

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of THOMAS P. MOONEY and DEPARTMENT OF THE NAVY,
HUNTERS POINT NAVAL SHIPYARD, San Francisco, CA

*Docket No. 99-702; Submitted on the Record;
Issued June 16, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

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

This case has previously been on appeal before the Board. By decision dated September 17, 1998, the Board found that the Office of Workers' Compensation Programs did not meet its burden of proof in rescinding its acceptance of appellant's claim for bilateral asbestosis.¹

In a decision dated November 9, 1998, the Office authorized medical care for appellant's accepted condition of asbestosis but denied his claim for a schedule award on the grounds that he was statutorily precluded from receiving a schedule award because his last occupational exposure to asbestos occurred prior to September 7, 1974. The Office further noted that the evidence did not establish that appellant stopped work in 1974 due to an employment-related disability.

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

The Federal Employees' Compensation Act² provides for payment of schedule awards for a permanent loss of use of certain specified anatomical members or functions of the body.³ For an injury which occurred prior to September 7, 1974, a schedule award is not payable for the

¹ Docket No. 97-342 (issued September 17, 1998).

² 5 U.S.C. §§ 8101-8193.

³ 5 U.S.C. § 8107.

loss of use of a part of the body not specifically enumerated in the Act.⁴ The lung is 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 Secretary.”⁵ The Board has held in numerous cases that where an injury is sustained over a period of time, as in the present case, the date of injury is the date of last exposure to the employment factors causing the injury. In schedule awards the term “injury” refers to the condition and thus the permanent impairment sustained.⁶ Pursuant to regulations, the Office has provided for a schedule award for a lung impairment.⁷ 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, 1974.⁸ This amendment is therefore inapplicable to appellant’s condition because his employment-related exposure to asbestos ceased on June 28, 1974, the date he retired from employment.⁹ Appellant, therefore, is not entitled to a schedule award for loss of use of his lungs.¹⁰

⁴ *Hiram L. Hendricks*, 33 ECAB 1487 (1982).

⁵ Act of September 7, 1974, 88 Stat. 1145.

⁶ *Barbara A. Dunnavant*, 48 ECAB 517 (1997).

⁷ 20 C.F.R. § 10.304.

⁸ Act of September 7, 1974, 88 Stat. 1151.

⁹ *Beth P. Chaput*, 37 ECAB 158 (1985).

¹⁰ Appellant may be entitled to compensation for lost wages if he sustained any periods of disability causally related to his accepted employment injury of bilateral asbestosis. In order to claim compensation benefits for wage loss, appellant should file a claim for compensation on account of disability (Form CA-8).

The decision of the Office of Workers' Compensation Programs dated November 9, 1998 is hereby affirmed.

Dated, Washington, D.C.
June 16, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member