

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GARY M. GOUL and U.S. POSTAL SERVICE,
MOUNT CLEMENS POST OFFICE, Mount Clemens, MI

*Docket No. 03-1235; Submitted on the Record;
Issued July 14, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant is entitled to a schedule award for the loss of the sense of smell and loss of memory.

On May 30, 1998 appellant, then a 53-year-old letter carrier, filed a claim for a traumatic injury occurring on that date when he fell backwards and struck his head on a sidewalk to evade an attacking dog. The Office of Workers' Compensation Programs accepted appellant's claim for a closed head injury, lacerated scalp, aggravated bilateral sensorineural hearing loss and an aggravation of tinnitus. Appellant stopped work on June 1, 1998 and returned to part-time restricted employment on September 3, 1998. Appellant resumed his full-time regular employment duties on December 2, 1998.¹

On May 9, 2002 appellant filed a claim for a schedule award. In a letter dated June 26, 2002, appellant requested a schedule award for hearing loss, tinnitus, a total loss of smell and mild memory loss.

By decision dated August 16, 2002, the Office granted appellant a schedule award for a four percent binaural sensorineural hearing loss. The period of the award ran for eight weeks from February 16 to April 12, 2001. The Office indicated in its decision that appellant was not entitled to a schedule award for mild memory loss or a loss of smell under the provision of the Federal Employees' Compensation Act.²

Appellant requested a review of the written record in a letter dated September 1, 2002. In the letter appellant stated that he was not challenging the hearing loss award but rather the denial of a schedule award for a loss of smell and memory loss. By decision dated January 28, 2003,

¹ By decision dated October 3, 2000, the Office denied appellant's claim for a recurrence of disability on June 24, 2000 causally related to his May 30, 1998 employment injury.

² 5 U.S.C. § 8107 *et seq.*

the hearing representative affirmed the Office's August 16, 2002 decision after finding that appellant was not entitled to a schedule award for the loss of the sense of smell or loss of memory.

The Board finds that appellant is not entitled to a schedule award for the loss of the sense of smell and loss of memory.

The schedule award provisions of the Act³ and its implementing federal regulation⁴ provide for payment of compensation for the permanent loss or loss of use of specified members, functions and organs of the body. No schedule award is payable for a member, function or organ of the body that is not specified in the Act or the implementing regulations.⁵ The Act identifies members 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 payment of compensation for permanent loss of "any other important external or internal organ of the body as determined by the Secretary [of Labor.]"⁶ 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, tongue, ovary, uterus/cervix and vulva/vagina to the schedule.⁷

The Secretary has not determined, pursuant to the discretionary authority granted under section 8107(c)(22) of the Act, that the sense of smell constitutes "any other important external or internal organ of the body;" therefore, section 8107(c)(22) provides no statutory basis for the payment of a schedule award for loss of the sense of smell.⁸ Additionally, the brain has not been identified as a scheduled member and appellant is not entitled to a schedule award for loss of memory due to his head injury. There is no provision under the Act for adding organs to the compensation schedule on a case-by-case basis.⁹ The terms of the Act are specific as to the method and amount of payment of compensation; neither the Office nor the Board has the authority to enlarge the terms of the Act or to award benefits under any terms other than those

³ 5 U.S.C. § 8107(a).

⁴ 20 C.F.R. § 10.404.

⁵ See *Donald A. Larson*, 41 ECAB 947 (1990).

⁶ 5 U.S.C. § 8107(c)(22).

⁷ 20 C.F.R. § 10.404(a). The Board notes that the Office has awarded schedule awards for conditions which are not covered under the compensation schedule if the condition is shown to have contributed to impairment of a scheduled member.

⁸ *Billie Sue Barnes*, 47 ECAB 478 (1996).

⁹ *John F. Critz*, 44 ECAB 788 (1993).

specified in the statute.¹⁰ Appellant, therefore, has not established that he is entitled to a schedule award for loss of the sense of smell or loss of memory.¹¹

The decision of the Office of Workers' Compensation Programs dated January 28, 2003 is affirmed.

Dated, Washington, DC
July 14, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

¹⁰ See *Virginia Chappell (William F. Chappell)*, 45 ECAB 275, 277 (1993).

¹¹ The Board notes that appellant has not appealed the finding that he is entitled to an award for a four percent binaural hearing loss and thus the issue is not before the Board.