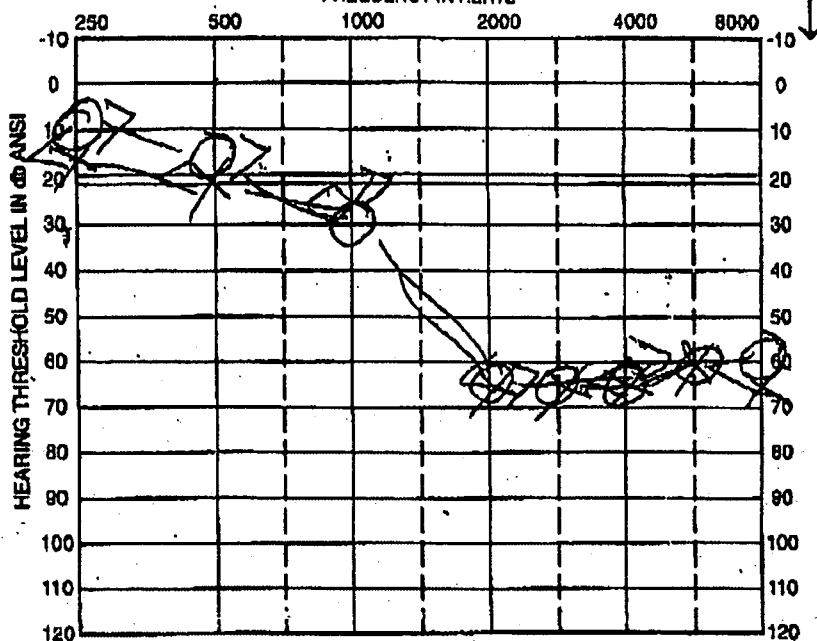
Treating Physician: [Signature] Date: 12/30/13

* VISIT INFO AMENDED 12/30/13

AUDIOLOGICAL EVALUATION

PURE-TONE AUDIOMETRY

FREQUENCY IN HERTZ



PURE TONE AVERAGES		
EAR	FREQUENCY	
	Two	Three
Right		
Left		

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

EAR	RIGHT	LEFT	SF
SRT	25	30	
Masking Level			
PBQ	60%	76%	%
PB Level			
Masking Level			
MCL			
UCL			

HEARING AID	
EAR	TYPE
Right	

Terry L. Fry, M.D.

ENT - HEAD & NECK SURGERY
(843) 546-7272

Carol H. Davis, M.A., Aud.

CLINICAL AUDIOLOGIST
(843) 546-6872401 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: _____

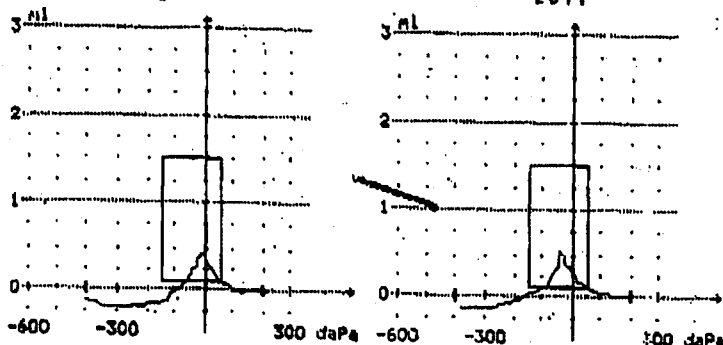
TONE DECAY		1K	2K	4K
	RE			
	LE			

TINNITUS MATCH		RIGHT	LEFT
	FREQ.		
	LEVEL		

226 Hz Tympanogram

Right

Left



Ear Volume 1.21 ml

Compliance 0.43 ml

Pressure -12 daPa

Gradient

Ear Volume 1.15 ml

Compliance 0.55 ml

Pressure -41 daPa

61 daPa

Patient's Name

Jack Woodward

Address

Age

Date

9-10-13

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

Jack Woodward

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

INDIVIDUAL EAR HANDICAP WORKSHEET

RIGHT

LEFT

500Hz 15

20

1000Hz 30

25

2000Hz 65

65

3000Hz 65

65

TOTALS = 175

175

Divide by 4 = 44

44

-25

-25

TOTALS = 19

19

x1.5%

x1.5%

RIGHT % 29

LEFT % 29

THESE ARE INDIVIDUAL EAR HEARING IMPAIRMENT

BINAURAL HEARING HANDICAP

Better ear percentage: 29

Multiply by 5: x5

Equals: =145

Plus poorer ear: +29

Equals: =174

Divid by 6: /6

Equals: 29%

BINAURAL HEARING IMPAIRMENT

AUDIOGRAM DATED: 9/10/2013

WACCAMAW SURGICAL ASSOCIATES**Terry L. Fry, MD, FACS****401 Marina Drive * Georgetown, SC 29440****843-546-7272 Fax# 843-546-0277**

July 3, 2006

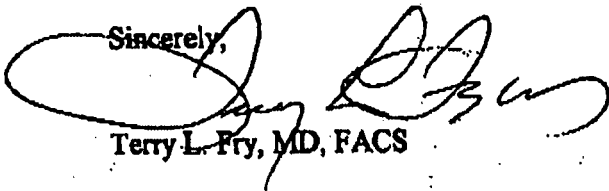
Re: Jack Woodward

To Whom It May Concern:

Jack Woodward was seen today reporting a gradual hearing loss over many, many years. He denies any family history of hearing loss or exposure to noise from gunfire as he is not a hunter, and he was never in the military. He denies exposure to loud noises at any other employment other than at the Steel Mill. Apparently, he has worked at the Mill for thirty one years and began wearing ear protection when it was required approximately fifteen years after beginning work there. He does report exposure to explosions but none close enough to cause bodily injury. His head exam is essentially normal. The audiogram is significant for a symmetrical bilateral mid to high frequency sensorineural hearing loss. The hearing loss averages 60 dB in both right and left ears at 2,000 hertz, 3,000 hertz and is slightly better at 4,000 hertz. This patient certainly has a sensorineural hearing loss due to industrial noise exposure. He also complains of tinnitus which is most bothersome when he is trying to listen to another individual talk to him even on a one on one basis.

At this point I would certainly recommend bilateral hearing aid amplification. Due to the pattern of noise induced hearing loss, this patient would benefit from digital hearing aid amplification binaurally. Per industry standards hearing aids usually need replacing every three to five years for the life of the patient. My findings are based on a reasonable degree of medical certainty.

Sincerely,


Terry L. Fry, MD, FACS

TERRY L. FRY, MD, FACS

OTOLARYNGOLOGY, HEAD AND NECK SURGERY,
FACIAL AND PLASTIC RECONSTRUCTION

Jack Woodward

06-22-54

07-03-06

Name

DOB

Date

Referring Physician:

HISTORY/CC: Graduated over the yrs. - Worked @ Steel Mill 31 yrs.
I used ear protection when required 15 yrs. after
beginning work @ hearing @ Milling @ Farm etc.
Never worked elsewhere. Exposed to explosions

Weight:

Blood Pressure:

Temp:

Past Hx: Bleeder DM MI Ca HBP PUD Seizure COPD

Allergies: Nasal Asthma Skin GLsx

DRUG: 5 Pen. Sulfa Mycin M.S. Cod

Surgeries: GB

Illnesses:

Rx: 5

General Appearance: WD WN

Tobacco: 5 x 20s.

Communication: Clear

HEAD AND FACE:

Face/Skin: NR

Sinus Tenderness: Yes No

Salivary Glands: NR

Facial Strength: Normal

EARS, NOSE, MOUTH AND THROAT:

EAC's: NR

Pinnae: NR

TM: R

L: NR

Nose: Patent + fl

Lips, Teeth and Gums: NR

Oropharynx: Oral NM: NR

Hard & Soft Palates: NR

Tonsils: NR

Post. Pharynx: NR

Pharyngeal Walls: NR

F/O: B

AUDIO: Bilat. mid - HEARNITL

NECK:

App: NR

Crepitus: NR

Thyroid: NR

Nodes: NR

Masses: NR

EYES:

RESP:

CV:

SKIN:

NEURO:

LYMPH:

(A) Bilat. Spina - Induced SNHL 4w
Industrial noise exp.
Tinnitus
(P) Rec: bilat. H.A.
[Signature]

Arthur M. LaBruce, MD PA
Otolaryngology - Allergy
9275 9 Medical Plaza Drive
N. Charleston, SC 29406
(803) 572-1771

Duncan, Crosby, and Maring
1001 Front Street
Georgetown, SC 29440

Ref: Jack Woodward

Dear Mr. Maring,

Mr. Woodward presented for a hearing evaluation on June 29, 2006. He has worked at the Georgetown Steel Mill for 31 years and said he always used ear protection when required. It has been over 25 years since he has fired a shotgun. He has had ringing in his ears for over 25 years with no family history of hearing loss or ear problems.

He has a lesion, (wart), at the entrance of his left ear. His ears were cleaned of wax and hearing tests were performed.

Diagnosis: Right Ear: Normal Hearing in the low and middle frequencies
Moderate to Severe Sensorineural Hearing Loss at 2000Hz
And 3000Hz.

Diagnosis: Left Ear: Normal Hearing at low frequencies
Mild Sensorineural Hearing Loss at middle frequency
Moderate to Severe Sensorineural Hearing Loss at 2000Hz
and 3000Hz

Diagnosis: Tinnitus

Impression: It is within reasonable medical certainty that this bilateral hearing loss is due to the industrial noise trauma over so many years, with inadequate ear protection.

Sincerely,



Arthur M. LaBruce, MD
June 29, 2006

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

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

PATIENT Jack Woodward DATE 6/29/06 AGE 35

INDIVIDUAL EAR HANDICAP WORKSHEET

RIGHT

500 Hz 25
1000 Hz 25
2000 Hz 60
3000 Hz 60

TOTALS = 170
Divide by 4 = 43
23
TOTALS = 18

X 15%
RIGHT = 27%

LEFT

20
20
60
60

TOTALS = 170
Divide by 4 = 43
23
TOTALS = 18

X 15%
LEFT = 27%

BINAURAL HEARING HANDICAP

BETTER EAR PERCENTAGE = 27
MULTIPLY X3

= 135

PLUS POORER EAR + 27

= 162

DIVIDE by 6

BINAURAL IMPAIRMENT = 27 %

BY Mary R. Hoffman
ARTHUR M. LEBRICE, MD PA
9231 A MEDICAL PLAZA DR.
N. CHARLESTON, S.C. 29406
(843) 578-1771

11

070 010 0000

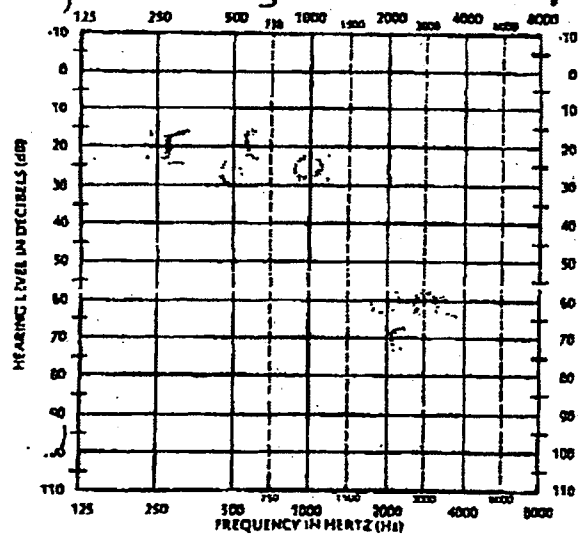
M M LABKULC M U

JUL 14 '07 04:11P



AUDIOGRAM

NP Woodward, Jack DATE 6/29/06 BY Gartha Hendrickson



AUDIOGRAM KEY	
Right	Left
AC Unmasked	○
AC Masked	△
BC Masked	□
BC Masked Unmasked	<
BC Masked	>
BC Masked	[
BC Masked	]
Forehead Masked	
Both	
BC Forehead Unmasked Sound Field	
↓	
S	
Right Ear Left Ear	
S.R.Y.	
Discrim.	
MCL	
UCL	

HEARING EXPOSURE FORM

Jack Woodward

1. LIST ANY LOUD NOISES YOU HAVE WORKED AROUND AND WHERE.

Steel Mill - both for a total of 3 1/2 yrs. - always wore
ear plugs when in required areas.

2. HAVE YOU DRIVEN ANY HEAVY EQUIPMENT? LIST TYPE AND WHEN.

No

3. HAVE YOU FIRED A GUN? LIST WHERE AND WHEN.

Yes: Over 25 YEARS AGO - 12 gauge Shotgun
up to 15 times ± but wore no ear protection

4. HAVE YOU BEEN IN THE MILITARY? LIST WHERE AND WHEN.

No

5. HAVE YOU EVER HAD RINGING IN YOUR EARS? LIST WHEN AND HOW OFTEN.

Yes All the time for past 10+ years
ringing or sometimes cricket chirping.

6. HAVE YOU BEEN DIAGNOSED WITH ALLERGIES, SINUSITIS, EAR INFECTIONS, OR VERTIGO,

No

7. HAS ANYONE IN YOUR IMMEDIATE FAMILY BEEN DIAGNOSED WITH HEARING DISORDERS.

No

Used a Skil Saw on 2-3 occasions, was with a
60 + HP outboard motor, and 18 HP rider
mower. Did use ear plugs with the Skil saw only.

NAME Jack W Edward DOB 02 4 M X P
 ADDRESS 441 Whites Bridge Dr Georgetown SC 29440
 PHONE 546-1238 WK 546-2525 HM 546-1238
 FAMILY DR Carelin REFERRED BY _____

ALLERGIES TO MEDICINES none



6-29-06 - Ears - ED An

clean but wart at
entrance to Lt ear lesion.

Audiogram: Sensori-
neural hearing loss of
Rt ear - Borderline
hearing at 500 + 1000 Hz
and moderate to severe
loss at 2000 + 3000 Hz.

Discussion: The sensori-
neural mostly high frequency
hearing losses, Bilaterally
are possibly due to
extended exposure to high
noise trauma for 31 yrs
when often times ear protectors
are inadequate over

continued -

Another possibility of
this type of hearing loss
is patient's exposure to
12 gauge shot gun
blasts and use of
a 60 HP outboard motor
and an 18 HP rider
mower - all without any
hearing protection.

Individual Hearing Evaluation Letter

09/21/05
Page: 246

Name **WOODWARD, JACK F**
DOB **01/01/54**
Company

SSN/ID **000-00-5461**
Test Date **09/16/05**

Your recent hearing test indicates the following.

Your left ear indicates the following:

You have a moderately severe loss in hearing. This occurs when the average level in hearing is greater than 55dB in either ear. If you have not already seen a hearing specialist regarding this matter, you should do so.

Your right ear indicates the following:

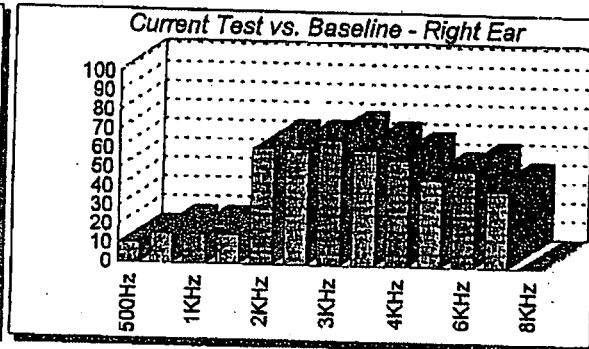
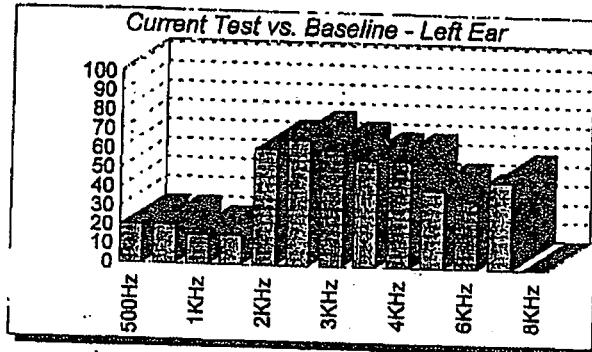
You have a moderately severe loss in hearing. This occurs when the average level in hearing is greater than 55dB in either ear. If you have not already seen a hearing specialist regarding this matter, you should do so.

There has been no significant change in your hearing since your baseline test.

The answers to your hearing history questionnaire indicated a possible medical problem. If you have not already seen a specialist regarding this matter, you are advised to do so.

History Questions Answered 'Yes'

Mumps, Allergies/Hayfever, Hearing loss in family-who?, Previous job with loud noise, Trouble with hearing/loss



Current Test Baseline Test

Always wear the appropriate hearing protection when exposed to excessive noise. This will help protect against any future loss of hearing. If you have any questions regarding this matter please speak to your supervisor.

Date	Test Type	Left								Right								Shift		
		500	1K	2K	3K	4K	6K	8K	234	500	1K	2K	3K	4K	6K	8K	234	LT	RT	STS
09/09/04	B	20	15	65	55	40	45		53	15	15	60	60	45	40		55	0	0	
09/16/05	A	20	15	60	60	55	35		58	10	15	60	65	55	50		60	4	4	

Results of Hearing Test	500Hz	1KHz	2KHz	3KHz	4KHz	6KHz	8KHz
Left Ear	20	15	60	60	55	35	
Right Ear	10	15	60	65	55	50	

Employee Signature

Date

Witness Signature

Date

Individual Hearing Evaluation Letter

09/25/04
Page: 190

Name **WOODWARD, JACK F**
DOB **01/01/54**
Company

SSN/ID **000-00-5461**
Test Date **09/09/04**

Your recent hearing test indicates the following.

Your left ear indicates the following:

You have a moderate loss in hearing. This occurs when the average level in hearing is greater than 40dE in either ear. If you have not already seen a hearing specialist regarding this matter you should do so.

Your right ear indicates the following:

You have a moderate loss in hearing. This occurs when the average level in hearing is greater than 40dE in either ear. If you have not already seen a hearing specialist regarding this matter you should do so.

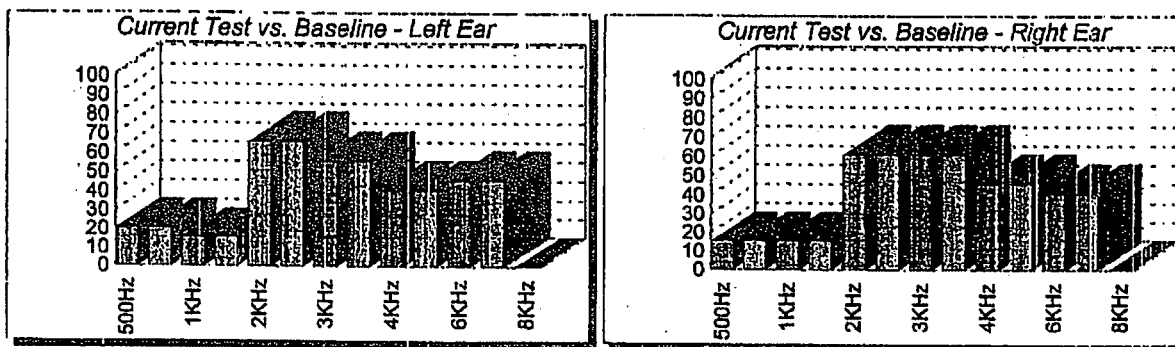
Since this test was your baseline test there was no comparison made to a previous test.

Your hearing test indicates a possible medical problem. If you have not already seen a hearing specialist regarding this matter, it is recommended that you do so.

The answers to your hearing history questionnaire indicated a possible medical problem. If you have not already seen a specialist regarding this matter, you are advised to do so.

History Questions Answered 'Yes'

Mumps, Allergies/Hayfever, Hearing loss in family-who?, Previous job with loud noise, Trouble with hearing/loss



Current Test Baseline Test

Always wear the appropriate hearing protection when exposed to excessive noise. This will help protect against any future loss of hearing. If you have any questions regarding this matter please speak to your supervisor.

Date	Test Type	Left								Right								Shift		
		500	1K	2K	3K	4K	6K	8K	234	500	1K	2K	3K	4K	6K	8K	234	LT	RT	STS
09/09/04	B	20	15	65	55	40	45		53	15	15	60	60	45	40		55	0	0	

Results of Hearing Test	500Hz	1KHz	2KHz	3KHz	4KHz	6KHz	8KHz
Left Ear	20	15	65	55	40	45	
Right Ear	15	15	60	60	45	40	

Employee Signature

Date

Witness Signature

Date

Georgetown Steel Corp. Hearing Program

FULL NAME Woodward Jack Franklin BIRTH DATE 6-22-54 S. S. # 248-78-5461

SERVICE DATE JUNE 24, 1975 DEPT. QC SHIFT

[illegible]

IS'ORY: Anyone in your Family have hearing loss? Grandmother Is your hearing—Good? ☒ Fair? ☐ Poor? ☐

Ever had previous measurement? YES Where? Medical Clinic Been in military service? No

Exposed to any gunfire or loud noises? NO Ever had infections (running ear)? NO

Ever had surgery on either ear? NO Explain _____

What antibiotics or other drugs have you taken? No What contagious diseases have you had? Childhood

Ever worked at a very noisy job? NO If yes, where, type job, length of time. _____

Ever had dizziness? YES What type, when does it occur? None, last 5 yrs

Have you ever had noises in your ears? No What does it sound like? _____

Do you have any noisy hobbies? ... No ... Do you have a second job? No

DATE	Comments following periodic or special audiograms (use reverse side for any comments, if necessary)
------	---

FULL NAME Woodward Jack Franklin BIRTH DATE 6-22-54 S. S. # 248-98-5461

[illegible]

Do you have any noisy hobbies? No Do you have a second job? No

DATE	Comments following periodic or special audiograms (use reverse side for any comments, if necessary.)
------	--

DATE	Comments following periodic or special audiograms (use reverse side for any comments, if necessary.)

JOB CLASSIFICATION RECORD
(BARGAINING UNIT)

Employee Name Woodward, Jack E

Hire Date 6-24-75

Clock No. 2307

Date	Dept	Job			Emp. Rate	Reason for Change
		Occupation Title	Jb. Cl.	Pos. No.		
12-6-78	2240 Utd	A/C Mechanic "A"	16	432	12.62	Contract Increase
12-6-79	00125 Utd	A/C Mechanic "A"	16	432	13.02	Contract Increase
12-3-80	00125 Utd	A/C Mechanic "A"	16	432	13.42	Contract Increase
12-9-81	00125 Utd	A/C Mechanic "A"	16	432	13.82	Contract Increase
7-14-82	125 C/m	A/C Mechanic "A"	16	432	14.22	Contract Increase
2-6-83	125 C/m	A/C Mechanic "A"	16	432	14.62	Contract Increase
10-21-83	125 C/m	Plant Closed				

GS 246 (8/79)

OSHA REPORTS SOUND LEVEL SURVEY

05MA

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 westend 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
Pecor - While casting	
Casters	- 96 - 98
Slidegate operators	- 96 - 98
Pecor - Not casting	- 83 - 85
ConCast Hot Bed Operator	- 86 - 88
Pecor 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
Stalmar 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

SHIPPING & BILLET YARD - Below 85

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.

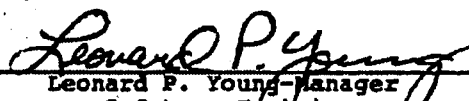
Mobile Equipment Mechanic Shop - Below 80

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
Pacor - Hot Bed Operator	970	87.3
Mason-Tundish Repair Area	975	87.7
Morter 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:

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

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 Bausch 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		
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 *SB crew*
Gregory R. Morton
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 84db 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 to #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 - 195 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. Motta 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

SLC 3312

Complaint Number

200369775

Establishment Name	Georgetown Steel		
Site Address	S. Frasier St., Georgetown, SC 29448		
Site Phone		Site FAX	
Mailing Address	1901 Rothborough Rd., Suite 200, Charlotte, NC 25211		
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 concerned 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 crane 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)	Citation 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 10/03/02	4. Inspection Number 100270980
5. Reporting ID 0454510	6. CO/H ID T0768
7. Optional Report No. 0458-03	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

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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 41-15-280, 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	SCRR 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 90.8 decibels over the 8-hour time weighted average of 85 decibels.		Immediately Upon Receipt	

17. Signature (Compliance Manager)

Dorothy S. Lyon

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
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CASE FILE COPY

CITATION AND NOTIFICATION OF PENALTY

SCOSH-2 (Rev. 1/84)

SOUTH CAROLINA DEPARTMENT OF LABOR, EMPLOYMENT & EDUCATION
Office of Occupational Safety and Health
NARRATIVE - PART 2

EVALUATION OF SAFETY AND HEALTH PROGRAM

PROGRAM ELEMENTS	IN PLACE YES NO	EFFECTIVE
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 212121</i>	☒	☒ Y ☐ N
3. Hazard Prevention/Control Engineering Disciplinary System PPE <i>hard hat, safety shoes, ear plugs, Fire extinguisher</i> Adm. Controls Facility & Equip. Maintenance Emergency Plans First Aid <i>supplies 1st Aid kit</i> <i>by Nurse + 3rd party</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 Lock out/Tagout <i>handled by OSHA</i> Hazardous Materials/Emergency Response Confined Space Entry <i>permits</i> Chemical Hygiene Plan Respiratory Program <i>Standard</i>	☒	☒ Y ☐ N ☒ Y ☐ N ☒ Y ☐ N ☒ Y ☐ N ☒ Y ☐ N ☒ Y ☐ N ☒ Y ☐ N

Safety & Health Program evaluated as:

☐ Effective

☒ Deficient

☐ No Program

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

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

OSH COMPLIANCE WORKSHEET

Page 2 of 2

NBR. T07168 REPORT NBR. 013-083

DATE 9-1-02 PHOTOGRAPH

LOCATION Rolling mill FRAME NO. T07168-013-03 i: des

ROLL NO. 0:01:22

TIME 7:00am - 3:00pm TRADE SECRET ()

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

What process or equipment is creating hazard? EE has been operating cranes for 32 yrs.

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. Earplugs - 3M 1115 - provided

Used Yes Training Yes Aggravated Haz No Mitigates Haz Yes

Eng. controls N/A None None Type: None

Medical surveillance/Testing/Training None - last done 1991

How Employees are exposed while operating crane moving steel and demarking the bar

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 9-1-02

Employer Knowledge Comments

EMP/REP acknowledged awareness of condition. Name Bill Martin

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

Open/Obvious Condition Yes Close Supervision Yes

Custom & Usage in industry Yes

Condition Close to Working Area of Managing Agent Yes

Other The don't wear earplugs while in the crane cab.

Employee Comments:

Sam McKnight - 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.

DOSH-C-IA-IH

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

Severity:

Most Reasonably Predictable Injury or Illness EE's may not know the level
(Health code) noise they are exposed to; Hearing Loss

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.	Instances	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	TJ
<u>1</u>	<u>C</u>	<u>immediate *</u>			

FAILURE TO ABATE ONLY Citation No.-Item & Instance No. No. of days over Additional pen

Substance codes	<u>8111</u>	<u>8110</u>			
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AS FOLLOWS:

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

* IH J. Tolson sampled for Noise on 9-11-02

TO 768-013-03

MCO Date	1. Reporting ID 454510	2. Inspection Number 300270980	3. Sampling Number 400009940
4. Establishment Name George W. Stahl	5. CSNO ID TO 768	6. Survey Date 9-11-02	7. Exposure Information a. Number 1
8. Employee (Name, Address, Telephone Number) PO. Bay 779 546-4723 G town SC 29442	9. Frequency Shesby 5 days/week	10. Occupation Code J. 000	11. PPE (Type and Effectiveness) No Heavy Protection (Says horn above crane cab)

12. SLM	13. SLM SN	14. SLM SN	15. SLM SN
a. Time	b. dBA	c. dBC	d. Location of Test and Remarks
9:00am	88.1	90.8	Horn on Crane in Roll Mill
10:03am	82.3	87.8	Ready to take in Roll mill No crane moving
11:00am	89.7	91.2	On Roll Mill E-kes
11:10am			EE to 12 Luch
1:30pm	83.1	88.2	Ready in Roll Mill
			The Roll mill went down around 10:30am so the crane moved more when normal shift.

Dosimeter Date	17. Dosimeter SN: 3870	18. 80 dB	19. 80 dB
20. Cell No(s)	80	90	21. Readout SN
22. Time On/Off	6:54am	6:54pm	22. Total Time 7:57:51
23. Readout %	111.6	103.5	23. Equivalent dBA

Exposure Summary																
4. Line	25. Substance Code	26. Smpl. Type	27. Exp. Type	28. Exposure Level	29. Units	30. PEL	31. Ad.	32. Severity	33. Citation Information (Action Lvl)							
									No. Ctl.	FDI	Over Exp.	Eng.	PPE	Trg.	Med.	Other
1.	8111	P	T	111.6	%	50		2.23			X					
2.	8110	P	T	103.5	%	100		1.04	X							
4. Total Number of Lines (24):									Case File Page							
2									of							

3. Total Number of Lines (24): 2	Case File Page
----------------------------------	----------------

Dosimeter Calibration (Mfg. SN) Quest 3870

35. Battery Check ☐ Yes ☐ No	36. Location T & B. P. <u>Note 1 70°</u>	
36. Calibrator SN <u>3398</u>		
37. Readout a. SN	38. Cell No(s) <u>80</u> <u>90</u>	40. Readout % <u>Pass 10.0 dB</u> " " " "
b. Voltage Check ☐ Yes ☐ No		
41. Initials	42. Date/Time <u>9-10-02 4:09 pm</u>	

43. Battery Check ☐ Yes ☐ No	44. Location T & B. P. <u>Note 1 70°</u>	
44. Calibrator SN		
45. Readout a. SN	46. Cell No(s) <u>80</u> <u>90</u>	48. Readout <u>Pass</u> " " " "
b. Voltage Check ☐ Yes ☐ No		
49. Initials <u>ST</u>	50. Date/Time <u>9-10-02</u>	

Sound Level Meter Calibration (Mfg. SN) Quest 789

51. Calibrator SN <u>QE4070107</u>	52. Location/T & B. P. <u>Note 1 70°</u>
53. Results	
	125 250 500 1000 2000
a. dBA	<u>114.1</u>
b. dBC	<u>113.9</u>
54. Initials <u>ST</u>	55. Date/Time <u>9-10-02 4:35 pm</u>

56. Calibrator SN <u>QE4070107</u>	57. Location/T & B. P. <u>Note 1 70°</u>
58. Results	
	125 250 500 1000
a. dBA	<u>114.1</u>
b. dBC	<u>113.9</u>
59. Initials <u>ST</u>	60. Date/Time <u>9-10-02</u>

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
Dose	54.58	57.79	Dose	103.5	111.6
TWA	85.6	86.0	TWA	90.3	90.8
Peak	132.2		Peak	140.2	
Slow Max			Slow Max		
On Time			On Time		
Run Time	4:55:52		Run Time	5:57:51	
Pause Time	3:37		Pause Time	9:24	

Noise Source

1° Siren from Crew member above Cab

2° Roll mill Noises also Radio

3° General Shop Noisy

Noise Survey Report

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

025-96

1. Reporting ID 454510	2. Inspection Number 124475243	3. Sampling Number 92261547 1
4. Establishment Name GEORGETOWN STEEL CO.	5. OSHA ID C1955	6. Survey Date 11/20/95
7. Person Performing Survey (Signature) James Stewart	8. Number 1	9. Division 2560
10. Employee Name, Address, Telephone Number Rt 2 Box 180 cc Hamingsburg SC 558-5360	11. Exposure Information 8 Hrs/Day 5 Days/Wk	12. Weather Conditions Indoors
13. Job Title 3rd Helper France #3	14. Occupation Code	15. Remarks @ Room # France 7

16. PPE (Type and Effectiveness) Hearing (muffs)	17. SLN JN 4070016
---	-----------------------

a. Time	b. dBA	c. dBC	d. Location of Test and Remarks
7:28	85.8	92.93	In Control Room 3, France # 3 Remote
7:52	97	102	In " " " " add new chrysothene
8:30	102	107	Cutting Pipe outside Control Room #3
10:38	88-11	88	In Control Room #3, France #3 Evening
12:12m	92	98	Outside Control Room #3, Checking France
1:34m	115	120	Outside Control Room #3, Putting fence pipe in.

HPL LTL
 L/A 95.3 95.35
 Dose 1186.37 908.7
 TWA 95.3 95.37
 Ave 126.3
 Std Dev 119.2
 O Time 5:22
 In Time 7:58.0
 Rest Time :34

18. Calendar Date 12 December 2423	19. Day of Week X 20 21	20. Reading 1 80	21. Reading 2 90
22. Time Onset 8:20am	23. Time Offset 7:00am	24. Reading 1 308.7	25. Reading 2 186.37
26. Reading 1 308.7	27. Reading 2 186.37	28. Total Time 728 minutes	29. Standard Dev HPL/LTL

30. Line No.	31. Substance Code	32. Shift	33. Exp. Limit	34. Units	35. PEL	36. AD	37. Severity	38. Control Information
1	8100	P	186.37	%	100	1.86		
2	8110	P	308.7	%	50	4.17		
39. Total Number of Lines (24)	2							

Case File Page 7/8

Pre-Survey			Post-Survey																																						
Dustmeter Calibration (Mg. 500) <i>2423</i>			Dustmeter Calibration (Mg. 500) <i>2423</i>																																						
33. Battery Check ☐ Yes ☒ No	34. Location T & S P <i>Hotel Room 65°F</i>		33. Battery Check ☒ Yes ☐ No	34. Location T & S P <i>Hotel Room 65°F</i>																																					
35. Calibrator SN <i>2423</i>			35. Calibrator SN <i>2423</i>																																						
36. Reading a. SN	37. Call Noise	38. Reading To <i>109.8</i>	36. Reading a. SN	37. Call Noise	38. Reading To <i>110.2</i>																																				
b. Voltage Check ☐ Yes ☒ No			b. Voltage Check ☐ Yes ☒ No																																						
39. Initials <i>JC</i>	40. Date/Time <i>11/24/96 5:37 pm</i>		39. Initials <i>JP</i>	40. Date/Time <i>11/24/96 4:15 pm</i>																																					
Sound Level Meter Calibration (Mg. 500) <i>31467816</i>			Sound Level Meter Calibration (Mg. 500) <i>31467816</i>																																						
41. Calibrator SN <i>DE 4070111</i>	42. Location T & S P <i>Hotel Room 65°F</i>		41. Calibrator SN <i>DE 4070111</i>	42. Location T & S P <i>Hotel Room 65°F</i>																																					
43. Results			43. Results																																						
<table border="1"> <thead> <tr> <th></th> <th>125</th> <th>250</th> <th>500</th> <th>1000</th> <th>2000</th> </tr> </thead> <tbody> <tr> <td>a. dBA</td> <td></td> <td></td> <td></td> <td><i>114.0</i></td> <td></td> </tr> <tr> <td>b. dBC</td> <td></td> <td></td> <td></td> <td><i>114.0</i></td> <td></td> </tr> </tbody> </table>				125	250	500	1000	2000	a. dBA				<i>114.0</i>		b. dBC				<i>114.0</i>		<table border="1"> <thead> <tr> <th></th> <th>125</th> <th>250</th> <th>500</th> <th>1000</th> <th>2000</th> </tr> </thead> <tbody> <tr> <td>a. dBA</td> <td></td> <td></td> <td></td> <td><i>118.0</i></td> <td></td> </tr> <tr> <td>b. dBC</td> <td></td> <td></td> <td></td> <td><i>119.0</i></td> <td></td> </tr> </tbody> </table>				125	250	500	1000	2000	a. dBA				<i>118.0</i>		b. dBC				<i>119.0</i>	
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b. dBC				<i>119.0</i>																																					
44. Initials <i>JC</i>	45. Date/Time <i>11/24/96 5:37 pm</i>		44. Initials <i>JP</i>	45. Date/Time <i>11/24/96 4:15 pm</i>																																					
46. Job Description, Operation, Work Location, Ventilation and Controls																																									

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

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

Primary noise source - Fence
Secondary noise source - Gravel Mill noise
Tertiary noise source - same as above

Cont'd

U.S. GOVERNMENT PRINTING OFFICE 1989-438-000

Noise Survey Report

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

925-96

1. Date 1/1/80		1. Recording ID 454510		2. Inspection Number 126475243		3. Sampling Number 92261546 3																					
4. Establishment Name GEORGETOWN STEEL CO.				5. OSHA ID 11/50		6. Survey Date 11/20/79																					
7. Person Performing Sampling (Signature) Vance B. Linnell				8. Signature H. Runk		9. Number of Samples 1																					
10. Employee Name, Address, Telephone Number Byce Jones P.O. Box 204 Amestown, NC 257-2165				11. Exposure Information 9 hrs/day 5 days/week 100 dBA 100 dBA		12. Frequency 100 dBA																					
13. Job Title 2nd Castler				14. Occupation Code																							
15. PPE (Type and Effectiveness) None																											
16. BLM a. Time b. dBA c. dBC d. Location of Test and Remarks e. BLM f. Time																											
<table border="1"> <tr> <td>7:59 am</td> <td>82</td> <td>90</td> <td>Casting Break Room</td> </tr> <tr> <td>8:57 am</td> <td>97</td> <td>102</td> <td>Casting - machine running Davielli</td> </tr> <tr> <td>9:46 am</td> <td>86</td> <td>91</td> <td>Davielli - machine running</td> </tr> <tr> <td>12:30 pm</td> <td>99</td> <td>104</td> <td>Castcast</td> </tr> <tr> <td>1:17 pm</td> <td>78</td> <td>88</td> <td>Castcast Break Room</td> </tr> </table>								7:59 am	82	90	Casting Break Room	8:57 am	97	102	Casting - machine running Davielli	9:46 am	86	91	Davielli - machine running	12:30 pm	99	104	Castcast	1:17 pm	78	88	Castcast Break Room
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12:30 pm	99	104	Castcast																								
1:17 pm	78	88	Castcast Break Room																								
HLA/LTL LA 92.8 95.39 Dose 18.11 200.2 TWA 75.5 95.13 Peak 124.3 Sat 120.2 DL Time -35 Run Time 7:40.2 Pause Time 6:42																											
17. Observer S/N 2425 18. Observer S/N 2425 19. Observer S/N 2425																											
20. Call No. 80 21. Time On/Off 7:10 am 2:51 pm 22. Reading No. 200.2 23. Reading No. 18.11																											
24. Reading No. 200.2 25. Reading No. 18.11																											
26. Exposure Summary 27. Line PEL 28. Line PEL 29. Line PEL 30. Line PEL 31. Line PEL 32. Line PEL 33. Line PEL 34. Line PEL 35. Line PEL 36. Line PEL 37. Line PEL 38. Line PEL 39. Line PEL 40. Line PEL 41. Line PEL 42. Line PEL 43. Line PEL 44. Line PEL 45. Line PEL 46. Line PEL 47. Line PEL 48. Line PEL 49. Line PEL 50. Line PEL 51. Line PEL 52. Line PEL 53. Line PEL 54. Line PEL 55. Line PEL 56. Line PEL 57. Line PEL 58. Line PEL 59. Line PEL 60. Line PEL 61. Line PEL 62. Line PEL 63. Line PEL 64. Line PEL 65. Line PEL 66. Line PEL 67. Line PEL 68. Line PEL 69. Line PEL 70. Line PEL 71. Line PEL 72. Line PEL 73. Line PEL 74. Line PEL 75. Line PEL 76. Line PEL 77. Line PEL 78. Line PEL 79. Line PEL 80. Line PEL 81. Line PEL 82. Line PEL 83. Line PEL 84. Line PEL 85. Line PEL 86. Line PEL 87. Line PEL 88. Line PEL 89. Line PEL 90. Line PEL 91. Line PEL 92. Line PEL 93. Line PEL 94. Line PEL 95. Line PEL 96. Line PEL 97. Line PEL 98. Line PEL 99. Line PEL 100. Line PEL																											
39. Test Number of Lines (PPE) 2																											
40. Case File Page 6 of 8																											

Pre-Survey			Post-Survey		
Customer Collection: Ag. SN <u>Q225</u> 2425			Customer Collection: Ag. SN <u>Q225</u> 2425		
31. Battery Check ☒ Yes ☐ No	32. Location T & R Hotel Room 65°F		41. Battery Check ☒ Yes ☐ No	42. Location T & R Hotel Room 65°F	
33. Collector SN 2428			43. Collector SN 2428		
34. Results A. dB 110.0	35. Call Maps	36. Results to 110.0	44. Results A. dB 111.0	45. Call Maps	46. Results to 111.0
37. Voltage Check ☐ Yes ☐ No			47. Voltage Check ☐ Yes ☐ No		
38. Initials JC	39. Date/Time 11/28/95 3:00 PM		48. Initials JP	49. Date/Time 11/29/95 4:00 PM	
Sound Level Meter Calibration (Ag. SN <u>Q225</u> JE 467026)			Sound Level Meter Calibration (Ag. SN <u>Q225</u> JE 467026)		
51. Collector SN QE4070111	52. Location T & R Hotel Room 65°F		51. Collector SN QE4070111	52. Location T & R Hotel Room 65°F	
53. Results a. dBA b. dBC 114.0 114.0			53. Results a. dBA b. dBC 119.0 119.0		
54. Initials JC	55. Date/Time 11/28/95 3:00 PM		54. Initials JP	55. Date/Time 11/29/95 3:58 PM	
56. Job Description, Operation, Work Location(s), Variation and Controls					

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

Controls - none

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

Notes 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 922261548 9																												
4. Establishment Name Georgetown Steel Co				5. OSHA ID C1949																												
6. People Performing Sampling (Signature) James N. Carraher / Joseph H. Rinkler				7. Exposure Information a. Number 1 b. Duration 2 1/2 hr																												
8. Exposure Station, Address, Telephone Number Rt 5 Box 53 Anderson, SC 221-5700				9. Frequency 8 hrs / day 10. Weather Conditions Indoor																												
11. Job Title 2nd Asster				12. Occupation Code																												
13. PPE (Type and Effectiveness) none																																
14. SLIM a. Time b. OSA c. OBC d. Location of Test and Remarks																																
15. SLIM SN JN 4070016																																
<table border="1"> <thead> <tr> <th>Time</th> <th>OSA</th> <th>OBC</th> <th>Location of Test and Remarks</th> </tr> </thead> <tbody> <tr> <td>8:05 am</td> <td>72</td> <td>71-80</td> <td>Concast office</td> </tr> <tr> <td>9:10 am</td> <td>81</td> <td>76</td> <td>Concast office</td> </tr> <tr> <td>10:50 am</td> <td>85</td> <td>71-92</td> <td>Concast</td> </tr> <tr> <td>12:27 pm</td> <td>99</td> <td>102</td> <td>Concast, Hooking up mold</td> </tr> <tr> <td>1:15 pm</td> <td>87</td> <td>96</td> <td>Concast, observing operations</td> </tr> </tbody> </table>						Time	OSA	OBC	Location of Test and Remarks	8:05 am	72	71-80	Concast office	9:10 am	81	76	Concast office	10:50 am	85	71-92	Concast	12:27 pm	99	102	Concast, Hooking up mold	1:15 pm	87	96	Concast, observing operations			
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Pre-Shift			Post-Shift		
Pre-Shift Collection (Mg. 84) QUEST 2426 25. Battery Check: ☒ Yes ☐ No 26. Call No: 2426 27. Readout: a. 84 b. Voltage Check: ☐ Yes ☐ No 28. Initials: JC 29. Date/Time: 11/29/95 2:30 PM			Post-Shift Collection (Mg. 84) QUEST 2426 30. Location T & S: R Hotel Room 85°F 31. Call No: 2426 32. Readout: a. 84 b. Voltage Check: ☐ Yes ☐ No 33. Initials: JP 34. Date/Time: 11/29/95 2:30 PM		
Pre-Shift Collection (Mg. 84) QUEST 407001b 35. Call No: 407001b 36. Location T & S: R Hotel Room 85°F 37. Readout: a. 84 b. Voltage Check: ☐ Yes ☐ No 38. Initials: JC 39. Date/Time: 11/29/95 2:30 PM			Post-Shift Collection (Mg. 84) QUEST 407001b 40. Call No: 407001b 41. Location T & S: R Hotel Room 65°F 42. Readout: a. 84 b. Voltage Check: ☐ Yes ☐ No 43. Initials: JP 44. Date/Time: 11/29/95 2:30 PM		

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

Controls - none

Primary auto swell - Furnace
 Secondary auto swell - General mill operations
 Tilt/sway auto swell - General mill operations

Cont'd

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

MCCB Date		1. Reporting ID 954410		2. Inspection Number 126475243		3. Sampling Number 921816203	
4. Establishment Name GEORGETOWN STEEL Co		5. CMM ID C157		6. Survey Date 11/30/75		7. Exposure Information 1	
8. Primary Personnel (Name, Address, Telephone) James H. Conner, 241 Philip Loop, Georgetown SC, 29640		9. Number 1		10. Duration 22 years		11. Frequency 5 days/yr	
12. Job Title Handy Tates		13. Winter Conditions Indoors		14. Period 8		15. Roll 6	
16. PPE (Type and Description) Ear Ear Plugs, Foam Earplugs 29		17. Occupation Code		18. BLM ID JN 4070016			
19. BLM ID		20. BLM ID		21. BLM ID		22. BLM ID	
a. Time		b. dB		c. dBC		d. Location of Test and Remarks	
7:05		97		102		Rolling mill, Coaster started	
7:33		97		103		"	
8:46		95		102		"	
10:22		97		102		"	
11:20		94		101		"	
1:30 PM		99		103		"	
23. Recorder Data		24. Recorder ID 2424		25. Recorder ID X 00 00 X 00 00		26. Recorder ID	
27. Call No. 80		28. Time Clock 7:00 AM 2:35 PM		29. Time Clock 7:00 AM 2:35 PM		30. Recorder ID 239.6	
31. Recorder ID 239.6		32. Recorder ID 239.6		33. Recorder ID 239.6		34. Recorder ID 239.6	
35. Recorder ID 239.6		36. Recorder ID 239.6		37. Recorder ID 239.6		38. Recorder ID 239.6	
39. Recorder ID 239.6		40. Recorder ID 239.6		41. Recorder ID 239.6		42. Recorder ID 239.6	
43. Recorder ID 239.6		44. Recorder ID 239.6		45. Recorder ID 239.6		46. Recorder ID 239.6	
47. Recorder ID 239.6		48. Recorder ID 239.6		49. Recorder ID 239.6		50. Recorder ID 239.6	
51. Recorder ID 239.6		52. Recorder ID 239.6		53. Recorder ID 239.6		54. Recorder ID 239.6	
55. Recorder ID 239.6		56. Recorder ID 239.6		57. Recorder ID 239.6		58. Recorder ID 239.6	
59. Recorder ID 239.6		60. Recorder ID 239.6		61. Recorder ID 239.6		62. Recorder ID 239.6	
63. Recorder ID 239.6		64. Recorder ID 239.6		65. Recorder ID 239.6		66. Recorder ID 239.6	
67. Recorder ID 239.6		68. Recorder ID 239.6		69. Recorder ID 239.6		70. Recorder ID 239.6	
71. Recorder ID 239.6		72. Recorder ID 239.6		73. Recorder ID 239.6		74. Recorder ID 239.6	
75. Recorder ID 239.6		76. Recorder ID 239.6		77. Recorder ID 239.6		78. Recorder ID 239.6	
79. Recorder ID 239.6		80. Recorder ID 239.6		81. Recorder ID 239.6		82. Recorder ID 239.6	
83. Recorder ID 239.6		84. Recorder ID 239.6		85. Recorder ID 239.6		86. Recorder ID 239.6	
87. Recorder ID 239.6		88. Recorder ID 239.6		89. Recorder ID 239.6		90. Recorder ID 239.6	
91. Recorder ID 239.6		92. Recorder ID 239.6		93. Recorder ID 239.6		94. Recorder ID 239.6	
95. Recorder ID 239.6		96. Recorder ID 239.6		97. Recorder ID 239.6		98. Recorder ID 239.6	
99. Recorder ID 239.6		100. Recorder ID 239.6		101. Recorder ID 239.6		102. Recorder ID 239.6	
103. Recorder ID 239.6		104. Recorder ID 239.6		105. Recorder ID 239.6		106. Recorder ID 239.6	
107. Recorder ID 239.6		108. Recorder ID 239.6		109. Recorder ID 239.6		110. Recorder ID 239.6	
111. Recorder ID 239.6		112. Recorder ID 239.6		113. Recorder ID 239.6		114. Recorder ID 239.6	
115. Recorder ID 239.6		116. Recorder ID 239.6		117. Recorder ID 239.6		118. Recorder ID 239.6	
119. Recorder ID 239.6		120. Recorder ID 239.6		121. Recorder ID 239.6		122. Recorder ID 239.6	
123. Recorder ID 239.6		124. Recorder ID 239.6		125. Recorder ID 239.6		126. Recorder ID 239.6	
127. Recorder ID 239.6		128. Recorder ID 239.6		129. Recorder ID 239.6		130. Recorder ID 239.6	
131. Recorder ID 239.6		132. Recorder ID 239.6		133. Recorder ID 239.6		134. Recorder ID 239.6	
135. Recorder ID 239.6		136. Recorder ID 239.6		137. Recorder ID 239.6		138. Recorder ID 239.6	
139. Recorder ID 239.6		140. Recorder ID 239.6		141. Recorder ID 239.6		142. Recorder ID 239.6	
143. Recorder ID 239.6		144. Recorder ID 239.6		145. Recorder ID 239.6		146. Recorder ID 239.6	
147. Recorder ID 239.6		148. Recorder ID 239.6		149. Recorder ID 239.6		150. Recorder ID 239.6	
151. Recorder ID 239.6		152. Recorder ID 239.6		153. Recorder ID 239.6		154. Recorder ID 239.6	
155. Recorder ID 239.6		156. Recorder ID 239.6		157. Recorder ID 239.6		158. Recorder ID 239.6	

Notes Survey Report

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

025-76

1. Reporting ID 954510		2. Inspection Number 126475243		3. Sequence Number 921816187	
4. Employer Name GROBETOWN STEEL CO				5. Date 11/30/96	
6. Person(s) Being Inspected GARY HUGHES				7. Age 25 years	
8. Employer Address, City, State, Zip 1020 Lubbock Street Greenville SC 29604				9. Reporting Agency HSA/MSD	
10. Job Title Machinist (Computer)				11. Weather Conditions Indoor	
12. PPE Type and Manufacturer Ear Plugs, Safety Glasses				13. PPE Condition Good	
14. Date and Time Nov 29				15. OSHA ID JN 4070016	
16. Time	17. DBA	18. DEC	19. Location of Test and Remarks		
7:31	97	102	Cavayage		
8:47	94	120	Compagor		
10:02	96	101	"		
11:55	93	98	Compagor - Mt. Running		
1:53	102	106	" - Running (Paw Running)		
			HTL / LTL		
			I. Avg 97.4 / 97.71		
			Noise 208.0 / 272.1		
			72.9 / 97.15 / 97.28		
			Peak 125.2		
			S.D. Max 119.5		
			OL Time .13		
			Run Time 7.28.2		
			Pause Time 14:53		
20. Call No. 80		21. Computer ID 2425		22. Product ID	
23. Time Out 6:59 am 2:28 pm		24. Time In 6:59 am 2:28 pm		25. Test Time 4:13	
26. Product No 272.1		27. Product No 28.0		28. Equipment ID HTL / LTL	
29. Product No 272.1		30. Product No 28.0		31. Product No 27.0 97.28	
32. Exposure Summary					
33. L	34. P	35. T	36. F	37. S	38. O
1	8110	7	24.0	7	100
2	8111	7	272.1	7	50
39. Total Number of Tests 2		40. Test Page 2 / 8			

Pre-Survey				Post-Survey			
Pre-Survey Collection (Qty. 800) Quest 2425 24. Battery Check ☒ Yes ☐ No 25. Collector SN 2425 26. Preset to SN 27. Voltage Check ☐ Yes ☐ No 28. Initials JP 29. Date/Time 11/24/95 9:13 PM				Post-Survey Collection (Qty. 800) Quest 2425 30. Battery Check ☒ Yes ☐ No 31. Collector SN 2425 32. Preset to SN 33. Voltage Check ☐ Yes ☐ No 34. Initials JP 35. Date/Time 11/30/95 9:30 AM			
Ground Level Water Collection (Qty. 800) Quest JE 4070011 36. Collector SN JE 4070111 37. Location T & R Hotel Room 65°F 38. Preset to SN 39. Voltage Check ☐ Yes ☐ No 40. Initials JP 41. Date/Time 11/30/95 9:32 AM				Post-Survey Collection (Qty. 800) Quest JE 4070011 42. Collector SN JE 4070111 43. Location T & R Auto 60°F 44. Preset to SN 45. Voltage Check ☐ Yes ☐ No 46. Initials JP 47. Date/Time 11/30/95 9:32 AM			
48. Job Description, Operation, Work Location, Ventilation and Controls Cuts nose and tail off wire and puts it on spool Engineering controls - Isolation Mats Primary noise source - Pulp loading machines, Drying Air (from mill) Secondary noise source - General mill operations Tertiary noise source - General mill operations							

RETURN THIS FORM TO:

SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING & REGULATION
OFFICE OF OCCUPATIONAL SAFETY & HEALTH
P. O. BOX 11139
COLUMBIA, SOUTH CAROLINA 29211
FAX: (803) 734-8772

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: CHRYSLER STEEL CORPORATION

LOCATION: P.O. BOX 619, CHRYSLER, SOUTH CAROLINA 29442

ITEM NO. FROM CITATION	ABATEMENT DATE	DATE ON WHICH VIOLATION WAS CORRECTED	DETAILED DESCRIPTION OF HOW VIOLATIONS WERE CORRECTED
<u>9-1</u>			
<u>1-A</u>	<u>03/23/96</u>	<u>03/27/96</u>	All employees were notified disciplinary action would be taken for anyone caught in this area without hearing protection. Vacated
<u>1-B</u>	<u>03/23/96</u>		
<u>1-A</u>	<u>07/22/96</u>		Additional testing is being conducted in this area.
<u>2-B</u>	<u>07/22/96</u>		Additional testing is being conducted in this area.
<u>2-C</u>	<u>07/22/96</u>		Additional testing is being conducted in this area.
<u>3-A</u>	<u>07/22/96</u>		Additional testing is being conducted in this area.
<u>4-A</u>	<u>07/22/96</u>		Grouped as one-Additional testing is being conducted in this area.
<u>5-A</u>	<u>07/22/96</u>		Grouped together as one-Additional testing is being conducted in this area.
<u>12-A</u>	<u>07/24/96</u>		Moved to other than serious - Additional testing is being conducted in this area.
<u>2-A</u>	<u>07/</u>		Vacated

APPROXIMATE COST OF COMING INTO COMPLIANCE: \$ _____

SIGNATURE: William H. Mault

TITLE: Off. Safety & Health

DATE: 4/26/96

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

South Carolina Department of Labor, Licensing and Regulation

Office of Occupational Safety and Health

P.O. Box 11189
Columbia, S.C. 29211

Citation and Notification of Penalty

The violation(s) described in the Citations 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 03/20/96	4. Inspection Number 176475343
5. Reporting ID 0454510	6. CORRID C1969
7. District Report No. 1207-06	8. Page No. 1 of 15

10. Inspection Dates:
10/17/95 - 01/12/96

9. Serious	01
------------	----

11. Inspection Site:

S. Fraser St.
Georgetown, SC 29440

To:
Georgetown Steel Corporation
2600 Roxborough Road
Charlotte, NC 28225

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 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 41-15-202, 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 penalty(ies) pursuant to the provisions of Section 41-15-202, South Carolina Code of Laws, 1976, as amended, unless within 30 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.

13. Item Number	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 (b)(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 85 decibels or greater, and who (A) has not yet had a baseline audiogram established pursuant to paragraph (g)(5)(ii); 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 97.35 decibels expressed as an eight hour time weighted average above the permissible exposure limit of 90 decibels. B. Use of hearing protectors not enforced in melt 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 97.35 decibels above the action limit of 85 decibels.	03/25/96	\$36

17. Signature of Inspected Employer

NOTES TO EMPLOYERS - The law gives an employee or his representative the opportunity to object to any statement made on his behalf 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 30 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.

ORDER AND COPIATION OF PENALTY

51

SCCH 12 Rev. 1995

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(3) Revised
(Health code) HE
Severity Assessment:
High _____ Medium ☒ Low _____ Minimal (O-T-8) _____
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. Exposed
	1	A	1910.95(2)(2)	2425	2000

No. Instances	REC	Abatement Days	TRK	Action Date	Type
2	—	1	X		

FAILURE TO ABATE ONLY	Citation No.-Item & Instance No.	No. of days over	Additional penalty

Substance codes	8110				
-----------------	------	--	--	--	--

AS FOLLOWS: HEARING PROTECTORS NOT ENFORCED AT THE ESTABLISHMENT
WHERE EMPLOYEES WERE EXPOSED TO NOISE LEVELS RANGING FROM 93 DB TO 98 DB DECIBELS,
EXPOSED AN EIGHT HOUR TIME WEIGHTED AVERAGE ABOVE THE PERMISSIBLE EXPOSURE
LIMIT OF 90 DECIBELS.

Imis 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

December 27, 2013

Drake Rogers III
Young Clement Rivers LLP
PO Box 993
Charleston, SC 29402

Re: Jack Woodward
DOB: 06/22/1954
Age: 59 years
Gender: male

Dear Mr. Rogers,

I had the pleasure of seeing your patient Jack Woodward in consultation today. Following is a summary of today's visit and my recommendation(s).

Chief Complaint/Reason for visit:

This 59 year old male presents with decreased hearing -adult.

History of Present Illness

1. decreased hearing -adult

Mr Woodward has progressive hearing loss since 1975. He has had loud noise exposure. He was an employee at Georgetown steel from 1974-2003. He did have loud noise exposure at Georgetown Steel, plug use was not required early in his employment, but he always used plugs when instructed.

He worked in maintenance and quality control. While employed at ArcelorMittal he always used earplugs. He has had non-occupational loud noise exposure. He has no history of head injury or trauma. He has had no military loud noise exposure. He has used guns in the past. He has no loud hobbies. He does on occasion use small engine / power tools. He does have family history of hearing loss, his 86 year old mother has decreased hearing. He does have high pitched tinnitus x 10 years.

Notable findings during today's visit are:

All normal unless otherwise noted.

Ears

Ears are normal. The small amount of earwax removed bilaterally.
Hearing test performed today.

Assessment/ Plan

Hearing Loss NOS (389.9)

I performed an independent medical evaluation on Mr. Jack Woodward on a 12/27/13. The information obtained is from review of his records, as well as an interview that I conducted personally with Mr. Woodward. As you know Mr. Woodward is a 59-year-old gentleman who worked at Georgetown steel from 1975 through 2003 and then was hired ArcelorMittal Georgetown, LLC 7/4/2004. He worked in the quality assurance department and then later in the maintenance department. He did have loud noise exposure. He does report having decreased hearing currently. He reports having a gradual loss in hearing since 1975. He has had tinnitus for the last 10 years. The tinnitus is bilateral and high-pitched in nature.

Woodward, Jack 06/22/1954

npd

1/3

While employed at Georgetown steel from June 1975 through 2003 he reports not using ear protection consistently in the early years of employment. He used ear protection more as workplace requirements required. While employed at ArcelorMittal Georgetown, LLC he always used ear protection. There was instruction on ear protection use and use was enforced and required.

He denies any history of ear trauma, head injury, military loud noise exposure. He denies any ototoxic medication exposure. He does have some non-occupational loud noise exposure. He is a past hunter and would shoot without ear protection. He has not hunted in 25 years. He has used and currently uses power tools such as a lawnmower without ear protection. He does have a family history of hearing loss, his 86-year-old mother uses hearing aids. His past medical history is negative; however he reports currently being worked up for lung, back, and nervous system (tremors) problems. He is a past smoker he quit in 1987, smoking below that one pack per day.

On exam his right and left ear canals are normal, small amount of wax was removed from the ear canals bilaterally. Tympanic membrane middle ear are normal. The middle ears are free of effusion. Remaining complete head neck exam is normal. We did do a hearing test today for performed by Tara Jordan, Certified Oto Technician. It was performed on the Madsen Auricle Audiometer last calibrated on and 10/11/13. The test was felt to be reliable.

On today's hearing testing the following results were obtained. In the right ear at 500 Hz - 15 dB, at 1000 Hz - 15 dB, at 2000 Hz - 55 dB, at 3000 Hz - 65 dB, at 4000 Hz - 60 dB, at 6000 Hz - 65 dB, at 8000 Hz - 60 dB. In the left ear and 500 Hz - 15 dB, at 1000 Hz - 20 dB, at 2000 Hz - 60 dB, at 3000 Hz - 60 dB, at 4000 Hz - 55 dB, at 6000 Hz - 65 dB, at 8000 Hz - 65 dB.

With speech audiometry, in the right ear, his speech reception threshold (SRT) was 25 dB, normal. His word discrimination was 84% at 65 dB. His left ear speech reception threshold (SRT) was 25 dB, word discrimination is hundred percent at 65 dB. The hearing test was felt to be reliable.

Looking at his hearing according to the American Academy of Otolaryngology Guide for Evaluation of Hearing Handicap, he has a 18.75% handicap in the right ear and a 20.62% handicap in the left ear. This gives him a total binaural hearing handicap of 19.06%.

It is my impression that Mr. Jack Woodward has a bilateral high-frequency sensorineural hearing loss that is consistent with loud noise exposure. I believe with reasonable degree of medical certainty that his hearing damage occurred prior to his employment at ArcelorMittal Georgetown, LLC. Review of his hearing test result reveals nerve loss as early as 1975. His hearing test done at presumed initial employment at Georgetown steel 12/3/1975 reveals loss in his left and right ear at 3000 Hz. This is early evidence of nerve hearing loss. If this hearing test was done prior to employment at Georgetown steel it suggests non-occupational hearing loss prior to employment. His Georgetown steel hearing test from 9/3/1976 reveals a worsening of his hearing. On the right ear he has responses of 55 dB at 3000 Hz, 35 dB at 4000 Hz, and 30 dB at 6000 Hz. On the left ear he has responses of 30 dB at 1000 Hz, 35 dB at 2000 Hz, 55 dB at 3000 Hz, 55 dB at 4000 Hz, 50 dB at 6000 Hz, and 40 dB at 8000 Hz. This reveals early hearing damage. It was during this time he had inconsistent ear protection use. It was also during this time he had non-occupational loud noise exposure while hunting and using small engines. He had significant nerve loss on his initial employment ArcelorMittal Georgetown, LLC hearing test on 9/9/2004. On that hearing test he had losses in the right ear as well as left. He has right ear responses of 60 dB at 2000 Hz, 60 dB at 3000 Hz, and on the left ear 65 dB at 2000 Hz, 65 dB at 3000 Hz, 40 dB at 4000 Hz, 45 dB at 6000 Hz. This is evidence of significant nerve hearing loss that predated his employment at ArcelorMittal Georgetown, LLC. He does have some minimal worsening of his hearing on subsequent tests on 2006, 2006, and 2007. These losses are in minimal relative to his initial 9/2004 test. Signs of early injury are present at his Georgetown steel hearing tests in 1975. Hearing injury was evident at his initial ArcelorMittal Georgetown, LLC hearing test 9/9/2004. I believe the early years of occupational and non-occupational exposure at Georgetown Steel when earplug use was intermittent is when the injury occurred. Non-occupational exposure as well as hereditary hearing loss is also possible factor. I believe with reasonable medical certainty the injuries all occurred prior to employment at ArcelorMittal Georgetown, LLC. While employed at ArcelorMittal Georgetown, LLC vigorous hearing protection measures were in place. His losses while employed at ArcelorMittal Georgetown, LLC had already occurred prior to employment. I believe with medical with reasonable medical certainty that the hearing loss did not occur while employed at ArcelorMittal Georgetown, LLC.

He does have a history of non-occupational loud noise exposure with his past hunting and small engine use without ear protection. He also may have an element of presbycusis/hereditary hearing loss the maturity. His mother does use a hearing aid and there may be a familial aspect to his nerve hearing loss. Generalized aging can also be a factor. None of which is the result of employment at ArcelorMittal Georgetown, LLC. Hearing aids may be of benefit. We did discuss his need to use ear protection when using small engines in the

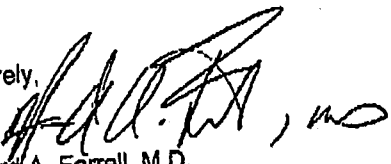
Woodward, Jack 06/22/1954

2/3

future.

Thank you so much for allowing me to participate in Mr. Woodward's evaluation.

Sincerely,


Howard A. Farrell, M.D.

Woodward, Jack 06/22/1954

3/3

12/27/13
Session Date: 7/

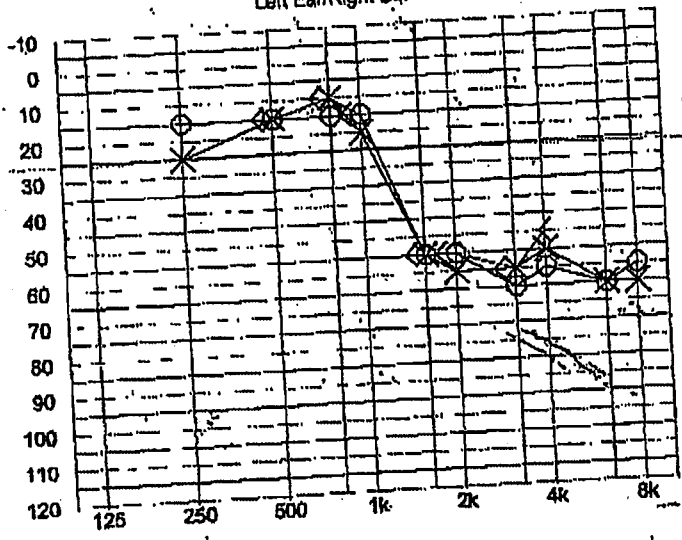
Client Name: Jack Woodward
Birth Date: 6/22/54

Client No: 0440700

Florence ENT & Hearing Practice

Aurical Tone Audiometer
Left Ear/Right Ear - HL

O = Right
X = Left



AC: _____
BC: _____
SF: _____
Masking Levels

Right
PTA: 28 dB
Right
SRT: 25 dB

Left
32 dB
Left
SRT: 25 dB

Unaided Discrimination:
Right
84 %

Masking

Binaural

Level

Masking

Left
100 %

Level
65 dB

Masking

Aided Discrimination:
Right
Level

Masking

Binaural

Level

Masking

Left

Level

Masking

Notes

Test is reliable

Could not get seal AS Types

This audiology examination was performed by an audiologist with the participation of a board certified hearing aid dispenser.

Signature: _____

Audiologist:

TJ
ototech

Equipment Serviced and Calibrated
on 10/11/13

12/22/13

Jack Woodward

12/27/13

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 HEARING HANDICAP WORKSHEET

	RIGHT	LEFT
500 Hz	15	15
1000 Hz	15	20
2000 Hz	55	60
3000 Hz	65	60
TOTALS =	150	155
Divide by 4 =	$150/4 = 37.5$	38.75
Subtract 25	$37.5 - 25 = 12.5$	$38.75 - 25 = 13.75$
TOTALS =	12.5	13.75
x 1.5%	$12.5 \times 1.5\% = 18.75$	$13.75 \times 1.5\% = 20.62$
RIGHT % =	18.75	LEFT % = 20.62

THESE ARE INDIVIDUAL EAR HEARING IMPAIRMENT

BINAURAL HEARING HANDICAP

Better ear percentage: 18.75

Multiply by 5: $18.75 \times 5 = 93.75$

Equals: 93.75

Plus poorer ear: $93.75 + 20.62 = 114.37$

Equals: 114.37

Divide by 6: $114.37 / 6 = 19.06$

Equals: 19.06 = BINAURAL HEARING IMPAIRMENT

100 plus db is considered 100 db for purposes of computing formula

Handwritten signature

Name **WOODWARD, JACK F**

DOB **01/01/54**

Company

SSN/ID **000-00-5461**

Test Date **09/16/05**

Page:

Your recent hearing test indicates the following.

Your left ear indicates the following:

You have a moderately severe loss in hearing. This occurs when the average level in hearing is greater than 55dB in either ear. If you have not already seen a hearing specialist regarding this matter, you should do so.

Your right ear indicates the following:

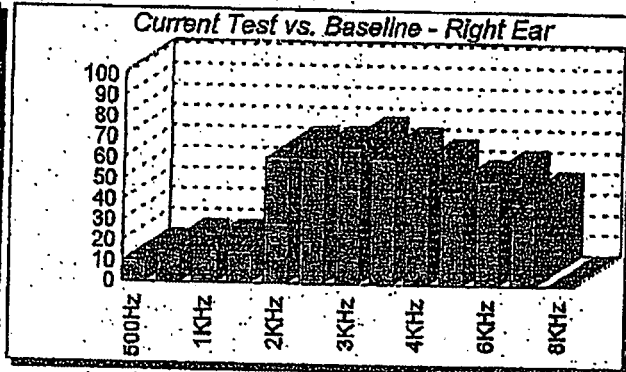
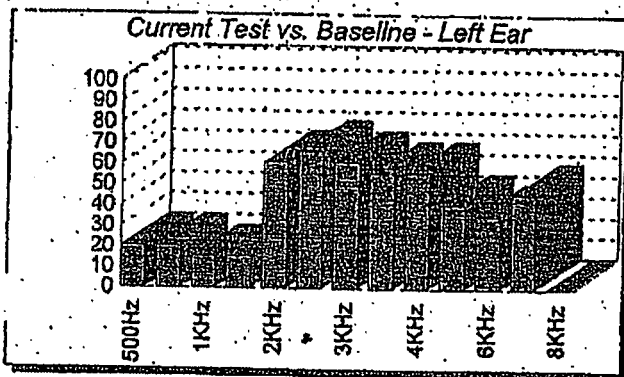
You have a moderately severe loss in hearing. This occurs when the average level in hearing is greater than 55dB in either ear. If you have not already seen a hearing specialist regarding this matter, you should do so.

There has been no significant change in your hearing since your baseline test.

The answers to your hearing history questionnaire indicated a possible medical problem. If you have not already seen a specialist regarding this matter, you are advised to do so.

History Questions Answered 'Yes'

Mumps, Allergies/Hayfever, Hearing loss in family-who?, Previous job with loud noise, Trouble with hearing/loss



Current Test Baseline Test

Always wear the appropriate hearing protection when exposed to excessive noise. This will help protect against any future loss of hearing. If you have any questions regarding this matter please speak to your supervisor.

Date	Test Type	Left								Right								Shift		
		500	1K	2K	3K	4K	6K	8K	234	500	1K	2K	3K	4K	6K	8K	234	LT	RT	STS
09/09/04	B	20	15	65	55	40	45		53	15	15	60	60	45	40		55	0	0	
09/16/05	A	20	15	60	60	55	35		58	10	15	60	65	55	50		60	4	4	

Results of Hearing Test	500Hz	1KHz	2KHz	3KHz	4KHz	6KHz	8KHz
Left Ear	20	15	60	60	55	35	
Right Ear	10	15	60	65	55	50	

Employee Signature

Date

Witness Signature

Date

Name:
Date Tested:

Jack Woodward
9/16/2005

	RIGHT	LEFT
500 Hz	10	20
1000 Hz	15	15
2000 Hz	60	60
3000 Hz	65	60
Total	150	155
	+4	+4
Average	37.5	38.75
Less 25	-25	-25
	12.5	13.75
	X 1.5	X 1.5
Individual Rating	18.75	20.625

Lowest Rating

18.75

X 5

Subtotal

93.75

Add Highest Rating

20.625

Subtotal

114.375

÷6

19.0625 % BINAURAL HEARING IMPAIRMENT

Calculated by Young Clement Rivers, LLP

Name **WOODWARD, JACK F**
 DOB **01/01/54**
 Company

SSN/ID **000-00-5461**
 Test Date **09/09/04**

Your recent hearing test indicates the following.

Your left ear indicates the following:

You have a moderate loss in hearing. This occurs when the average level in hearing is greater than 40dB in either ear. If you have not already seen a hearing specialist regarding this matter you should do so.

Your right ear indicates the following:

You have a moderate loss in hearing. This occurs when the average level in hearing is greater than 40dB in either ear. If you have not already seen a hearing specialist regarding this matter you should do so.

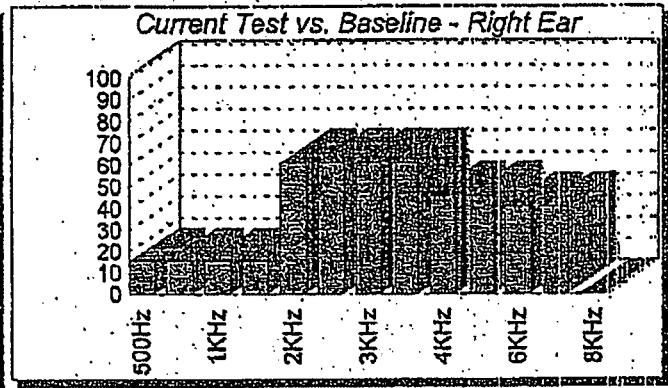
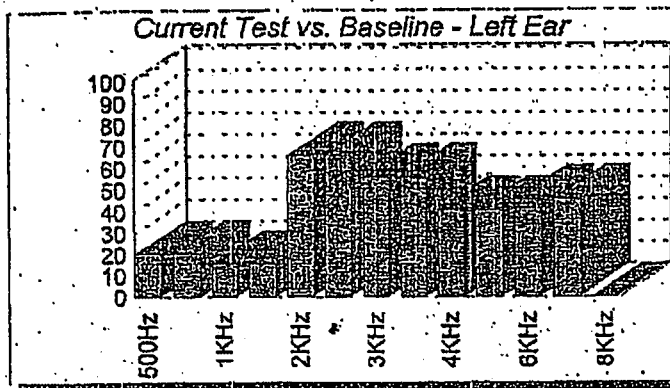
Since this test was your baseline test there was no comparison made to a previous test.

Your hearing test indicates a possible medical problem. If you have not already seen a hearing specialist regarding this matter, it is recommended that you do so.

The answers to your hearing history questionnaire indicated a possible medical problem. If you have not already seen a specialist regarding this matter, you are advised to do so.

History Questions Answered 'Yes'

Mumps, Allergies/Hayfever, Hearing loss in family-who?, Previous job with loud noise, Trouble with hearing/loss.



Current Test Baseline Test

Always wear the appropriate hearing protection when exposed to excessive noise. This will help protect against any future loss of hearing. If you have any questions regarding this matter please speak to your supervisor.

Date	Test Type	Left								Right								Shift		
		500	1K	2K	3K	4K	6K	8K	234	500	1K	2K	3K	4K	6K	8K	234	LT	RT	STS
09/09/04	B	20	15	65	55	40	45		53	15	15	60	60	45	40		55	0	0	

Results of Hearing Test	500Hz	1KHz	2KHz	3KHz	4KHz	6KHz	8KHz
Left Ear	20	15	65	55	40	45	
Right Ear	15	15	60	60	45	40	

Employee Signature

Date

Witness Signature

Date

① 1 ISG GEORGETOWN INC. GEORGETOWN SC
 COMPANY NAME LOCATION (CITY - STATE)

2 50 1954 M 5461
 AGE YEAR OF BIRTH SEX LAST FOUR SSN

JACK F WOODWARD JR.
 FIRST NAME MI LAST NAME

HISTORY

(Circle Yes or No to each question)

- | | | |
|--|------------|-----------|
| 1. Did you wear hearing protection prior to today's testing? | Yes | <u>No</u> |
| 2. Have you recently taken prescription drugs? | Yes | <u>No</u> |
| 3. Do you have high blood pressure? | Yes | <u>No</u> |
| 4. Have you seen a doctor for ear problems? | Yes | <u>No</u> |
| 5. Have you ever had ear, head, or neck surgery? | Yes | <u>No</u> |
| 6. Have you ever had a head injury/unconsciousness? | Yes | <u>No</u> |
| 7. Do you wear a hearing aid? | Yes | <u>No</u> |
| 8. Have you ever had Mumps? | <u>Yes</u> | <u>No</u> |
| 9. Scarlet fever? | Yes | <u>No</u> |
| 10. Measles? | <u>Yes</u> | <u>No</u> |
| 11. Meningitis? | Yes | <u>No</u> |
| 12. Diabetes? | Yes | <u>No</u> |
| 13. Kidney disease? | Yes | <u>No</u> |
| 14. Allergies/hayfever? | <u>Yes</u> | <u>No</u> |
| 15. Hearing loss in your family? If yes, who <u>Grand mother</u> ? | <u>Yes</u> | <u>No</u> |
| 16. Do you have a head cold today? | Yes | <u>No</u> |
| 17. Have you served in the military? | Yes | <u>No</u> |
| 18. Do you have noisy hobbies (hunting, farming, use power tools)? | Yes | <u>No</u> |
| 19. Do you listen to loud music/headphones? | Yes | <u>No</u> |
| 20. Have you had previous jobs with loud noise exposure? | <u>Yes</u> | <u>No</u> |
| 21. Do you have trouble with hearing loss? | <u>Yes</u> | <u>No</u> |

EMPLOYEE HEALTH TRAINING: Instruction pertaining to the following topics were covered; 1) the effects of noise on hearing, 2) hearing protection devices - advantages & disadvantages, proper selection, fit, use and care, 3) the purpose and procedures of audiometric testing.

3 Employee signature Jack Woodward

Test Date					Otoscope LEFT		LEFT EAR						Otoscope RIGHT		RIGHT EAR					
YY	MM	DD	time	age			500	1000	2000	3000	4000	6000			500	1000	2000	3000	4000	6000
04	09	09			<u>N</u>		20	15	65	55	40	45	<u>N</u>		15	15	60	60	45	40

Serial # 84258124 Calibration Date 10/03 Tested By WJL

Name:
Date Tested:

Jack Woodward
9/9/2004

	RIGHT	LEFT
500 Hz	15	20
1000 Hz	15	15
2000 Hz	60	65
3000 Hz	60	55
Total	150	155
	÷4	÷4
Average	37.5	38.75
Less 25	-25	-25
	12.5	13.75
	X 1.5	X 1.5
Individual Rating	18.75	20.625

Lowest Rating

18.75
X 5

Subtotal

93.75

Add Highest Rating

20.625

Subtotal

114.375

÷6

19.0625 % 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: dcm@lawfirm@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

May 25, 2007

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

RE: Jack Woodward vs. Georgetown Steel Company, LLC

Date of Accident: 10/21/03

WCC File No.: 0326648

Dear Commissioner Roche:

Please find enclosed herewith the original and one copy of the Pre-Hearing Brief and Notice of Witnesses/Evidence on behalf of the Claimant, and Claimant's Memorandum on Legal Issues; in regards to the above referenced matter which is scheduled for a hearing before you on June 15, 2007.

By copy of this letter and a certificate of mailing dated May 25, 2007, I am hereby serving a copy of the Pre-Hearing Brief and Notice of Witnesses/Evidence on behalf of the Claimant, and Claimant's Memorandum on Legal Issues, upon all parties, as attorneys for Mr. Woodward's employer's carrier.

Should you have any questions or comments, please do not hesitate to call. With kindest regards, I am

Very truly yours,

William S. Duncan
William Stuart Duncan

WSD/mvj

Enclosures

cc: Mr. Jack Woodward
Allison M. Carter, Esquire
F. Reid Warder, Esquire
Michael Chase, Esquire
Wallace G. Holland, Esquire

162

RECEIVED

MAY 29 2007

S.C. WORKERS COMP. COMM.
Andrea Pope Roche
Commissioner 71

South Carolina Workers' Compensation Commission
P.O. Box 1716 1612 Marion Street
Columbia, South Carolina 29202-1716
(803) 737-5700

WCC File #: 0328648
Carrier File #: _____
Carrier Code #: _____
Employer FEIN: _____

Jack Woodward 248-98-5461
Claimant's Name SSN No.

411 Whites Bridge Rd., Georgetown, SC 29440
Address

(843) 546-1238 ()
Home Phone # Work Phone #

Georgetown Steel
Employer's Name
P.O. Box 619, Georgetown, SC 29440
Address:
St. Paul Travelers Ins. Co.
Korf Industries Co.
Zurich American Ins. Co.
Capital City Ins. Co.
Insurance Carrier

William Stuart Duncan: P.O. Box, 736, Georgetown, South Carolina 29442 (843) 546-1212
Preparer's Name Address Phone #

Provide the information requested in the space provided. Use an additional sheet, if necessary. Type or print all information.

☒ Injury by Accident ☐ Occupational Disease ☐ Both Injury By Accident and Disease ☐ Other

1. Date of Accident 10/21/03; 2004-present time 2. AWW: \$ 909.97 Comp. Rate: \$ 563.55

3. Type of Injury and body part(s) Hearing loss both ears

4. Facts in controversy: Claimant was employed with Georgetown Steel From 1975 through 10/21/03 and continues in the same position at the same plant with its current owner, Mittal Steel from 2004 through the present time. The latter claim is supported by the new case law *Geathers v. 3V, Inc.*, wherein the Supreme Court adopts the "last injurious exposure rule" for South Carolina Workers' Compensation. (Also See Addendum)

5. Legal issues involved: \$42-1-180; \$42-9-20; \$42-9-30; \$42-15-40; \$42-15-60; See Claimant's Memorandum on Legal Issues.

6. Unusual problems: Claimant is a long time employee of Georgetown Steel June 24, 1975 through October 21, 2003. Later, when the mill reopened, he began working for Mittal Steel from 2004 through the present time performing the same job duties and being exposed to the same noise exposure. Due to long time exposure to high noise levels at Georgetown Steel, Claimant suffered hearing loss due to the repetitive trauma injury. Claimant provided notice to the employer on September 8, 2004, however, the employer knew of claimant's hearing loss through hearing tests which were periodically performed on claimant prior to October 21, 2003. Claimant was tested on December 3, 1975 and revealed a 0.6% hearing loss. St. Paul Travelers Insurance Co., provided coverage for employer during this period. Claimant was tested on September 3, 1976 and revealed a 13% hearing loss. Korf Industries Co., provided coverage for employer during this period. The hearing scheduled on June 16, 2007, is to determine whether St. Paul Travelers and Korf are responsible for Claimant's hearing loss during that time and whether Mittal Steel is responsible for a portion of Claimant's hearing loss.

7. Witnesses (designate if expert)* Claimant Jack Woodward. Claimant reserves the right to use any witness designated by the employer.

8. Exhibits: letter to Georgetown Steel from claimant's attorney giving notice of hearing loss; GSC hearing test results dated 12/3/75 through 9/16/05; deposition of George White and Bill Martin; Deposition of Dr. Arthur LaBruce; Osha sound level surveys periodically performed in Georgetown Steel; layout of Georgetown Steel plant; job classification records from Georgetown Steel; letter from Dr. Harmon re: Bill Martin; Deposition of Dr. Fry.

9. Medical evidence: (Indicate report pursuant to R.67-612; deposition or appearance)
Dr. Terry Fry, Ear Nose and Throat; Dr. Arthur LaBruce,

10. Name, address, and specialty, if any, of the treating physician: Dr. Terry Fry, Ear Nose and Throat, 401 Marina Drive, Georgetown, SC 29440; Dr. Arthur LaBruce, 9275 G Medical Plaza Dr., N: Charleston, SC 29408

11. Impairment rating(s); body part(s); physician and date of opinion: On April 6, 2008, Claimant was examined by Dr. Terry Fry and was assigned an impairment rating of 24% bilateral hearing loss. On June 29, 2008, Claimant was examined by Dr. Arthur LaBruce and was assigned an impairment rating of 27% bilateral hearing loss.

SIGNATURE William S. Duncan / RF

DATE OF HEARING: June 15, 2007 TIME OF HEARING: 10:45 a.m.
On behalf of ☒ Claimant ☐ Employer

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.

ADDENDUM

1. Whether claimant has suffered a compensable injury for noise induced bilateral hearing loss which resulted from repetitive trauma. Claimant worked for Georgetown Steel for twenty-eight years and was continually exposed to loud industrial noise which caused a gradual onset of bilateral hearing loss.

2. Whether claimant is entitled to future medical treatment (hearing aids and supporting medical care) which would tend to lessen his hearing disability.

3. Whether claimant filed timely notice the notice to employer requirement is set out in §42-15-20, S.C. Code Ann. However, when the employer has actual knowledge of the injury, the notice requirement is deemed satisfied, so long as the employer is not prejudiced. *Meze 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. Capital Construction Co.*, 252 S.C. 236, 167 S.E. 2d 439 (1969). Georgetown Steel's actual knowledge of the "accidents" satisfies the notice requirement of §42-15-20. (See Attached Memorandum)

Also, a recent Court of Appeals case addresses the notice issue in repetitive trauma cases. *Bass v. Isochem*, 2005 WL 1330967 (S.C. 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." *Id.* at p. 15.

In the last sentence the court set two triggering events as starting the 90 day notice deadline: (1) when the Claimant became disabled; and (2) when, with reasonable diligence, he could discover his condition was compensable. The Claimant was tested and evaluated by Dr. Terry Fry on April 6, 2006. 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. Accordingly, the notice requirement is met since the employer had actual knowledge and notice was given within 90 days of Claimant being definitively diagnosed. (See Attached Memorandum)

4. 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. On examination of Claimant's prior Employer designated hearing tests, Claimant tested 0.6% in 1975 during St. Paul Travelers Insurance company and 13% in 1976 during Korf Industries Company. Claimant's periodic hearing tests make it possible to determine with some degree of accuracy, the liability of each employer and carrier. Accordingly, each employer and insurer here is responsible for their corresponding impairment as specifically found in Claimant's prior audiogram (See attached Memorandum Page 5)

STATE OF SOUTH CAROLINA)

COUNTY OF GEORGETOWN)

JACK WOODWARD,)

Employee,)

Claimant.)

-vs-)

GEORGETOWN STEEL)
CORPORATION,)

Employer,)

and)

CAPITAL CITY INSURANCE CO.,)

Carrier,)

Defendants.)

BEFORE THE SOUTH CAROLINA

WORKERS' COMPENSATION COMMISSION

ORDER

W.C.C. FILE NO. 0326648 & 0326647

CARRIER FILE NO. WC070044 & WC070045

APPROVED

SEP 14 2007

S. C. Workers' Comp. Comm.

This matter now comes before the South Carolina Workers' Compensation Commission upon the petition of the Claimant, Jack Woodward. The Claimant is represented by William Stuart Duncan Esquire, and the Defendants, Georgetown Steel Corporation and Capital City Insurance Company, are represented by Allison M. Carter, Esquire of Willson, Jones, Carter & Baxley, P.A. of Mount Pleasant, South Carolina. The South Carolina Workers' Compensation Commission has jurisdiction.

It appears that the Claimant was an employee of Georgetown Steel Corporation and alleges that during his entire employment through October, 2003, he sustained an injury by accident and occupational disease arising out of and in the course of said employment resulting in alleged injuries to his right shoulder, neck and hearing loss. It is expressly understood and agreed that this case is settled on a doubtful and disputed basis and Defendants continue to deny liability in the matter.

The parties hereto now advise that in their opinion the matter is in bona fide dispute and in view of such dispute an agreement has been reached to settle this matter in its entirety, as related to the coverage period of Capital City Insurance Company, subject to the approval of the South Carolina Workers' Compensation Commission.

Under the proposed settlement the Defendants have agreed to pay and the Claimant has agreed to accept One Thousand Two Hundred Dollars (\$1,200.00) in full settlement and satisfaction of every liability of whatsoever nature or kind under the South Carolina Workers' Compensation Act growing out of, or in any way connected with, any and all alleged injuries which occurred during the coverage period of Capital City Insurance Company. Which, as an integral part of this Settlement Agreement, it is expressly understood and agreed that the Claimant shall be responsible for all medical expenses causally related to the aforesaid injuries by accident or occupational diseases and that any and all further medical expenses of whatsoever nature or kind shall be the express liability of the Claimant and the Defendants shall have no liability therefor.

The Claimant and Defendants expressly agree that this agreement releases Capital City Insurance Company and Georgetown Steel Corporation from any and all injuries the Claimant may have, either known or unknown, which occurred during or were caused by injurious exposure during the period of time Capital City Insurance Company provided workers' compensation coverage to Georgetown Steel Corporation. This agreement does not release any other carriers for any other coverage periods in which the Claimant may have sustained an injury or received injurious exposure.

It is understood and agreed that the consideration given for this Settlement Agreement is not to be construed as an admission of liability or fault on the part of Georgetown Steel Corporation - the same being expressly denied - but is in compromise and settlement of disputed claims.

Claimant agrees not to disclose the amount of this Settlement Agreement to anyone, including other claimants with pending or potential workers' compensation claims against Georgetown Steel Corporation. Claimant acknowledges that he understands that the amount of this Settlement Agreement is totally confidential and shall not be discussed with anyone other than Claimant's counsel. The parties to this Agreement agree not to discuss the terms thereof with any other persons, corporations, or entities other

than immediate family who will not discuss said terms with any other persons, corporations, or entities.

The Claimant hereby asserts that he has been fully advised by his attorneys of record of all his rights under the South Carolina Workers' Compensation Act, and that the Claimant is of the opinion that the proposed settlement is reasonable and fair and in this opinion the Claimant's attorneys concur and assert that they have fully advised the Claimant of all his rights under the South Carolina Workers' Compensation Act, and they respectfully request that this Commission approve the settlement as set forth above. The Claimant hereby asserts that he recognizes that his consent to, and the approval of, this Order is a final determination and adjudication of all benefits under the South Carolina Workers' Compensation Act growing out of, or in any way connected with any and all alleged injuries which occurred during the coverage period of Capital City Insurance Company.

The parties hereto acknowledge that the South Carolina Workers' Compensation Commission relies upon the representation of the attorney for the Claimant that the Claimant has been fully apprised of his rights under the South Carolina Workers' Compensation Act.

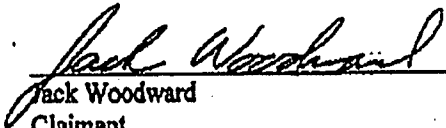
NOW, THEREFORE, IT IS ORDERED that upon the payment of One Thousand Two Hundred Dollars (\$1,200.00) by the Defendants, and the acceptance of said sum by the Claimant, the Defendants be, and they hereby are, fully and forever discharged of all liability of whatsoever nature and kind under the South Carolina Workers' Compensation Act growing out of, or in any way connected with, any and all alleged injuries which occurred during the coverage period of Capital City Insurance Company, so that upon such payment and the acceptance as aforesaid, this matter be, and it hereby is, res judicata and not subject to review under any conditions, except as specifically set forth above.

Signatures continued on next page.

Jack Woodward v. Georgetown Steel Corporation
WCC FILE NO. 0326648 & 0326647 - PAGE 4

DATED: _____

WE CONSENT TO THE
FOREGOING ORDER:



Jack Woodward
Claimant

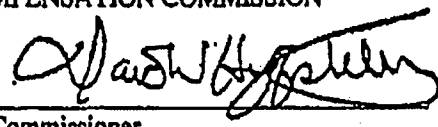


William Stuart Duncan, Esquire
Attorney for Claimant



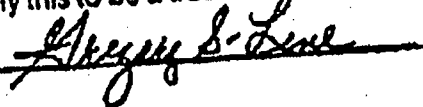
Allison M. Carter, Esquire
Attorney for Defendants

SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION

BY: 

Commissioner

I certify this to be a true and correct copy.



Clerk

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

WC # 0326647; 0326648
Carrier File # WC070044; WC070045
Carrier Code # 440
Employer FEIN 010649167

Jack Woodward 248-98-5461
Claimant's Name SSN
411 White Bridge Georgetown SC 29440
Address City State Zip
Home Phone # Work Phone #
Paula Dyches
Preparer's Name

Georgetown Steel
Employer's Name
420 South Hazard Street Georgetown SC 29440
Address City State Zip
Capital City Insurance
Insurance Carrier
(803) 731-1745
Phone #

Compensation Paid	Number of Weeks	From To	Amount
1. Number of weeks T.T. _____	_____	_____	\$ _____
2. Number of weeks T.P. _____	_____	_____	\$ _____
3. Number of weeks P.P. _____	_____	_____	\$ _____
4. Disfigurement _____	_____	_____	\$ _____
5. Agreement and Final Release _____	_____	_____	\$1200.00
Total Compensation Paid _____			\$1200.00
6. Total Medical Benefits* Paid _____	_____	_____	\$402.00
7. Funeral Benefits _____	_____	_____	\$ _____

☐ Case Denied

Date of Injury 10-20-03; 10-21-03
month day year

By signing this receipt, I acknowledge that I have received the compensation shown above.

By: Jack Woodward
Claimant

By: Paula Dyches
Employer's Representative

Date: 8-23-07

Print or type the name of the person, other than the claimant, receiving benefits and sign below.

By: _____

Report of additional Fees and Recoupment

A. Carrier Reimbursement by Third Party _____

B. Attorney's Fee Paid by Employer _____

C. Attorney's Fee Paid by Claimant _____
(Non contingent fees, only)

RECEIVED

SEP 14 2007
Division of Claims
Claims Administrator
S.C. Workers' Comp. Comm.

\$ _____
\$ _____
\$ _____

File this form with the Claims Department according to R.87-414 and R.87-1204. A person, other than the claimant, receiving benefits should sign on the line provided. *Do not include as medical costs fees paid for expert testimony, fees for determining carrier's liability, costs of autopsy, birth and death certificates and impartial examination. Form 19 must be filed within sixteen days of final payment of compensation. Form 19 must be filed when a claim is denied.

WCC Form #19. REV. DATE 3/96

19

STATUS REPORT AND COMPENSATION REPORT

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO: 0326648

Jack Woodward,
Employee/Claimant,

-versus-

ArcelorMittal Georgetown, Inc.,
Employer,
American Zurich Insurance Company,
Carrier,

Georgetown Steel
Employer,
St. Paul/Travelers/Aetna Casualty &
Surety,
Carrier,

Korf Industries Company,
Employer,
ACE USA,
Carrier,

Defendants.

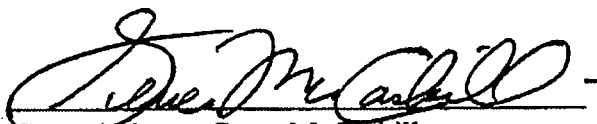
CONSENT ORDER

The above-captioned matter comes before the Commission pursuant to an agreement between counsel for the parties involved. The parties have entered into a consent agreement as follows:

1. Counsel for the multiple Defendants and for the Claimant have agreed that ArcelorMittal and its insurance carrier, American Zurich Insurance Company, can be dismissed from this case. The parties agree that the Claimant did not work for ArcelorMittal during the time that hearing loss was alleged in this 2003 claim.

2. The hearing in this matter shall go forward as scheduled on October 23, 2014; however, ArcelorMittal and its carrier, American Zurich Insurance Company, shall be dismissed from this matter entirely.

S.C. WORKERS' COMPENSATION COMMISSION


Commissioner Gene McCaskill

November 5, 2014

Columbia, South Carolina

[Individual Signature Pages To Follow]

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

By Kellie Lindler on November 5, 2014

WE CONSENT:

A handwritten signature in black ink, appearing to read "William Stuart Duncan", written over a horizontal line.

**William Stuart Duncan, Esquire
Attorney for Claimant**


F. Drake Rogers III, Esquire
Attorney for ArcelorMittal Georgetown, Inc./American Zurich Insurance Company

A handwritten signature in black ink, appearing to read "Ashley R. Kirkham". The signature is fluid and cursive, with a large initial "A" and "K".

Ashley Ryan Kirkham, Esquire

Michael E. Chase, Esquire

Attorneys for Korf Industries Company/ACE USA



F. Reid Warder, Jr., Esquire

Attorney for Georgetown Steel/St. Paul/Travelers/Aetna Casualty & Surety

Transcript of Jack F. Woodward, Jr.

Page 1

1 BEFORE THE
2 SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
3 JACK F. WOODWARD, JR.) W.C.C. File No. 0326648
4 Employee/Claimant,)
5 -vs-)
6 GEORGETOWN STEEL) DEPOSITION OF:
7 CORPORATION)
8) JACK F. WOODWARD, JR.
9 Employer.)
10)
11 -and-)
12)
13 CAPITAL CITY INSURANCE)
14 COMPANY)
15)
16 Carrier.)
17
18

13 DATE: Wednesday, May 31, 2006
14 TIME: 12:05 p.m.
15 LOCATION: Duncan, Crosby & Maring
16 1001 Front Street
17 Georgetown, South Carolina
18

19 REPORTER: Cynthia Kaylene Hunter, CSR (Texas)
20 CLARK & ASSOCIATES, INC.
21 P.O. BOX 73129
22 NORTH CHARLESTON, SC 29415
23 843.762.6294
24
25

1 in maintenance I was never tested either. I was never
2 tested except maybe when I went to work there in the '70s.
3 I was never tested again until ISG bought it.

4 Q Georgetown Steel, as far as you remember, only
5 tested you when you first worked there?

6 A No.

7 Q Did they tell you the results of the test?

8 A No. I didn't ask. I was in my twenties then.

9 Q Did Georgetown Steel ever send you a letter that
10 said you should go see a private hearing doctor?

11 A No, not to my knowledge.

12 Q Has anybody recommended that you have hearing
13 aids?

14 A When ISG tested me?

15 Q Has anyone ever -- has anybody ever recommended
16 that you have hearing aids?

17 A Excluding ISG?

18 Q No, anybody.

19 A When I was tested by ISG I asked for my results
20 and he said that -- he said he wore hearing aids, the guy
21 that did the tests, he wore hearing aids and that my hearing
22 was worse than his.

23 Q Anyone else recommend hearing aids for you?

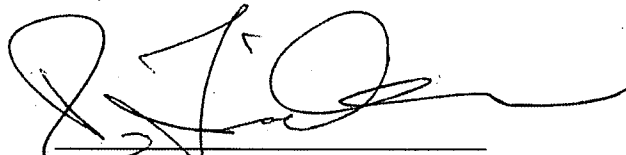
24 A No.

25 Q Have you seen any other doctors for your hearing?

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
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