NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

BATH IRON WORKS CORP. ET AL. *v.* DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR, ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

No. 91–871. Argued November 4, 1992—Decided January 12, 1993

Upon learning after he retired that he suffered from a work-related hearing loss, respondent Brown, a former employee of petitioner Bath Iron Works Corp., filed a timely claim for disability benefits under the Longshore and Harbor Workers' Compensation Act. In calculating Brown's benefits, the Administrative Law Judge applied a hybrid of the compensation systems set forth in §§8(c)(13) and 8(c)(23) of that Act, and the Benefits Review Board affirmed. Rejecting the Board's reliance on §8(c)(23), the Court of Appeals held that hearing loss claims, whether filed by current workers or retirees, must be compensated pursuant to §8(c)(13). Under that section, a claimant who has suffered a disabling injury of a kind specifically identified in a schedule, including hearing loss, is entitled to certain benefits regardless of whether his earning capacity had actually been impaired. In contrast, the Courts of Appeals for the Fifth and Eleventh Circuits have held that a retiree's claim for occupational hearing loss should be compensated pursuant to §8(c)(23). Under that section, a retiree who suffers from an occupational disease that did not become disabling until after retirement—one ``which does not immediately result in death or disability'' in the words of the Act—receives certain benefits based on the ``time of injury,'' which is defined as the date on which the claimant becomes aware, or reasonably should have been aware, of the relationship between the employment, the disease, and the disability. In Brown's case, as in most cases, §8(c)(13) benefits would be more generous than §8(c)(23) benefits.

Held: Claims for hearing loss, whether filed by current workers or

retirees, are claims for a scheduled injury and must be compensated under §8(c)(13), not §8(c)(23). Respondent Director's undisputed characterization of occupational hearing loss as a condition that *does* cause immediate disability must be accepted. A worker who is exposed to excessive noise suffers the injury of such loss, which, as a scheduled injury, is presumptively disabling, simultaneously with that exposure. Thus, the loss cannot be compensated under §8(c)(23) as ``an occupational disease which does not immediately result in . . . disability.'' In holding that claims for occupational hearing loss should be compensated pursuant to §8(c)(23), the Eleventh and Fifth Circuits have essentially read this key phrase out of the statute. To the extent there is any unfairness in the statutory scheme in that employers may be held liable for postretirement increases in hearing loss due to aging, they can protect themselves by giving employees audiograms at the time of retirement and thereby freezing the amount of compensable hearing loss. A lone Senator's single passing remark in the legislative history does not persuade this Court that retirees' hearing loss claims should be compensated under §8(c)(23). Pp.10–14.

942 F.2d 811, affirmed.

STEVENS, J., delivered the opinion for a unanimous Court.