

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JOHN C. BERGSTROM and DEPARTMENT OF COMMERCE,  
NATIONAL OCEANIC & ATMOSPHERIC ADMINISTRATION, Norfolk, VA

*Docket No. 02-202; Submitted on the Record;*  
*Issued June 14, 2002*

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DECISION and ORDER

Before ALEC J. KOROMILAS, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether appellant established he sustained a hearing loss in the performance of duty.

On May 31, 2001 appellant, then a 64-year-old chief engineer, claimed that he had sustained high frequency sensorineural hearing loss due to constant exposure to noise around the engines of the employing establishment ships on which he worked. In a June 14, 2001 letter, the Office of Workers' Compensation Programs requested additional information, particularly on the decibel and frequency of noise to which appellant was exposed at work. In an August 9, 2001 decision, the Office denied appellant's claim on the grounds that he had not established that he sustained a hearing loss that was job related because he had not submitted evidence requested by the June 14, 2001 letter.

The Board finds that the case is not in posture for decision.

The record submitted on appeal contains a July 16, 2001 letter from the employing establishment specifying the noise level on a ship on which appellant worked. The letter was received by the Office on August 3, 2001. In *William A. Couch*,<sup>1</sup> the Board remanded the case because the Office, in issuing a decision, failed to consider new evidence submitted four days prior to that decision. The Board stated:

“The Federal Employees' Compensation Act provides that the Office shall determine and make findings of fact in making an award for or against compensation after considering the claim presented by the employee and after completing such investigation as the Office considers necessary with respect to the claim. Since the Board's jurisdiction of a case is limited to reviewing that evidence that was before the Office at the time of its final decision, it is necessary

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<sup>1</sup> 41 ECAB 548 (1990).

that the Office review all the evidence submitted by a claimant and received by the Office prior to issuance of its final decision. As the Board's decisions are final as to the subject matter appealed, it is crucial that all evidence relevant to that subject matter which was properly submitted to the Office prior to the time of issuance of its final decision be addressed by the Office."

The evidence on noise exposure submitted by the employing establishment was responsive to the Office's June 14, 2001 letter and was received six days prior to the Office's decision. The case must therefore be remanded so that the Office can consider the evidence. After further development as it may find necessary, the Office should issue a *de novo* decision.

The decision of the Office of Workers' Compensation Programs dated August 9, 2001 is hereby set aside and the case remanded for further action as set forth in this decision.

Dated, Washington, DC  
June 14, 2002

Alec J. Koromilas  
Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member