

¹ Pursuant to the Federal Employees' Compensation Act (FECA), 5 U.S.C. §§ 8101-8193, and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

(DMA).² The DMA primarily relied on the September 14, 2010 findings of Dr. Peter A. Rogol, an OWCP referral physician.³

Appellant was dissatisfied with the June 28, 2011 schedule award and requested reconsideration.⁴ In an October 2, 2011 supplemental report, Dr. Rogol found 23 percent whole person impairment under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (2008).⁵

In a decision dated February 6, 2012, OWCP denied modification of the June 28, 2011 schedule award.

The Board finds that the case is not in posture for decision.

Section 8107 of FECA sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.⁶ FECA, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The implementing regulations have adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule losses.⁷ Effective May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (2008).⁸

The DMA's May 16, 2011 report indicates that he improperly relied upon Table 5-9 and Table 5-10, A.M.A., *Guides* 104 (5th ed. 2001) in determining the extent of appellant's respiratory impairment. As noted, all schedule awards issued on or after May 1, 2009 are determined in accordance with the sixth edition of the A.M.A., *Guides*.

² Dr. Brigham is Board-certified in occupational medicine.

³ Dr. Rogol is a Board-certified internist with a subspecialty in pulmonary disease. Although OWCP identified him as an impartial/referee examiner, the conflict Dr. Rogol was asked to resolve did not involve appellant's physician, but instead involved a prior DMA, Dr. Barry W. Levine, and another OWCP referral physician, Dr. Fielding Johnson, III.

⁴ Appellant's counsel challenged the DMA's calculation of impairment as well as the number of weeks of compensation OWCP awarded.

⁵ See Table 5-5, Asthma, A.M.A., *Guides* 90 (6th ed. 2008).

⁶ For a total or 100 percent loss of use of a lung (one), an employee shall receive 156 weeks' compensation. 5 U.S.C. § 8107(c)(22); 20 C.F.R. § 10.404(a). However, with respect to impairment of the lungs, awards are based on the loss of use of both lungs, and the percentage for the particular class of whole person respiratory impairment will be multiplied by 312 weeks (twice the award for loss of function of one lung) to obtain the number of weeks payable. Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.4d(1)(c) (January 2010).

⁷ 20 C.F.R. § 10.404.

⁸ See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1; Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.6a.

Once OWCP undertakes development of the record, it must resolve the relevant issues in the case.⁹ As the DMA's May 16, 2011 impairment rating is not in accordance with the A.M.A., *Guides* (6th ed. 2008), the case will be remanded to OWCP for further development. After OWCP has developed the case record to the extent it deems necessary, a *de novo* decision shall be issued.¹⁰

IT IS HEREBY ORDERED THAT the February 6, 2012 decision of the Office of Workers' Compensation Programs is set aside. The case is remanded for further action consistent with this order of the Board.

Issued: November 13, 2012
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

⁹ *Richard F. Williams*, 55 ECAB 343, 346 (2004).

¹⁰ In both his July 8, 2011 request for reconsideration and his brief on appeal, counsel correctly noted that the June 28, 2011 schedule award for 40.56 weeks' compensation was computed based on a single lung (156 weeks) rather than both lungs (312 weeks) as required. *See supra* note 6.