

steel frames. The Office accepted the employee's claim for contusion and bruise of the right forearm on April 12, 1979. It later expanded the claim to include right ulnar nerve syndrome and cervical disc disease and right upper extremity pain. The Office entered the employee on the periodic rolls on May 12, 1980. It accepted the conditions of postlaminectomy cervical and spinal stenosis cervical on August 15, 2005.

In a letter dated August 28, 2009, the Office indicated receiving notice of the employee's death. Appellant provided the employee's death certificate noting the date of death as August 4, 2009.

Appellant requested the employee's schedule award on September 9, 2009 noting that he had reached maximum medical improvement on February 12, 1993. She submitted medical evidence from Dr. Stephen J. Flood, a Board-certified orthopedic surgeon, dated February 2 and May 27, 1993 addressing the employee's permanent impairment as well as the Office medical adviser's April 1, 1993 report. The claims examiner completed a letter on December 11, 1992 and requested a report from Dr. Flood to determine the extent of the employee's permanent impairment based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment*. In a letter dated April 12, 1993, the claims examiner noted receiving the February 2, 1993 report regarding the employee's permanent impairment and requested additional information from Dr. Flood.

The Office responded on October 19, 2009 and stated that appellant was not entitled to claim a posthumous schedule award as no schedule award claim had been filed during the employee's lifetime as required by 5 U.S.C. § 8109(a)(2). Appellant submitted a letter dated October 24, 2009, objecting to the Office's conclusions and noting that the Office in 1993 had begun development of the issue of the employee's entitlement to a schedule award. She stated that the employee was not aware of the necessity to file for a schedule award.

By decision dated December 1, 2009, the Office denied appellant's claim for a posthumous schedule award as the evidence did not establish that a valid claim was filed during the employee's lifetime. It noted that, if the claim had been filed during the employee's lifetime and the claim was under development, the employee's estate might have been entitled to schedule award benefits if entitlement were established by the medical evidence. Appellant requested a review of the written record on December 18, 2009.

The Office's Branch of Hearings and Review issued a decision on the written record on March 15, 2010 finding that the employee failed to file a claim for a schedule award during his lifetime and that appellant was not entitled to receipt of a schedule award filed after the employee's death.

LEGAL PRECEDENT

Section 8109 of the Act provides for the payment of compensation under schedule awards unpaid at death to beneficiaries and lists an order of precedence for identifying eligible beneficiaries. The statute provides, in pertinent part:

“(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].”²

The Board has held 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, such claim must have been filed within the employee’s lifetime.³ If a claim has been filed during the employee’s lifetime and the claim was under development, the employee’s estate may be entitled to schedule award benefits if entitlement is established by the medical evidence.⁴

ANALYSIS

The employee filed a claim for compensation in 1978 and continued on the periodic rolls from 1980. The record does not contain a Form CA-7 requesting a schedule award or other written request for a schedule award. Appellant has stated that the employee was not aware of the necessity to file a claim for a schedule award and that this is the explanation for his failure to do so. Appellant requested a schedule award on the employee’s behalf on September 9, 2009 following his death on August 4, 2009.

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 The Board has held that a schedule award claim must be filed by an injured employee or someone acting on his behalf during the employee’s lifetime to establish a valid claim for compensation under section 8107.⁶

² 5 U.S.C. § 8109(a). *Carol T. Collins (Harold Turner)*, 54 ECAB 417 (2003); *P.G., (T.G.)*, Docket No. 08-2183 (issued June 23, 2009).

³ *Id.*

⁴ *See Cheryl R. Holloway (Wryland R. Holloway)*, 54 ECAB 443 (2003).

⁵ *Carol T. Collins (Harold Turner)*, *supra* note 2; *Mary Marie Young (David E. Young)*, 30 ECAB 94 (1978); *P.G., (T.G.) supra* note 2.

⁶ *Id.*

Additionally, the Office's implementing regulations provide that the right to claim compensation ceases and does not survive the death of the employee.⁷ In the instant case, neither appellant, on the employee's behalf, nor the employee filed a schedule award claim before his death on August 4, 2009. As no valid schedule award claim was filed within the employee's lifetime, the Board finds that a posthumous claim for schedule award compensation may not be filed by the employee's estate.⁸

CONCLUSION

Appellant is not entitled to a posthumous schedule award on behalf of the employee, because neither the employee nor someone on his behalf filed a schedule award claim during his lifetime.

ORDER

IT IS HEREBY ORDERED THAT the March 15, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 11, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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

⁷ See 20 C.F.R. § 10.105(d); *see also P.G. (T.G.), supra* note 2.

⁸ *P.G. (T.G.), supra* note 2. Neither the Board nor the Office has the authority to enlarge the terms of the Act as specified in the statute. *See e.g., Mary C. Anderson-Paine (Robert O. Anderson)*, 47 ECAB 148, 152 (1995).