

Section H

Can You Hear Me Now? The Overlap & Pitfalls in Handling Tinnitus & Hearing Loss Claims

Andrew Giller

Rush & Nicholson, PLC
115 First Ave. SE
Cedar Rapids, IA
andy@rushnicholson.com



The following information, in printed and electronic form, can ONLY be used by the individual specifically registered with IAJ to attend IAJ's Claimants & Plaintiffs Trial Lawyer Conference or an individual member of IAJ, and SHALL NOT be disseminated, either orally or in writing, to any other individual or entity without the express written permission of IAJ.

Hearing Loss and Tinnitus Outline

I. Hearing Loss v. Tinnitus

A. Scheduled v. Unscheduled

1. Hearing Loss is compensated as a scheduled injury under
 - a. Chapter 85B
 - b. 85.34(r)(1)
2. Tinnitus is compensated as a whole-body injury under
 - a. 85.34(u)
 - b. See **Ehteshamfar v. UTA Engineered Systems Div., 555 N.W.2d 450 (Iowa 1996)**

B. Date of Injury

1. Hearing Loss (one of the following dates)
 - a. Transfer from excessive noise exposure employment by an employer
 - b. Retirement
 - c. Termination of the employer-employee relationship
2. Tinnitus –
Manifestation Date or when it was “plainly apparent to a reasonable person that”
 - a. Claimant has an injury or condition
 - b. Causally related to employment

II. Statute of Limitations for Tinnitus

A. Manifestation Date (see above)

B. Discovery Rule (tolls SOL) **Herrera v. IBP, Inc., 633 N.W.2d 284 (Iowa 2001)**

1. SOL does not begin to run until the Claimant knows or should know the nature, seriousness, and probable compensable nature of his/her injury or condition

2. Seriousness is defined as when Claimant's "physical condition is serious enough to have a permanent adverse impact on Claimant's employment or employability."

III. Tinnitus and Hearing Loss Together

A. **Ament v. Quaker Oats, File Nos. 5044299 and 5044298** **(App. Dec. Mar. 2016)**

1. "Hearing loss occurring with same injury date as a tinnitus claim are considered together under an industrial disability assessment."
2. "When a claimant has sustained both a scheduled injury and an unscheduled injury from the same work exposure or incident, the injuries are compensated as a body-as-a-whole under an assessment of industrial disability."
Mortimer v. Fruehauf Corp., 502 N.W.2d 12, 16
(Iowa 1993)

B. **Rizzio v. Quaker Oats, File No. 5053022** (Ruling on Rehearing Mar. 2018)

1. Hearing loss will not be considered as part of a tinnitus claim unless hearing loss claim is ripe under 85B
2. Can file 85B claim later when ripe
3. I would suggest filing a Review Reopen for tinnitus claim along with the 85B claim
4. You could also have a new tinnitus injury along with 85B claim (new injury every day Claimant is exposed to excessive noise)

IV. High Frequency Hearing Loss

- A. Chapter 85B only compensates hearing in 500 Hz to 3000 Hz range. Does not compensate hearing loss in higher frequencies (4000 Hz to 8000 Hz)
- B. Iowa Code 85.34(r)(1)
"For the loss of hearing, other than occupational hearing loss as defined in section 85B.4, weekly compensation during fifty

weeks, and for the loss of hearing in both ears, weekly compensation during one hundred seventy-five weeks.”

- C. **Martin v. MidAmerican Energy, File No. 5055340**
Arbitration Decision on 8/16/16
Appeal Decision on 2/16/18