

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EMILENE VALENCOURT, claiming as widow of JOSEPH M.
VALENCOURT and DEPARTMENT OF THE AIR FORCE, MILITARY
AIRLIFT COMMAND, GRIFFISS AIR FORCE BASE, Rome, NY

*Docket No. 02-3; Submitted on the Record;
Issued February 24, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant may file a posthumous schedule award claim in connection with the employee's accepted employment-related condition.

Appellant filed a claim for compensation on October 21, 1994 alleging that the employee's death was due to his employment-related asbestos exposure. The Office of Workers' Compensation Programs accepted the claim on October 18, 1997 finding that the medical evidence established that the employee's lung condition and subsequent death were due to his employment-related asbestos exposure. Appellant, through her attorney, requested a schedule award for permanent impairment to the employee's lungs on August 2, 1999. By decision dated January 14, 2000, the Office denied this request. Appellant requested an oral hearing and by decision dated June 13, 2001 the hearing representative denied the request for a schedule award.

The Board finds that appellant is not entitled to a posthumous schedule award as no valid claim was filed during the employee's lifetime.

Section 8109 of the Federal Employees' Compensation Act states: "(a) If an individual -- (1) has sustained disability compensable under section 8107(a) 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."

The Board has held a schedule award claim must be filed by an injured employee or someone on his or her behalf during the employee's lifetime to establish a valid claim for compensation.¹ A plain reading of 5 U.S.C. § 8109(a) makes this clear with respect to a claim for a schedule award.

In the instant case, neither the employee, nor someone on his behalf, filed a schedule award claim before his death on November 10, 1993. A valid claim must be in writing and filed in the employee's lifetime.² If the injured employee or someone acting on his or her behalf does not file a claim before the employee's death, the right to claim compensation under the schedule award does not survive.³ As no valid schedule award claim was filed within the employee's lifetime, the Office properly denied appellant's claim for compensation.

The June 13, 2001 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
February 24, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

¹ See *Mary H. Martin (Wallace C. Martin)*, 46 ECAB 295, 296 (1994); *Mary Marie Young (David E. Young)*, 30 ECAB 94, 96 (1978).

² See *Mary Marie Young (David E. Young)*, *supra* note 1 at 96.

³ *Carol T. Collins (Harold Turner)*, 54 ECAB ____ (Docket No. 01-1560, issued February 24, 2003).