

**United States Department of Labor
Employees' Compensation Appeals Board**

C.D., claiming as widow of A.D., Appellant)

and)

U.S. POSTAL SERVICE, PROCESSING &)
DISTRIBUTION CENTER, Bellmawr, NJ,)
Employer)

Docket No. 07-663

Issued: January 9, 2008

Appearances:

*Thomas Uliase, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On January 11, 2007 appellant, through her representative, filed a timely appeal from the Office of Workers' Compensation Programs merit decision dated July 19, 2006 with respect to a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether the Office properly issued a posthumous schedule award for a 19 percent right upper extremity permanent impairment.

FACTUAL HISTORY

On October 14, 1999 the employee filed a traumatic injury claim (Form CA-1), for a right shoulder injury while picking up a sack of mail. The claim was accepted for right shoulder impingement. The employee underwent physical therapy and right shoulder surgery on February 7, 2000. He returned to a light-duty position on May 14, 2000. According to the

record, the employee died on August 5, 2000 due to a nonemployment-related condition. By letter dated August 21, 2000, appellant's representative stated that he would be "presenting a posthumous award claim regarding the upper right extremity."

In a report dated October 20, 2000, Dr. David Weiss, an osteopath, provided an opinion regarding permanent impairment to the employee's arm pursuant to the fourth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*. He discussed physical therapy notes in May 1999 with regard to loss of range of motion and motor strength testing. Dr. Weiss opined that appellant had a 2 percent impairment for loss of range of motion, impairments totaling 20 percent for motor strength deficit and a 24 percent impairment for right shoulder arthroplasty. He combined the impairments for a 40 percent right upper extremity impairment.

In a brief undated report, received by the Office on January 18, 2001, Dr. Larry Rosenberg stated that he agreed with Dr. Weiss that the employee had a 40 percent right arm impairment. In a report dated April 2, 2001, an Office medical adviser reviewed the evidence and provided an opinion on permanent impairment under the fifth edition of the A.M.A., *Guides*. With respect to the February 7, 2000 surgery, he opined that the employee had a 10 percent impairment for acromioplasty and 10 percent for clavicle resection under Table 16-27. The medical adviser combined the impairments for a 19 percent right upper extremity impairment.

Appellant filed a claim for compensation (Form CA-7), dated May 29, 2001. She checked a box that her claim was for a schedule award.

By decision dated June 25, 2002, the Office issued a posthumous schedule award for a 19 percent permanent impairment to the right arm. The period of the award was August 5, 2000 to September 23, 2001.

Appellant requested a hearing before an Office hearing representative, which was eventually held on May 26, 2006. By decision dated July 19, 2006, the hearing representative affirmed the June 25, 2002 decision.

LEGAL PRECEDENT

The Federal Employees' Compensation Act provides for payment to beneficiaries of schedule awards that remained 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) [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].”

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 death of an injured employee, the claim for a schedule award must have been filed within the employee’s lifetime.¹ There is no entitlement to a posthumous schedule award if the schedule award claim is not filed during the lifetime of the injured employee.²

ANALYSIS

Appellant received a posthumous schedule award for a 19 percent right upper extremity impairment by decision dated June 25, 2002. There is no indication that the employee filed a claim for a schedule award prior to his death on August 5, 2000. Appellant’s representative indicated in an August 21, 2000 letter that a claim would be filed for a posthumous schedule award. On May 29, 2001 appellant filed a CA-7 claiming a schedule award.

As noted above, the statutory language of 5 U.S.C. § 8109 is clear. An employee must have filed a claim for a schedule award during his or her lifetime before there can be payment to a beneficiary of an unpaid schedule award. Since the employee did not file a claim for a schedule award during his lifetime, there was no entitlement to a posthumous schedule award in this case.

CONCLUSION

Appellant was not entitled to a posthumous schedule award for a 19 percent permanent impairment to the right arm because the employee did not file a claim for a schedule award during his lifetime.

¹ *Carol T. Collins (Harold Turner)*, 54 ECAB 417, 419 (2003).

² *Id.*

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 19, 2006 is reversed.

Issued: January 9, 2008
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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