

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FRED W. JENSEN and DEPARTMENT OF THE AIR FORCE,
ELLSWORTH AIR FORCE BASE, SD

*Docket No. 01-1239; Submitted on the Record;
Issued January 3, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
PRISCILLA ANNE SCHWAB

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

The Office of Workers' Compensation Programs accepted that on April 6, 1998 appellant, then a 50-year-old heating boiler mechanic, sustained a concussion when he banged his head against a pipe.

On September 19, 2000 appellant filed a claim for a schedule award. Appellant submitted medical evidence indicating that he had cognitive impairment as a result of his April 6, 1998 employment injury.

By decision dated November 16, 2000, the Office found that appellant was not entitled to a schedule award for the reason that the Federal Employees' Compensation Act did not allow for a schedule award for impairment of the brain.

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

The schedule award provision of the Act, section 8107¹ and its implementing regulation,² set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. In addition to the bodily members and functions listed in section 8107(c) of the Act, Congress delegated authority to the Secretary of Labor to add other important external or internal organs of the body to the compensation schedule.³ A schedule award is not payable for the loss or loss of use, of

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404 (1999).

³ See 5 U.S.C. § 8107(c)(22).

any part or function of the body not specifically enumerated in the Act or the Office's regulation that added certain organs to the compensation schedule.⁴ Not only is the brain not specifically enumerated in the Act or the regulations, but under section 8101(19) of the Act, Congress provided that "for purposes of this subchapter," the term organ "excludes the brain, heart and back." A schedule award is not payable to any claimant for any impairment of the brain.

The decision of the Office of Workers' Compensation Programs dated November 16, 2000 is affirmed.

Dated, Washington, DC
January 3, 2002

Michael J. Walsh
Chairman

David S. Gerson
Member

Priscilla Anne Schwab
Alternate Member

⁴ *Thomas E. Stubbs*, 40 ECAB 647 (1989).