

occupational disease claim alleging that he developed bilateral carpal tunnel syndrome due to his federal employment. Initially, the Office denied the employee's claim.² Effective April 29, 1994 he retired. According to the record, the employee died on March 25, 1999 due to a nonemployment-related condition. On July 5, 2002 the claim was accepted for bilateral carpal tunnel syndrome. On February 26, 2003 appellant filed a claim for a posthumous schedule award.

By decision dated November 13, 2006, the Office denied appellant's claim for a posthumous schedule award on the grounds that the employee did not file a claim for a schedule award during his lifetime. On November 17, 2006 appellant requested a hearing which was held on March 20, 2007.

By decision dated May 24, 2007, an Office hearing representative affirmed the November 13, 2006 decision.

LEGAL PRECEDENT

The Federal Employees' Compensation Act provides for payment to beneficiaries of schedule awards that remain unpaid at the death of the employee. According to 5 U.S.C. § 8109:

“(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 [to specified beneficiaries].”

The Board has held that the intent of this statutory language is clear. For a beneficiary to be entitled to payment of a schedule award upon the death of an injured employee, the claim for a schedule award must have been filed within the employee's lifetime.³ To receive consideration for a schedule award, appellant must establish that the employee was entitled to future benefits of compensation under section 8107.⁴ There is no entitlement to a posthumous schedule award if the schedule award claim is not filed during the lifetime of the injured employee.⁵

² This case was combined with appellant's claim for bilateral carpal tunnel syndrome filed on August 23, 1995.

³ *C.D (A.D.)*, 59 ECAB ____ (Docket No. 07-663, issued January 9, 2008); *Carol T. Collins (Harold Turner)*, 54 ECAB 417 (2003).

⁴ The Board has noted that section 8109 directs payment of unpaid portions of schedule awards to specific dependents of the deceased employee. See *Kathleen Carlton (Jay Harold Carlton)*, 34 ECAB 606 (1983).

⁵ *Carol T. Collins (Harold Turner)*, *supra* note 3.

ANALYSIS

The employee filed an occupational disease claim (Form CA-2) for bilateral carpal tunnel syndrome on April 10, 1986, which was accepted by the Office. Prior to his death on March 25, 1999, he did not file a schedule award claim. On February 26, 2003 appellant filed a claim for a posthumous schedule award. The statutory language of 5 U.S.C. § 8109 is clear in providing that the employee must have filed a claim for a schedule award during his lifetime. Since this claim for a schedule award was filed posthumously, there is no entitlement to a schedule award in this case.⁶

CONCLUSION

Appellant is not entitled to a posthumous schedule award because the employee did not file a schedule award claim during his lifetime.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated May 24, 2007 and November 13, 2006 are affirmed.

Issued: April 23, 2008
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

⁶ *Id.*