

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DOSS W. CREEF and DEPARTMENT OF THE NAVY,  
NORFOLK NAVAL SHIPYARD, Portsmouth, VA

*Docket No. 97-1903; Submitted on the Record;  
Issued August 12, 1999*

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DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,  
BRADLEY T. KNOTT

The issue is whether appellant has greater than a 43 percent loss of hearing for which he received a schedule award.

On August 12, 1994 appellant, then a 63-year-old mailhandler, filed a claim alleging that he had sustained an additional hearing loss.<sup>1</sup> Appellant retired from the employing establishment on January 30, 1994.

In a statement dated August 24, 1994, Dr. George M. Stone, II, a Board-certified specialist in preventive medicine and an employing establishment physician, stated that he had reviewed the hearing loss claim submitted by appellant and he noted that work restrictions placed on appellant in 1983 had removed him from significant exposure to noise levels greater than 85 decibels. In an accompanying report, S.E. Lewis, an audiologist, noted that appellant had a long-standing history of a bilateral mild to severe high-frequency sensorineural hearing loss. He enclosed copies of audiograms taken on April 13, 1983 and August 1, 1984 which he stated showed essentially the same results. He also enclosed a copy of an employing administration administrative action dated February 16, 1983 removing appellant from work involving hazardous noise exposure and placing him in a mailroom position which complied with his medical restriction of no hazardous noise exposure. Mr. Lewis stated that the August 1994 audiogram revealed a 42.19 percent hearing loss and that appellant had no significant noise exposure since 1983.

In a report dated February 12, 1996, sent to the employing establishment, Gary Leffke, an audiologist, stated that he had fitted appellant with binaural hearing aids in 1989 which had performed well until August 1, 1994 when the right hearing aid was not functioning. Dr. Leffke related that appellant had recently told him that neither hearing aid was functioning and he was seriously affected by his hearing loss. He enclosed the results of audiometric testing and requested that appellant be given new hearing aids.

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<sup>1</sup> The Office of Workers' Compensation Programs had earlier granted appellant a schedule award for a 43 percent hearing loss.

In a statement received by the Office in September 1996, appellant stated that he had worked in a shipyard at the employing establishment from 1973 until February 1983 when he was placed in a mailroom position because of a hearing loss.

By letter dated November 25, 1996, the Office stated that appellant's case file reflected that he had been transferred to a new position on February 16, 1983 in which he was not exposed to loud noise. The Office advised appellant that if he felt he had been exposed to loud noise in the workplace after February 16, 1983, he should submit evidence to support such exposure.

By decision dated January 17, 1997, the Office denied appellant's claim for compensation benefits on the grounds that the evidence of record failed to establish that he had sustained any additional loss of hearing causally related to his 1983 employment injury.

By letter dated March 20, 1997, appellant requested reconsideration of the denial of his claim. In an undated statement, appellant noted that in his job as a mailhandler he was exposed to noises from the shipyard including train whistles, noise from steam lines, ship horns and whistles, truck and car horns, crane bells, air hammers, fire truck and ambulance sirens, and noise from other machinery.

By decision dated April 16, 1997, the Office denied modification of its January 17, 1997 decision.

The Board finds that appellant sustained no greater than a 43 percent hearing loss for which he received a schedule award.

An award of compensation may not be based on surmise, conjecture, speculation or appellant's belief of causal relationship.<sup>2</sup> Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that he sustained an injury in the performance of duty and that his disability was caused or aggravated by his employment.<sup>3</sup> As part of this burden, a claimant must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship.<sup>4</sup> The mere manifestation of a condition during a period of employment does not raise an inference of causal relationship between the condition and the employment.<sup>5</sup> Neither the fact that the condition became apparent during a period of employment nor appellant's belief that the employment caused or aggravated his condition is sufficient to establish causal relationship.<sup>6</sup>

The record shows that appellant was granted a schedule award for a 43 percent binaural hearing loss by the Office and that he filed a claim for an additional hearing loss in 1994. The record also shows that in February 1983 the employing establishment placed him in a position which removed him from hazardous noise exposure.

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<sup>2</sup> *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

<sup>3</sup> *Daniel R. Hickman*, 34 ECAB 1220, 1223 (1983).

<sup>4</sup> *Mary J. Briggs*, 37 ECAB 578, 581 (1986); *Joseph T. Gulla*, 36 ECAB 516, 519 (1985).

<sup>5</sup> *Edward E. Olson*, 35 ECAB 1099, 1103 (1984).

<sup>6</sup> *Id.*

In a report dated August 24, 1994, Mr. Lewis noted that appellant had a long-standing history of a bilateral mild to severe high-frequency sensorineural hearing loss. He enclosed copies of audiograms taken on April 13, 1983 and August 1, 1984 which he stated showed essentially the same results. Mr. Lewis stated that the August 1994 audiogram revealed a 42.19 percent hearing loss, slightly less than the 43 percent hearing loss for which appellant had received a schedule award and that appellant had no significant noise exposure since 1983. As he stated that appellant's hearing loss in 1994 was essentially the same as in 1983 when he was removed from hazardous noise exposure, this report does not support appellant's claim for an additional hearing loss.

In a report dated February 12, 1996, Mr. Leffke stated that he had fitted appellant with binaural hearing aids in 1989 which had performed well until August 1, 1994 when the right hearing aid was not functioning. He related that appellant had recently told him that neither hearing aid was functioning and he was seriously affected by his hearing loss. Mr. Leffke enclosed the results of audiometric testing and requested that appellant be given new hearing aids. However, he did not opine that appellant had sustained an additional hearing loss and therefore this report does not support appellant's claim for an additional schedule award. Furthermore, since Mr. Leffke noted that appellant's hearing aids were malfunctioning, it may be that appellant's hearing problems were due to problems with the hearing aid devices, rather than due to any additional hearing loss.

Although appellant alleged that he had been exposed to hazardous noise in his new position as a mailhandler, he provided no evidence of this allegation, as requested by the Office. Further there is no medical evidence of record establishing that his employment exposure resulted in greater than a 43 percent hearing loss, for which he received a schedule award.

The April 16 and January 17, 1997 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.  
August 12, 1999

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member