

No. 33708

SWVA, Inc. v. Elmer Adkins, Jr.

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SUPREME COURT OF APPEALS
OF WEST VIRGINIA

Starcher, J., concurring:

I concur with the conclusion reached in the majority opinion in this appeal. I write separately to express my understanding of the basis for affirming the Board of Review in this matter.

This Court has, on several occasions, extensively addressed the issue of workers' compensation hearing loss claims. In *Bilbrey v. Workers' Compensation Commissioner*, 186 W.Va. 319, 412 S.E.2d 513 (1991), we found that there had been "little or no consistency in the manner in which the Commissioner grants permanent partial disability awards for noise-induced hearing impairment or in the tests that are required in order to determine what percentage of loss is actually due to noise." *Id.* at 323, 412 S.E.2d at 517. This Court again addressed the issue of hearing loss in *Blackburn v. Workers' Compensation Division*, 212 W.Va. 838, 575 S.E.2d 597 (2002), where we examined the practice of automatically basing a disability award on the audiogram demonstrating the lowest level of hearing loss when there were discrepancies between audiograms. In *Blackburn* we concluded that additional rules needed to be promulgated on the issue and we established temporary guidelines for selecting which audiogram to use as a basis for permanent partial disability awards when two valid audiograms differed by a significant margin. *Id.* at 851, 575 S.E.2d at 610.

Neither *Bilbrey* nor *Blackburn*, however, addressed the precise issue of the type of hearing aid to which a claimant is entitled. While a determination of compensability and an impairment rating must include a distinction between job related noise-induced hearing loss and conductive loss, the ultimate goal of a hearing aid must be the most effective restoration of the claimant's hearing capacity. When attempting to correct hearing loss through the use of a hearing aid, it is virtually impossible to provide a hearing aid that addresses only the noise-induced component of the overall hearing loss. The exercise of such an effort is senseless and wasteful – why pay for something that is not going to work? Therefore, it is reasonable to conclude that where a portion of the hearing loss is noise-induced, the claimant is entitled to the hearing aid which most effectively restores the claimant's hearing as completely as possible to full capacity.

The majority properly has found that the appellee suffered noise-induced hearing loss as a result of his employment and that the appellee was entitled to a hearing aid that most fully restored the appellee's hearing to full capacity. This entitlement exists notwithstanding that the appellee's hearing loss was the result of a combination of causes – both employment related and non-employment related.