



headache syndrome and postconcussion tinnitus. On May 25, 2006 appellant requested a schedule award.

The record contains a June 9, 2006 attending physician's report from Dr. Talbot Smith, a treating physician, who stated that appellant's December 12, 2005 work-related injury resulted in cranial nerve injuries, which lead to permanent loss of smell. In an August 14, 2006 report, Dr. Smith opined that appellant's loss of his sense of smell should be considered permanent as of June 9, 2006.

By decision dated August 24, 2006, the Office denied appellant's request for a schedule award, on the grounds that the evidence was insufficient to establish that he had sustained a permanent impairment to a scheduled member due to his accepted condition.

On September 15, 2006 appellant, through his representative, requested an oral hearing. At the March 7, 2007 hearing, his representative stated that appellant had lost not only his sense of smell as a result of the accepted injury, but also his sense of taste. He contended that, since the tongue is a covered member under the Federal Employees' Compensation Act, appellant was entitled to a schedule award for his loss of the sense of taste.

Appellant submitted an April 9, 2007 report from Dr. Smith, who stated that appellant had a 70 percent loss of the sense of taste due to his December 12, 2005 head injury. Dr. Smith based his conclusion on the "commonly accepted medical guidelines" that the sense of taste is provided by the sense of smell, which appellant lost as a result of his head injury.

By decision dated April 24, 2007, the hearing representative affirmed the denial of a schedule award, finding that there was no provision under the Act or its implementing regulations for a schedule award for loss of the senses of taste or smell.

### **LEGAL PRECEDENT**

The schedule award provision of the Act<sup>1</sup> provides for compensation to employees sustaining permanent impairment from loss or loss of use, of specified members, functions and organs of the body. The Act does not, however, specify the manner by which the percentage loss shall be determined. The method used in making such a determination is a matter that rests in the sound discretion of the Office.<sup>2</sup> For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants.<sup>3</sup>

No schedule award is payable for a member, function or organ of the body not specified in the Act or in the implementing regulations.<sup>4</sup> The Act identifies members such as the arm, leg,

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<sup>1</sup> 5 U.S.C. § 8107 *et seq.*

<sup>2</sup> *Arthur E. Anderson*, 43 ECAB 691, 697 (1992); *Daniel C. Goings*, 37 ECAB 781, 783 (1986).

<sup>3</sup> *Arthur E. Anderson*, *supra* note 2 at 697; *Henry L. King*, 25 ECAB 39, 44 (1973).

<sup>4</sup> *George E. Williams*, 44 ECAB 530, 533 (1993); *William Edwin Muir*, 27 ECAB 579, 581 (1976).

hand, foot, thumb and finger; functions such as loss of hearing and loss of vision; and organs to include the eye. Section 8107(c)(22) of the Act provides for the payment of compensation for permanent loss of any other important external or internal organ of the body as determined by the Secretary of Labor<sup>5</sup> who has made such a determination and pursuant to the authority granted in section 8107(c)(22), added the breast, kidney, larynx, lung, penis, testicle, ovary, uterus and tongue to the schedule.<sup>6</sup>

### **ANALYSIS**

Appellant's claim was accepted for postconcussion headache syndrome and postconcussion tinnitus. Dr. Smith indicated that his cranial nerve injuries led to permanent loss of smell and that his loss of smell, in turn, resulted in a loss of the sense of taste. However, he made no mention of any facial disfigurement or loss of the use of the tongue. The Board finds that appellant is not entitled to a schedule award for loss of the sense of smell or taste.

As noted, no schedule award is payable for a member, function or organ of the body not specified in the Act or in the implementing regulations.<sup>7</sup> If there is permanent disability involving the loss, or loss of use, of a member or function of the body so specified, or involving disfigurement, the employee is entitled to basic compensation for the disability.<sup>8</sup> The Act does not identify the nose as a member warranting compensation. Further, there is no medical evidence indicating that appellant had a loss of the use of his tongue. The Secretary has not determined, pursuant to the discretionary authority granted in section 8107(c)(22) of the Act, that the nose or sense of smell or taste constitutes any other important external or internal organ of the body. Section 8107(c)(22) provides no statutory basis for the payment of a schedule award for loss of the sense of smell or taste.<sup>9</sup>

### **CONCLUSION**

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

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<sup>5</sup> 5 U.S.C. § 8107(c)(22).

<sup>6</sup> 20 C.F.R. § 10.404; *Henry B. Floyd, III*, 52 ECAB 220 (2001).

<sup>7</sup> *See supra* note 4.

<sup>8</sup> 5 U.S.C. § 8107(a).

<sup>9</sup> *See Leroy M. Terska*, 53 ECAB 247 (2001); *see also Billie Sue Barnes*, 47 ECAB 478, 480 (1996).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated April 24, 2007 and August 24, 2006 are affirmed.

Issued: January 8, 2008  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board