

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HAROLD L. WELKER and DEPARTMENT OF THE ARMY,
NEW CUMBERLAND ARMY DEPOT, New Cumberland, PA

*Docket No. 98-2120; Submitted on the Record;
Issued January 12, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant may receive a schedule award for permanent impairment to his lungs resulting from his employment injury on April 4, 1955.

In a decision dated May 19, 1998, the Office of Workers' Compensation Programs denied appellant's claim for a schedule award on the grounds that, prior to 1974, the Federal Employees' Compensation Act provided no coverage for impairments to internal organs.

The Board finds that no schedule award is payable for permanent impairment to appellant's lungs resulting from his employment injury on April 4, 1955.

The Act provides for the payment of schedule awards for the permanent loss of use of specified anatomical members or functions of the body.¹ Effective September 7, 1974 the Act was amended to authorize the payment of a schedule award for the loss or loss of use of "any important external or internal organ of the body as determined by the Secretary."² Pursuant to regulations the Office has provided for the payment of a schedule award for permanent impairment of the lung.³ The 1974 amendments, however, specifically state that this provision is applicable only to an injury or death occurring on or after the date of enactment, September 7, 1974.⁴ Because appellant's employment injury occurred on April 4, 1955, prior to

¹ 5 U.S.C. § 8107.

² Act of September 7, 1974, 88 Stat. 1145.

³ 20 C.F.R. § 10.304(a).

⁴ Act of September 7, 1974, 88 Stat. 1151.

the effective date of the 1974 amendment, the Act provides no coverage for permanent impairment to his lungs resulting from the accepted employment injury.⁵

The May 19, 1998 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
January 12, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

⁵ *Beth P. Chaput*, 37 ECAB 158 (1985); *Hiram L. Hendricks*, 33 ECAB 1487 (1982).