16 Pre-employment Audiograms and Dismissal of Employees

In one mass assessment of nearly 30,000 workers exposed to continuous noise, only 600 cases were without otological abnormality from any cause (Raber, 1971). Ideally, one should also have a pre-employment audiogram for all employees. These issues raise the following questions:

1. Is the information gained from individual audiograms used to protect the individual worker? Does the organisation move the worker into less noisy surroundings or provide personal protection in other ways?
2. If the worker's noise-induced hearing loss is too great in relation to his time exposure, can he be persuaded to change his job?
3. Can he be given special compensation?
4. Can he be strictly recommended to use ear protectors which is in reality difficult to comply with? (Bruton, 1970).

In the area of hearing protection, one of the most useful features of serial audiometry is that of educating the workers, trying to get them interested in protecting their own hearing. However, when evidence of increasing noise-induced hearing loss is encountered,

5. Where does the loyalty of the Factory Audiologist lie?

From the medical point of view, where a person has significant loss on later retesting,

1. He should be advised that he is at some degree of risk,
2. He must be provided with hearing protection, and
3. More frequent audiometric follow-up must be arranged.

The presence of a pre-employment audiogram does not absolve the employer from legal liability in future: the fact that pre-existing pathology is picked up does not mitigate his culpability but rather it enhances his duty to protect the remaining precious hearing under the rule in *Paris v Stepney Borough Council* [1951].

A pre-employment audiogram has the merit of:

1. Identifying those with pre-existing hearing loss — the audiological equivalent of the one-eyed or one-legged man. There is no law to stop an employer from not taking a disabled man on board, if he is diligent enough to discover the disability before employing the prospective employee.
2. Identifying those with pre-existing noise-induced hearing loss which might start to manifest as a disability during the new employment contract: a current employer is an obvious source to look to for compensation.
3. Forming a base-line recording for future reference. It is such common practice among the relevant employers to have pre-employment audiograms that any doubt as to the state of hearing before employment will be held against the employer.

An abnormal pre-employment audiogram can be detrimental to an employer in that its presence puts him on notice of the abnormal susceptibility of the employee. Paradoxically, an employee with poor hearing is less likely to suffer the effects of noise than a normal person, but this is a medical consideration and not a legal one. An employer must then decide on the course of action after weighing up the risks and benefits of employing the

https://doi.org/10.1017/S0022215100600191 Published online by Cambridge University Press

applicant and this usually means turning down the job applicant.

At present, the only way of determining whether a worker is unduly susceptible to the effects of industrial noise is to test his hearing at regular intervals and note whether it deteriorates at a significantly greater rate than normal. This may take six months. There are some people with 'tough' ears who seem able to withstand higher levels of exposure better than average, and others with relatively tender ears which are easily damaged.

Under the Employment Protection (Consolidation) Act 1978 as amended, there are situations where suspension for medical reasons is required by law. There is however no common law or statutory rule that an employer must keep on his staff even without pay, an employee who is incapable of performing his work (Barrett, 1981).

The proliferation of rules and regulations has the negative effect of putting more susceptible workers at risk of dimissal. If the deterioration of hearing loss is such that an employer cannot continue to employ him without breach of a statutory provision, an employer has a duty to transfer him to another position in the company and if that is not possible, to terminate the employment.

For all new workers, an employer can terminate employment simply by giving the requisite period of notice under the Act in the first two years of employment. The employer can decide to cut his liability any time during the two year period before unfair dismissal provisions and the consequential obstacles apply. Any impairment during this period is likely to be minimal, if disability is caused at all, it will be minor. The probationary workers and those having less than two years of service may not even qualify for compensation under any no-fault scheme as the threshold may be high enough to exclude them. There is no legal necessity for employers to transfer them to an alternative position in the company. There are however no known cases of new employees being dismissed in this manner. It is unlikely that the Unions will let such an occasion pass without the most strenuous objection. [1]

[1] The full weight and extent of Tory employment laws are not generally appreciated outside academic circles, except perhaps by the 3½ million unemployed. There is a *carte blanche* for Management; the constraints are political, not legal. The Unions are only beginning to realise this, as in the SOGAT and NGA versus Rupert Murdoch disputes.

https://doi.org/10.1017/S0022215100600191 Published online by Cambridge University Press