

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of VINCENT J. TAMMARO and DEPARTMENT OF THE NAVY,  
NAVAL SEA SYSTEMS COMMAND, Arlington, Va.

*Docket No. 98-311; Submitted on the Record;  
Issued June 17, 1999*

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DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,  
DAVID S. GERSON

The issue is whether appellant is entitled to a schedule award for permanent impairment of his lungs.

The Board finds that appellant is not entitled to a schedule award for permanent impairment of his lungs.

In the present case, the Office of Workers' Compensation Programs accepted that appellant sustained asbestos-related lung disease due to exposure to asbestos while he worked for the employing establishment at the Brooklyn Navy Yard from November 12, 1953 to June 18, 1954 and November 12, 1956 to November 11, 1957. The Office paid appellant for periods of disability and medical treatment; appellant alleged that he was entitled to a schedule award for permanent impairment of his lungs. By decision dated October 27, 1997, the Office denied appellant's claim on the grounds that he was not entitled to such an award because his last occupational exposure to asbestos was prior to September 7, 1974 and therefore he was statutorily precluded from receiving a schedule award.

The Federal Employees' Compensation Act provides for payment of schedule awards for a permanent loss of use of certain specified anatomical members or functions of the body.<sup>1</sup> For an injury which occurred prior to September 7, 1974, a schedule award was not payable for the loss of use of a part of the body not specifically enumerated in the Act.<sup>2</sup> The lung was not one of the members of the body so specified.

The Act was amended effective September 7, 1974, authorizing a schedule award for loss or loss of use of "any other important external or internal organ of the body as determined by the

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<sup>1</sup> 5 U.S.C. § 8107.

<sup>2</sup> *George L. Gonzales*, 33 ECAB 1001, 1007 (1982).

Secretary.<sup>3</sup> Pursuant to regulations the Office has provided for a schedule award for a lung impairment.<sup>4</sup> However, the 1974 amendments specifically state that this provision is applicable only to an injury or death occurring on or after the date of enactment, September 7, 1974.<sup>5</sup> This amendment is therefore inapplicable to appellant's condition because his exposure to the asbestos causing his pulmonary condition ceased in 1957, prior to the effective date of the 1974 amendment.<sup>6</sup> On appeal, appellant argued that he was entitled to a schedule award for permanent impairment of his lungs, because he did not become aware of his asbestosis until 1995 and therefore his date of injury should be fixed in 1995. However, the fixing of the date of injury for an occupational disease in this context is no later than the date of the last exposure to the injury-causing agent.<sup>7</sup>

The decision of the Office of Workers' Compensation Programs dated October 27, 1997 is affirmed.

Dated, Washington, D.C.  
June 17, 1999

Michael J. Walsh  
Chairman

George E. Rivers  
Member

David S. Gerson  
Member

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<sup>3</sup> Act of September 7, 1974, 88 Stat. 1145.

<sup>4</sup> 20 C.F.R. § 10.304.

<sup>5</sup> Act of September 7, 1974, 88 Stat. 1151.

<sup>6</sup> See *Anderson Reynolds*, 35 ECAB 957, 958 (1984); *Pasquale B. Ruffo*, 34 ECAB 819, 822 (1983).

<sup>7</sup> See *Joseph L. Burrus*, 34 ECAB 1660, 1661-62 (1983).