

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LILLIAN R. TOKMO and DEPARTMENT OF DEFENSE,
DEFENSE LOGISTICS AGENCY, Stockton, CA

*Docket No. 99-1043; Submitted on the Record;
Issued June 1, 2000*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant has a permanent impairment of the lungs which would entitle her to a schedule award.

On May 2, 1996 appellant, then a 42-year-old packer, filed a claim for an asthma attack which she related to inhalation of dust that come out of the overhead blowers in the warehouse in which she worked. The Office of Workers' Compensation Programs accepted appellant's claim for a temporary aggravation of asthma. On September 8, 1997 appellant filed a claim for a schedule award. In a March 18, 1998 decision, the Office rejected appellant's claim for a schedule award on the grounds that she did not have a permanent impairment of the lungs due to the May 2, 1996 employment injury. In an undated letter, received by the Office on April 22, 1998, appellant requested reconsideration. In an April 29, 1998 decision, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted in support of the request was immaterial and irrelevant and therefore insufficient to warrant review of the prior decision.

The Board finds that appellant is not entitled to a schedule award.

The schedule award provision of the Federal Employees' Compensation Act¹ and its implementing regulation² set forth the number of weeks of compensation to be paid for permanent loss, or loss of use, of members or functions of the body listed in the schedule. However, before a schedule award can be paid, appellant must establish that she has a permanent impairment of a listed member, organ or function of the body. In this case, the only medical report to address the issue of permanent impairment was the December 2, 1997 report of Dr. Leslie A. Oshita, Board-certified in occupational medicine and internal medicine, who

¹ 5 U.S.C. § 8107(c).

² 20 C.F.R. § 10.304.

reported that appellant had not required treatment for the May 2, 1996 employment injury since June 12, 1996. She indicated that, as of June 12, 1996, she had concluded appellant's asthma had been aggravated by inhaling dust from overhead blowers but the condition had improved. She stated that appellant had not sustained a permanent impairment as a result of the May 2, 1996 employment injury. There is no other medical evidence of record that states that appellant has a permanent impairment of the lungs due to the May 2, 1996 employment injury. As appellant has not established that she had a permanent impairment of the lungs, she is not entitled to a schedule award.

The decisions of the Office of Workers' Compensation Programs, dated April 28 and March 18, 1998, are hereby affirmed.

Dated, Washington, D.C.
June 1, 2000

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member