

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SANDRA J. HENLEY, claiming as widow of TRACY V. HENLEY and
DEPARTMENT OF THE ARMY, Riyadh, Saudi Arabia

*Docket No. 00-1619; Oral Argument Held February 19, 2002;
Issued April 4, 2002*

Appearances: *Virgil W. Henley and Steven L. Henley*, for appellant; *Jim Gordon, Jr.*,
for the Director, Office of Workers' Compensation Programs.

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly denied the schedule award claimed by appellant on behalf of her husband, the deceased employee.

The Board finds that the Office properly denied the schedule award claimed by appellant on behalf of her husband, the deceased employee.

Section 8109 of the Federal Employees' Compensation Act states: "(a) If an individual -- (1) has sustained disability compensable under section 8107(a) [providing for schedule awards] of this title; (2) has filed a valid claim in his lifetime; and (3) dies from a cause other than the injury before the end of the period specified by the schedule; the compensation specified by the schedule that is unpaid at his death, whether or not accrued or due at his death, shall be paid ..." to specified beneficiaries.¹

On November 13, 1995 the employee, then a 50-year-old supervisory contract specialist, sustained multiple injuries when a terrorist bomb exploded in his office. On December 29, 1995 an Office official advised the employee via telephone that he might be entitled to a schedule award for his left eye if there was a permanent impairment of the eye. In a letter dated December 31, 1995, which memorialized this conversation, the Office further advised the employee that a schedule award for his left eye, or any scheduled member which had permanent impairment, would only be payable after he had reached maximum medical improvement. In several letters to public officials, dated in July 1998, the employee expressed his belief that the law should be changed so that workers would be able to concurrently receive disability for wage-loss and schedule award compensation from the Office.

¹ 5 U.S.C. § 8109.

On November 13, 1998 the employee passed away due to conditions related to his November 13, 1995 employment injury. On March 26, 1999 appellant, the employee's widow, filed a claim for a schedule award due to impairment of the employee's left eye. By decision dated April 4, 1999, the Office denied appellant's claim on the grounds that a schedule award claim had not been filed within the employee's lifetime. By decision dated January 14, 2000, an Office hearing representative affirmed the Office's denial of appellant's schedule award claim.²

As previously noted, a schedule award claim must be filed by an injured employee or someone on his behalf during the employee's lifetime to establish a valid claim for compensation.³ A plain reading of 5 U.S.C. 8109(a) makes this clear with respect to a claim for a schedule award. Neither the Board nor the Office has the authority to enlarge the terms of the Act as specified in the statute.⁴

In the instant case, neither the employee, nor someone on his behalf, filed a schedule award claim before he passed away on November 13, 1998.⁵ A valid claim must be in writing and contain words of claim.⁶ The employee's letters to public officials expressing his concerns about workers' compensation law, or the fact that the Office sent the employee letters explaining the possible availability of schedule award compensation, do not satisfy this requirement.⁷ The evidence of record does not contain words of claim sufficient to satisfy the requirements of the Act. As no valid schedule award claim was filed within the employee's lifetime, the Office properly denied appellant's claim for compensation.⁸

² In this decision, the Office hearing representative also reversed a prior Office decision, which had denied appellant's claim that the employee passed away due to an employment-related condition.

³ See *Mary H. Martin, (Wallace C. Martin)*, 46 ECAB 295, 296 (1994); *Mary Marie Young, (claiming as widow of David E. Young)*, 30 ECAB 94, 96 (1978).

⁴ See *Mary C. Anderson-Paine (Robert O. Anderson)*, 47 ECAB 148 (1995).

⁵ Appellant filed a claim on the employee's behalf on March 26, 1999.

⁶ See *Young, supra* note 3 at 96.

⁷ See *Alta J. James, (Allen D. James)*, Docket No. 97-2426 (issued September 6, 2000).

⁸ The record does not contain medical evidence showing that appellant's left eye condition had reached maximum medical improvement. Office procedure provides that when an employee reaches maximum medical improvement, an Office claims examiner should advise him of possible schedule award entitlement. See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.3 (March 1995).

The January 14, 2000 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
April 4, 2002

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member