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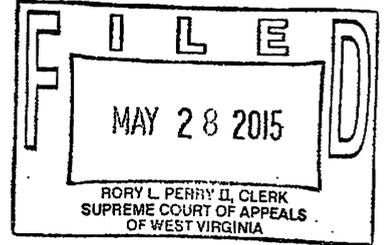
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BEFORE THE WEST VIRGINIA SUPREME COURT OF APPEALS
CHARLESTON, WEST VIRGINIA

15-0397

Stephen Swain, Claimant,

Respondent



v.

Appeal No. 2049999

Brayman Construction, Employer,

Respondent

BRIEF ON BEHALF OF RESPONDENT
BRAYMAN CONSTRUCTION

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May 27, 2015

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I. NATURE OF THE PROCEEDING

This proceeding arises out of the employer's, Pioneer Pipe, Inc., appeal from the Board of Review's Order dated April 3, 2015. The Board of Review affirmed the Administrative Law Judge's November 6, 2014 Decision, which affirmed the claims administrator's order dated August 1, 2013 (JCN 2014002593) rejecting the claim against Brayman Construction for occupational disease hearing loss since the claimant was not employed with this employer on the last day of exposure to excessive occupational noise. The Office of Judges' decision modified the September 20, 2013 (JCN 2014010112) order denying the claim for occupational disease hearing loss against J&J General Maintenance for insufficient noise exposure with that employer, and instead, denied that claim on the basis that J&J Maintenance was not the last employer to subject the claimant to excessive occupational noise. The decision further indicated that Pioneer Pipe was the chargeable employer in the subject claim since the claimant worked for that employer on his date of last exposure. The employer, Pioneer Pipe, filed an appeal from the Office of Judges' November 6, 2014 Decision to the Board of Review.

The Board of Review issued an order dated April 3, 2015, which affirmed the November 6, 2014 Decision affirming the claims administrator's order dated August 1, 2013 (JCN 2014002593) rejecting the claim against Brayman Construction for occupational disease hearing loss since the claimant was not employed with this employer on the last day of exposure to excessive occupational noise. The employer, Pioneer Pipe, Inc., has filed a Petition for Appeal from said order to this Honorable Court.

II. STATEMENT OF THE FACTS

On April 29, 2013, the claimant, Stephen Swain, completed an Employees' and Physicians' Report of Occupational Hearing Loss. [Appendix at 1] He advised that he has not

been working as of March 21, 2013 due to retirement. The claimant worked as a heavy equipment operator for Brayman Construction Corporation from July 2011 to August 2012. He advised that he was made aware of his hearing impairment on May 1, 2013. He was evaluated by Dr. Charles Abraham for his condition on May 1, 2013.

On May 2, 2013, Dr. Abraham drafted a letter to the claimant's attorney. [Appendix at 2] Dr. Abraham advised that in the early part of the claimant's 33 year career in construction, he did not wear hearing protection when operating large machinery such as bulldozers. He also advised that the claimant was in the United States Air force as an ammunitions loader from 1973 to 1979. He was not exposed to gunfire and he was given an audiogram upon discharge. The claimant initially noticed hearing loss over ten years ago. It has progressed over the years, beginning as a "cricket" sound, then changing to a "ringing" and now a "roar." The claimant's ENT examination was normal, except for a deviated septum. His audiogram revealed bilateral sensorineural deafness consistent with a history of noise exposure. Dr. Abraham suggested a whole man impairment rating of 19.43%. He further recommended that the claimant consistently wear hearing protection when exposed to loud noises. Dr. Abraham completed a Hearing Loss Exposure Addendum to supplement his report.

By order dated August 1, 2013, the claims administrator denied the claim for benefits as the investigation revealed that the claimant was not employed with Brayman Construction on the date of last exposure, which was March 21, 2013. [Appendix at 3] His last date of employment with Brayman Construction was August 15, 2012. The claimant was working for J and J General Maintenance from October 2012 to December 2012; Mountaineer Contractors in January 2013; J and J General Maintenance from February 2013 to March 2013; and Pioneer Pipe, Inc. in March 2013. Therefore, the claimant should file for coverage with Pioneer Pipe, Inc.'s insurance carrier. The claimant protested this order.

By order dated September 20, 2013, the claims administrator denied the claim for benefits filed against J & J General Maintenance stating that the claimant did not have sufficient exposure for this claim to be considered. [Appendix at 4] The claims administrator stated that the claimant only worked for 53 days for J & J General Maintenance and that W.Va. Code §23-4-6(g) requires 60 days. The claimant protested this order.

The claimant filed a motion on January 15, 2014 to extend the time frame, and for consolidation of the two (2) protested hearing loss claims for the purposes of an evidentiary hearing. [Appendix at 5] The Office of Judges scheduled an evidentiary hearing for April 1, 2014 covering both claims.

The claimant appeared at the April 1, 2014 Office of Judges' hearing with counsel Larry Lowry. Lisa Hunter appeared as counsel for the employer, Brayman Construction, and Jeffrey Brannon appeared on behalf of J & J General Maintenance. Administrative Law Judge Charles Moredock presided over the hearing. The claimant testified regarding his alleged exposure to hazardous noise. [Appendix at 6] The claimant testified that he had about 32 years of exposure while working out of the local union as a heavy equipment operator. The claimant worked for Brayman Construction from about July 2011 through August 20, 2012. All of the claimant's employment for Brayman Construction involved working on a dozer or excavator and operating a crane a few times. All of the work was performed outside. The claimant did not believe that he had as much exposure while working for Brayman Construction as he had with other employers because the other work involved working inside of a plant and having the exposure to the equipment used by other crafts.

The claimant alleged exposure with Brayman Construction from the heavy equipment itself. He indicated that there were 3 dozers models D6, D3, and D4 – CAT. The 3 excavators were Hitachi 400, CAT 315, and CAT 320. He indicated that he was provided hearing loss

protection, but could not always wear the protection during his job because he was required to communicate over the radio.

The claimant's application for hearing loss was based upon Dr. Charles Abraham's May 1, 2013 examination. The application was filed in May 2013 against each employer – Brayman Construction and J & J General Maintenance. The claimant testified that his work for J & J General Maintenance was heavy equipment operating of a fork truck and excavator and exposure to all of the plant equipment running including fans, and pumps. He was given hearing protection, which he indicates he could not always wear during work. He worked for J&J General Maintenance from October 2012 through March 13, 2013.

The claimant testified that his most recent employment and exposure to hazardous noise was incurred while working for Pioneer Pipe. The claimant worked for Pioneer Pipe for about four (4) days in March 2013. He testified that his last date of work for this employer was March 21, 2013. The claimant worked as a heavy equipment operator out of the union. While working for Pioneer Pipe, he worked inside the chemical plant at Nitro. He testified that he had exposure to loud noise from the equipment as well as the framers and the ironworkers and the other machinery in the plant during this employment. The claimant alleged exposure to hazardous loud noise while working for Pioneer Pipe. The claimant retired after this job and has not worked anywhere since March 21, 2013.

The undersigned moved to consolidate the subject hearing loss claims for purposes of a decision on the compensability issue. Judge Moredock granted the motion. The undersigned also moved to add Pioneer Pipe as a potential chargeable employer based upon the claimant's employment with that employer and allegation of exposure to hazardous noise while working for that employer about 4 days in March 2013. Judge Moredock denied the motion. J&J General Maintenance counsel, Jeff Brannon, moved to add an earlier employer, Early Construction,

arguing that the employer has employed the claimant within three (3) years of the date of last exposure. Counsel for Brayman Construction objected to this motion since the allocation portion of our statute is permissible and the Commissioner has declined to allocate occupational disease claims. Judge Moredock denied Mr. Brannon's motion.

The Office of Judges issued an order dated July 2, 2014, which consolidated the claimant's protests to the August 1, 2013 and September 20, 2013 orders denying the claims for simultaneous decision. [Appendix at 7] Further, the order granted the motion to add Pioneer Pipe, Inc., as a potential chargeable employer. The order indicated that the motion to add Early Construction Company as a chargeable company remained denied in this claim.

The employer, Pioneer Pipe, introduced a safety orientation sheet for Pioneer Pipe completed and signed by the claimant on March 18, 2013. [Appendix at 8] This employer introduced an employee record form signed by the claimant on March 18, 2013. This employer further introduced a time sheet indicating four (4) days of work through March 21, 2013.

The employer, Brayman Construction, introduced the Office of Judges' Decision in another occupational disease hearing loss claim, which is instructive regarding the date of last exposure and the responsible carrier. [Appendix at 9] In the October 28, 2011 Decision, Judge Armstrong noted that W.Va. Code §§23-4-1, 23-4-6b, and 23-4-15 (c) do not address exposure requirements in order to establish a date of last exposure in an occupational disease hearing loss claim. In other words, the statutory language does not provide a requisite period of sixty (60) days of exposure to establish an occupational disease claim for hearing loss against an employer or to establish a date of last exposure. The date of last exposure in an occupational disease hearing loss claim is simply the date that the claimant last worked with exposure to hazardous noise on the job. In this claim, the date of last exposure is March 21, 2013.

The employer, Brayman Construction, also introduced the Board of Review's order dated May 29, 2012, which affirmed the Office of Judges' Decision dated October 28, 2011 regarding the establishment of the date of last exposure based upon the date the claimant last worked and was exposed to hazardous loud noise regardless of only working for a certain employer and/or under a certain workers' compensation policy for a few days. [Appendix at 10]

The Office of Judges issued a Decision dated November 6, 2014, which affirmed the claims administrator's order dated August 1, 2013 (JCN 2014002593) rejecting the claim against Brayman Construction for occupational disease hearing loss since the claimant was not employed with this employer on the last day of exposure to excessive occupational noise. The Office of Judges' decision modified the September 20, 2013 (JCN 2014010112) order denying the claim for occupational disease hearing loss against J&J General Maintenance for insufficient noise exposure with that employer, and instead, denied that claim on the basis that J&J Maintenance was not the last employer to subject the claimant to excessive occupational noise. The decision further indicated that Pioneer Pipe was the chargeable employer in the subject claim since the claimant worked for that employer on his date of last exposure. Administrative Law Judge Moredock further indicated that the date of last exposure with Brayman Construction was August 31, 2012, and the date of last exposure with J&J General Maintenance was March 13, 2013. The claimant's last date of exposure to excessive occupational noise was March 21, 2013 while employed by Pioneer Pipe. The employer, Pioneer Pipe, filed an appeal from the Office of Judges' November 6, 2014 Decision to the Board of Review.

The Board of Review issued an order dated April 3, 2015, which affirmed the November 6, 2014 Decision. The employer, Pioneer Pipe, Inc., filed a Petition for Appeal from said order to this Honorable Court. This is the employer, Brayman Construction's, response to Pioneer Pipe's appeal.

III. ISSUE

WHETHER THE BOARD OF REVIEW WAS CLEARLY WRONG TO AFFIRM THE ADMINISTRATIVE LAW JUDGE'S DECISION DATED NOVEMBER 6, 2014 NAMING PIONEER PIPE AS THE PROPER CHARGEABLE EMPLOYER IN THIS HEARING LOSS CLAIM WHERE THE CLAIMANT'S LAST DATE OF EXPOSURE TO EXCESSIVE OCCUPATIONAL NOISE WAS MARCH 21, 2013, AND THE CLAIMANT WORKED FOR PIONEER PIPE ON HIS DATE OF LAST EXPOSURE?

IV. ARGUMENT

The Board of Review's order affirming the Office of Judges' decision listing Pioneer Pipe as the responsible employer for this hearing loss claim was not clearly wrong because the claimant alleged that he worked for Pioneer Pipe on his last date of employment and exposure to hazardous noise. Pioneer Pipe requests that this Court reverse the lower rulings based upon the contention that the allocation section of Chapter 23 imposes a requirement that the claimant establish sixty (60) days of exposure with an employer in order for that employer to be responsible for an occupational disease hearing loss claim. However, the allocation portion of our workers' compensation chapter is permissive and our Insurance Commission has determined that it will not allocate occupational disease claims between employers/insurers. Further, the allocation section does not impose a jurisdictional requirement of establishing sixty (60) days of exposure with an employer in order to file a hearing loss claim against that employer. Chapter 23 does provide a specific jurisdictional requirement that the claimant establish sixty (60) days of exposure with an employer in order to file a claim for occupational pneumoconiosis against that employer. *See*, W.Va. Code §23-4-15(b). However, the code is void of any like jurisdictional requirement related to occupational disease hearing loss. *See*, for example, W.Va. Code §23-4-15(c), which does not discuss sixty days of exposure when discussing filing requirements for all other occupational disease claims. Likewise, the statutes require that a claimant establish

exposure to hazardous dust in the state of West Virginia for at least 2 out of the 10 years preceding the date of last exposure or 5 of the 15 years preceding the date of last exposure or the claimant does not have enough exposure to establish a claim for occupational pneumoconiosis in West Virginia. See, W.Va. Code §23-4-1(b). In Maynard v. State Workman's Compensation Commissioner, 239 S.E. 2nd 504 (W.Va. 1977), this Court addressed the date of last exposure in accordance with §23-4-1 for occupational pneumoconiosis claims by indicating that the claimant must have sixty (60) days of continuous exposure to hazardous dust in order for an employer to be chargeable. Chapter 23 does not include any similar jurisdictional requirements for occupational disease hearing loss. The Board of Review was not clearly wrong to affirm the Office of Judges' decision finding Pioneer Pipe responsible for this hearing loss claim since the claimant alleged that his last exposure to hazardous noise occurred while working for it.

When reviewing a decision of the board of review, the Supreme Court of Appeals shall consider the record provided by the board and give deference to the board's findings, reasoning and conclusions, in accordance with subsections (c) and (d) of this section. W.Va. Code § 23-5-15 (b).

If the decision of the Board effectively represents an affirmation of a prior ruling by both the commission or the Office of Judges that was entered on the same issue in the same claim, the decision of the Board may be reversed or modified by the Supreme Court of Appeals only if the decision is in clear violation of constitutional or statutory provision, is clearly the result of erroneous conclusions of law, or is based upon the board's material misstatement or mischaracterization of particular components of the evidentiary record. W.Va. Code § 23-5-15 (c).

The Board of Review shall reverse a final order if the substantial rights of the petitioner have been prejudiced because the Administrative Law Judge's findings are (1) in violation of

statutory provisions; (2) in excess of the statutory authority or jurisdiction of the Administrative Law Judge; (3) made upon unlawful procedures; (4) affected by other error of law; (5) clearly wrong in view of the reliable, probative and substantial evidence on the whole record; or (6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. W. Va. Code § 23-5-12(b)(2005).

When the Office of Judges reviews the evidence of record and the facts of this claim, it must weigh that evidence pursuant to the preponderance of the evidence standard as set forth in West Virginia Code § 23-4-1g, which states:

(a) For all awards made on or after the effective date of the amendment and reenactment of this section during the year two thousand three, resolution of any issue raised in administering this chapter shall be based on a weighing of all evidence pertaining to the issue and a finding that a preponderance of the evidence supports the chosen manner of resolution. The process of weighing evidence shall include, but not be limited to, an assessment of the relevance, credibility, materiality and reliability that the evidence possesses in the context of the issue presented. Under no circumstances will an issue be resolved by allowing certain evidence to be dispositive simply because it is reliable and is most favorable to a party's interests or position. If, after weighing all of the evidence regarding an issue in which a claimant has an interest, there is a finding that an equal amount of evidentiary weight exists favoring conflicting matters for resolution, the resolution that is most consistent with the claimant's position will be adopted.

(b) Except as provided in subsection (a) of this section, a claim for compensation filed pursuant to this chapter must be decided on its merit and not according to any principle that requires statutes governing workers' compensation to be liberally construed because they are remedial in nature. No such principle may be used in the application of law to the facts of a case arising out of this chapter or in determining the constitutionality of this chapter.

W. Va. Code § 23-4-1g. (2005).

West Virginia Code § 23-4-1(a) (2008) states that "[s]ubject to the provisions and limitations elsewhere in this chapter, workers' compensation benefits shall be paid...to the

employees of employers subject to this chapter who have received personal injuries in the course of and resulting from their covered employment.” W. Va. Code 23-4-1(a) (2008).

“Where an employee files his application for workmen’s compensation benefits, based on the occurrence of an occupational disease other than silicosis, to entitle him to an award, he must establish that the disease was contracted in the course of and resulted from the employment: it is not sufficient to establish that the employment resulted in an aggravation of a disease existing at the beginning of such employment.” Syl. pt. 3, Bannister v. State Workmen’s Compensation Comm’r, 174 S.E.2d 605 (W.Va. 1970)(emphasis added).

An “Occupational Disease” is defined by statute as follows:

... Except in the case of occupational pneumoconiosis, a disease shall be considered to have been incurred in the course of or to have resulted from the employment *only if it is apparent to the rational mind, upon consideration of all the circumstances*: (1) That there is a *direct causal connection* between the conditions under which work is performed and the occupational disease; (2) that it can be seen to have followed *as a natural incident of the work* as a result of the exposure occasioned by the nature of the employment; (3) that *it can be fairly traced to the employment as the proximate cause*, (4) that it does not come from a hazard to which workmen would have been equally exposed outside of the employment; (5) that *it is incidental to the character of the business* and not dependent of the relation of employer and employee, and (6) that it must appear to have had its origin in a risk connected with the employment and to have flowed from that source as a natural consequence, though it need not have been foreseen or expected before its contraction: ...

W.Va. Code § 23-4-1(f)(2008)(emphasis added).

An application for benefits alleging a noise-induced hearing loss shall set forth the name of the employer or employers and the time worked for each. The Insurance Commissioner may allocate to and divide any charges resulting from the claim among the employers with whom the claimant sustained exposure to hazardous noise for as much as sixty days during the period of three years immediately preceding the date of last exposure. The allocation is based upon the

time of exposure with each employer. In determining the allocation, the Insurance Commissioner shall consider all the time of employment by each employer during which the claimant was exposed and not just the time within the three-year period under the same allocation as is applied in occupational pneumoconiosis cases. W.Va. Code §23-4-6b(g).

The claimant must file an occupational disease claim other than occupational pneumoconiosis within three years after the day on which the employee was last exposed to the particular occupational hazard involved or within three years from the date the occupational disease was made known to the employee or within three years from when the employee should reasonably have known, whichever last occurs. W.Va. Code §23-4-15 (c). The filing requirement for an occupational pneumoconiosis claim requires filing within three years of the last day of the last continuous period of sixty days or more during which the employee was exposed to the hazards of occupational pneumoconiosis or within three years of such diagnosis. W.Va. Code §23-4-15(b).

Each West Virginia Worker's Compensation insurance policy is required to provide coverage and benefit payments consistent with the provisions of the West Virginia Worker's Compensation law and the rules propagated there under for any bodily injury, for the date of injury within the policy period and for all benefit types thereafter awarded. Each West Virginia Worker's Compensation policy must also provide coverage for any occupational disease or occupational pneumoconiosis award with the date of last exposure within the policy period, as provided in the Worker's Compensation law and its implemented rule. *See* 85 C.S.R. 8 § 8.82.

"West Virginia workers' compensation coverage" means workers' compensation coverage that provides the employees of the insured employer workers' compensation benefits consistent with chapter twenty-three of the West Virginia Code and the rules promulgated thereunder. *Id.* at 8.1.

The claimant filed two (2) separate claims for occupational disease hearing loss. The claimant completed one hearing loss application that he signed on April 29, 2013. Dr. Abraham signed the application on May 2, 2013. The claimant filed this application with two (2) separate carriers – Travelers and Westfield. Travelers is the carrier that insured the employer, Brayman Construction, during the period of time that the claimant worked for that employer from July 2011 through August 20, 2012. Westfield is the carrier that insured the employer, J&J General Maintenance, during the period that the claimant worked for that employer from October 2012 through March 13, 2013.

The claimant has alleged exposure to hazardous loud noise while working for Brayman Construction. However, he noted that he worked outside on the jobs for Brayman and did not have exposure to hazardous noise to the degree that he did while working for other employers where he worked inside the plant. He explained that, while working inside, he was exposed to the equipment and machinery used by other crafts as well as the equipment that he was operating on the job whereas working outside included only noise from the equipment that he operated on the job.

The claimant last worked for Brayman Construction on August 20, 2012. According to the union employment records as well as the claimant's own testimony, the claimant worked for two (2) subsequent employers – J&J General Maintenance and Pioneer Pipe. The claimant's last date of employment was March 21, 2013. The claimant testified that he had exposure to hazardous noise while working for both of these employers.

The claimant's date of last exposure in this claim is the date that the claimant last worked, which was March 21, 2013. According to the claimant's testimony and the union records, the claimant worked for Pioneer Pipe on this date. Additionally, as noted, the claimant

alleged exposure to loud noise on this job. Accordingly, March 21, 2013 is the claimant's date of last exposure to loud noise.

Pursuant to Rule 8, a carrier must provide coverage for any occupational disease award with the date of last exposure within the policy period. The carrier who covered Pioneer Pipe as of March 21, 2013 – the date of last exposure – is responsible for the claimant's claim for occupational disease hearing loss. Based upon the fact that the claimant did not work for Brayman Construction since August 20, 2012, and his date of last exposure is March 21, 2013, the carrier who covered Brayman Construction is not responsible for covering an occupational disease claim with a date of last exposure that is several months later than the claimant's work for this employer. Accordingly, the Office of Judges properly affirmed the claims administrator order dated August 1, 2013 denying the claim noting that the claimant was not employed by Brayman Construction as of the date of last exposure on March 21, 2013 as he last worked for Brayman Construction in August 2012.

The employer, Brayman Construction, introduced the Office of Judges' Decision in another occupational disease hearing loss claim, which is instructive regarding the date of last exposure and the responsible carrier. In the October 28, 2011 Decision, Judge Armstrong noted that W.Va. Code §§23-4-1, 23-4-6b, and 23-4-15 (c) do not address exposure requirements in order to establish a date of last exposure in an occupational disease hearing loss claim. In other words, the statutory language does not provide a requisite period of sixty (60) days of exposure to establish an occupational disease claim for hearing loss against an employer or to establish a date of last exposure. The date of last exposure in an occupational disease hearing loss claim is simply the date that the claimant last worked with exposure to hazardous noise on the job. In this claim, the date of last exposure is March 21, 2013.

The employer, Brayman Construction, also introduced the Board of Review's order dated May 29, 2012, which affirmed the Office of Judges' Decision dated October 28, 2011 regarding the establishment of the date of last exposure based upon the date the claimant last worked and was exposed to hazardous loud noise regardless of only working for a certain employer and/or under a certain workers' compensation policy for a few days.

Finally, Brayman Construction would note that the only responsible carrier is the carrier that held a policy for the employer that employed the claimant on the date of last exposure, which is March 21, 2013. In this claim, the last employer is Pioneer Pipe. The workers' compensation act allows the Insurance Commissioner the discretion to allocate occupational disease claims to the employers/responsible parties for whom the claimant worked an alleged exposure within three (3) years of the date of last exposure. However, the Insurance Commissioner has chosen not to allocate occupational disease claims, which is within the Commissioner's discretion. Accordingly, the only responsible/chargeable party in this claim is Pioneer Pipe and the entity that covered their workers' compensation claims as of March 21, 2013 pursuant to Chapter 23 and 85 C.S.R. 8 § 8.82. Therefore, the Administrative Law Judge properly added Pioneer Pipe as a potential chargeable employer in this claim in July 2014, and properly determined that Pioneer Pipe is the sole chargeable employer in this hearing loss claim.

The employer, Pioneer Pipe, asserts that W.Va. Code §23-4-6b(g) requires that an application for benefits alleging a noise-induced hearing loss shall set forth the name of the employer or employers and the time worked for each. Further, this section indicates that the Insurance Commissioner **may allocate** to and divide any charges resulting from the claim among the employers with whom the claimant sustained exposure to hazardous noise for as much as sixty days during the period of three years immediately preceding the date of last exposure. Based upon this language, Pioneer Pipe argues that there is a statutory requirement of 60 days or

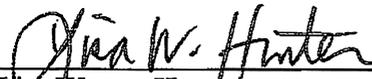
harmful noise exposure against the employer. However, this language applies to the allocation of a hearing loss claim among employers for whom the claimant was employed within three (3) years of the date of last exposure. This statutory section does not address the jurisdictional requirements of filing a hearing loss claim and does not create a burden of establishing 60 days of exposure with an employer to sustain a claim for hearing loss against that employer.

Pioneer Pipe simply did not establish that the Office of Judges' decision was in violation of statutory provisions or was clearly wrong in view of the evidence of record, which clearly establishes that the claimant's last date of exposure to excessive occupational noise was March 21, 2013 during his employment with that employer. Accordingly, the Board of Review was not clearly wrong to affirm the Office of Judges' decision listing Pioneer Pipe as the responsible employer in this occupational disease hearing loss claim.

V. CONCLUSION

Based upon the foregoing, the employer, Brayman Construction, submits that the Board of Review's order to affirm the Administrative Law Judge's decision did not violate a statutory provision nor was it clearly wrong to name Pioneer Pipe as the sole chargeable employer based upon the date of last exposure to hazardous noise while working for that employer. Therefore, the employer, Brayman Construction, respectfully requests that this Honorable Court refuse the employer's, Pioneer Pipe, Inc., Petition for Appeal from the Board of Review's order dated April 3, 2015, which affirmed the Administrative Law Judge's November 6, 2014 Decision.

Respectfully submitted,
Brayman Construction
By Counsel



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CERTIFICATE OF SERVICE

I, Lisa Warner Hunter, attorney for the Respondent, Brayman Construction, hereby certify that a true and exact copy of the foregoing "Brief on Behalf of Respondent, Brayman Construction." was served upon the Petitioner and Respondents by forwarding a true and exact copy thereof in the United States mail, postage prepaid, this 27th day of May 2015 addressed as follows:

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