

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LEROY M. TERSKA and DEPARTMENT OF THE AIR FORCE,
SACRAMENTO AIR LOGISTICS CENTER, McCLELLAN AIR FORCE BASE, CA

*Docket No. 01-980; Submitted on the Record;
Issued November 29, 2001*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant is entitled to a schedule award for loss of senses of smell and taste.

The Office of Workers' Compensation Programs accepted appellant's claim for anosmia secondary to exposure to methyl ethyl ketone. Appellant did not miss work due to the accepted condition. On April 25, 2000 appellant filed a claim for a schedule award. Appellant also asserted his sense of taste was affected.

By decision dated May 17, 2000, the Office denied the claim stating that neither the statute nor the implementing regulations provide for payment of a schedule award for loss of smell and taste.

The Board finds that appellant is not entitled to a schedule award for loss of sense of smell or taste.

The schedule award provision of the Federal Employees' Compensation Act¹ provides for compensation to employees sustaining permanent impairment from loss or loss of use of specified members of the body. The Act's compensation schedule specifies the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body. The Act does not, however, specify the manner by which the percentage loss of a member, function or organ shall be determined. The method used in making such a determination is a matter that rests in the sound discretion of the Office.² For consistent results and to ensure equal justice under the law to all claimants, good administrative practice

¹ 5 U.S.C. § 8107 *et seq.*

² *Arthur E. Anderson*, 43 ECAB 691, 697 (1992); *Daniel C. Goings*, 37 ECAB 781, 783 (1986).

necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants.³

No schedule award is payable for a member, function or organ of the body not specified in the Act or in the implementing regulations.⁴ The Act identifies members such as the arm, leg, hand, foot, thumb and finger, functions as loss of hearing and loss of vision and organs to include the eye. Section 8107(c)(22) of the Act provides for the payment of compensation for permanent loss of “any other important external or internal organ of the body as determined by the Secretary of Labor.”⁵ The Secretary of Labor has made such a determination, and pursuant to the authority granted in section 8107(c)(22), added the breast, kidney, larynx, lung, penis, testicle, ovary, uterus and tongue to the schedule.⁶ As the Secretary has not determined, pursuant to the discretionary authority granted in section 8107(c)(22) of the Act, that the nose or sense of smell or taste constitutes “any other important external or internal organ of the body,” section 8107(c)(22) provides no statutory basis for the payment of a schedule award for loss of the sense of smell or taste.⁷

The May 17, 2000 decision of the Office of Workers’ Compensation Programs is hereby affirmed.

Dated, Washington, DC
November 29, 2001

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

³ *Arthur E. Anderson*, *supra* note 2 at 697; *Henry L. King*, 25 ECAB 39, 44 (1973).

⁴ *George E. Williams*, 44 ECAB 530, 533 (1993); *William Edwin Muir*, 27 ECAB 579, 581 (1976).

⁵ 5 U.S.C. § 8107(c)(22).

⁶ 20 C.F.R. § 10.404; *Henry B. Floyd, III*, 52 ECAB ____ (Docket No. 99-813, issued January 16, 2001).

⁷ *Billie Sue Barnes*, 47 ECAB 478, 480 (1996).