

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of LOYLESS B. TUCKER and DEPARTMENT OF THE NAVY,  
CHARLESTON NAVAL SHIPYARD, Charleston, S.C.

*Docket No. 98-310; Submitted on the Record;  
Issued July 9, 1999*

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DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,  
A. PETER KANJORSKI

The issue is whether appellant has a ratable hearing loss causally related to factors of his federal employment.<sup>1</sup>

The Board has given careful consideration to the issue involved, the contentions of appellant on appeal and the entire case record. The Board finds that the decision of the hearing representative of the Office of Workers' Compensation Programs dated and finalized October 6, 1997, is in accordance with the facts and the law in this case and hereby adopts the findings and conclusions of the hearing representative.<sup>2</sup>

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<sup>1</sup> In a prior appeal, the Board issued an Order Remanding Case to the Office for reconstruction of the case record, to be followed by an appropriate merit decision. Docket No. 95-797 (issued December 9, 1996). The facts and history surrounding the prior appeal are set forth in the Board's Order and are hereby incorporated by reference.

<sup>2</sup> The Board notes that although the Office hearing representative gave special weight to the July 7, 1994 report and audiogram submitted by Dr. J. David Osguthorpe, a Board-certified otolaryngologist, rather than to the September 15, 1994 report and audiogram submitted by J.C. Foley, an audiologist, there could never have been a conflict in the medical reports submitted since Dr. Foley, being an audiologist, is not a "physician" under the Federal Employees' Compensation Act and his report could not be afforded equal weight to that of Dr. Osguthorpe, a Board-certified otolaryngologist. 5 U.S.C. § 8123(a); *see also Glen C. Chasteen*, 42 ECAB 493 (1991).

The decision of the Office of Workers' Compensation Programs, dated and finalized October 6, 1997, is hereby affirmed.

Dated, Washington, D.C.  
July 9, 1999

Willie T.C. Thomas  
Alternate Member

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski  
Alternate Member.