

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of FRANK COSTA and DEPARTMENT OF THE NAVY,  
PHILADELPHIA NAVAL SHIPYARD, Philadelphia, PA

*Docket No. 98-1480; Submitted on the Record;  
Issued December 22, 2000*

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DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether appellant is entitled to a schedule award for an employment-related hearing loss.

The Board has duly reviewed the case on appeal and finds that appellant has not met his burden of proof in establishing that he is entitled to a schedule award for an employment-related hearing loss.

Appellant, a bus driver, filed a claim on August 29, 1995 alleging that he had sustained a loss of hearing due to factors of his federal employment. The Office of Workers' Compensation Programs issued a decision on May 10, 1996 finding that appellant was not entitled to a schedule award for his loss of hearing. Appellant requested an oral hearing on July 28, 1997 and by decision dated October 10, 1997, the hearing representative affirmed the Office's decision.

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, including the fact that the individual is an "employee of the United States" within the meaning of the Act and that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.<sup>2</sup>

In support of his claim, appellant submitted a note dated September 11, 1995 from Dr. Zefferino A. Aversa, Jr., an otolaryngologist, who stated that appellant had no apparent otologic disease, but that he had some nerve deafness and recommended further evaluation.

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Kathryn Haggerty*, 45 ECAB 383, 388 (1994).

Appellant also submitted several audiograms and reports from Lisa Blackman, an audiologist. These reports and notes do not comply with the standard for evaluating hearing loss established by the Office and approved by the Board.

The Board requires that the employee undergo both audiometric and otologic examination; that the audiometric testing precede the otologic examination; that the audiometric testing be performed by an appropriately certified audiologist; that the otologic examination be performed by an otolaryngologist certified or eligible for certification by the American Academy of Otolaryngology; that the audiometric and otologic examination be performed by different individuals as a method of evaluating the reliability of the findings; that all audiological equipment authorized for testing meet the calibration protocol contained in the accreditation manual of the American Speech and Hearing Association; that the audiometric test results included both bone conduction and pure tone air conduction thresholds, speech reception thresholds and monaural discrimination scores; and that the otolaryngologist's report must include: date and hour of examination, date and hour of employee's last exposure to loud noise, a rationalized medical opinion regarding the relation of the hearing loss to the employment-related noise exposure and a statement of the reliability of the tests.<sup>3</sup>

As there was no evidence which complied with the above standard, the Office referred appellant for a second opinion evaluation with Dr. Arnold K. Brenman, a Board-certified otolaryngologist. In his report dated March 21, 1996, Dr. Brenman reviewed appellant's history of injury and provided his physical evaluation. He reviewed the audiograms and stated that appellant had thresholds of hearing within the normal range. Dr. Brenman concluded, "The audiometric pattern is not characteristic of hearing loss ascribable to noise trauma. It does not appear to be related, in my opinion, to the conditions of employment by [appellant] at the [employing establishment]."

The Board finds the weight of the medical opinion evidence to be represented by Dr. Brenman's detailed report, which establishes that appellant's loss of hearing is not causally related to his employment exposure. Appellant is not entitled to a schedule award and the Office properly denied his claim.<sup>4</sup>

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<sup>3</sup> *Raymond H. VanNett*, 44 ECAB 480, 482-83 (1993).

<sup>4</sup> The Board further notes that, even if appellant's hearing loss was related to his employment, the evidence of record establishes that such loss is not compensable for schedule award purposes.

The October 10, 1997 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
December 22, 2000

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member