United States Department of Labor
Employees' Compensation Appeals Board

J.P., Appellant	)	
and	)	**Docket No. 06-1683**
	)	**Issued: October 23, 2006**
DEPARTMENT OF THE NAVY, CHARLESTON NAVAL SHIPYARD, Charleston, SC, Employer	)	

Appearances:
Jeffrey P. Zeelander, 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 July 17, 2006 appellant filed a timely appeal from an Office of Workers' Compensation Programs' merit decision dated July 5, 2006, denying his claim for a schedule award. Under 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 appellant has sustained any permanent impairment to a scheduled member of his body causally related to his accepted pleural thickening condition, entitling him to a schedule award under 5 U.S.C. § 8107.

FACTUAL HISTORY

On February 26, 2006, appellant, then a 52-year-old machinist, filed a Form CA-2 claim for benefits, alleging that he developed an asbestos-related condition causally related to factors of his federal employment. He claimed that he was exposed to asbestos contained in insulation

while removing and reinstalling machinery and equipment from ships. Appellant became aware this condition was caused or aggravated by his employment on February 10, 2006.

In order to determine the nature and extent of appellant's claimed pulmonary condition and its relationship to factors of his employment, the Office referred appellant to Dr. Robert L. Thomas, Board-certified in internal medicine and a specialist in pulmonary medicine. In a report dated June 8, 2006, Dr. Thomas set forth findings on examination, reviewed the statement of accepted facts and appellant's medical history. He conducted several diagnostic tests from which he concluded that appellant had pleural thickening caused by exposure to asbestos at work. Dr. Thomas noted that a spirometry done on June 6, 2006 showed forced expiratory volume in the first second (FEV_1) results of 1 of 2.66 liters, which was 71 percent of the predicted value and forced vital capacity (FVC) of 3.66 liters, which was 79 percent of the predicted value. A diffused lung capacity (DLCO) test showed 24.8 ml/mmhg per minute, which was 60 percent of the predicted value. Dr. Thomas concluded:

> "The evidence of asbestos exposure is shown as asbestos-related pleural plaques and pleural thickening and two soft tissue fusiform nodular shadows, one in the left major fissure on image 30 and one close to some bronchiovascular markings on image 38 on the right. This was noted on computerized axial tomography [CAT] scan of the chest dated January 18 and March 17, 2006, and this is unchanged for the comparison CAT scan of October 6, 2005."

Dr. Thomas stated that pulmonary function tests and arterial blood gas performed in room air did not show any significant functional impairment from appellant's asbestos-related lung disease. He advised that the changes noted in the pulmonary function tests were due to obstructive impairment secondary to smoking-related lung disease.

The Office accepted appellant's claim for pleural thickening due to asbestos exposure and pleurisy without effusion or current tuberculosis.

In an impairment evaluation June 30, 2006, an Office medical adviser, reviewed Dr. Thomas' findings. He determined that appellant had a zero percent impairment under the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fifth edition) [the A.M.A., *Guides*]. The Office medical adviser stated that test results for an FVC of 3.66, 79 percent of the predicted value, an FEV-1 of 2.66, 71 percent of the predicted value, and a DLCO of 24.8, 60 percent of the predicted value, amounted to a 0 percent impairment pursuant to Table 5-12 at page 107 of the A.M.A., *Guides*.

By decision dated July 5, 2006, the Office denied appellant's claim for a schedule award. It found that the medical evidence of record did not establish that he sustained any permanent impairment of his lungs due to his accepted asbestos exposure.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[1] sets forth the number of weeks of compensation to be paid for permanent loss, or loss of use of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use.[2] However, the Act does not specify the manner in which the percentage of loss of use of a member is to be determined. For consistent results and to ensure equal justice under the law to all claimants, the Office has adopted the A.M.A., *Guides* (fifth edition) as the standard to be used for evaluating schedule losses.[3]

ANALYSIS

In the instant case, the Office medical adviser determined that appellant had no ratable permanent impairment under the A.M.A., *Guides* based on Dr. Thomas' June 8, 2006 report. Chapter 5-10 at page 107 of the A.M.A., *Guides* outlines the procedures for determining an impairment rating due to respiratory disorders, using pulmonary function and exercise test results. This section instructs the examiner to determine the predicted values for FVC, FEV and DLCO, using Tables 5-2a through 5-7a, and to calculate the percent predicted through the observed/predicted value method. Relying on these guidelines, Dr. Thomas determined FEV results of 1 of 2.66 liters, which was 71 percent of the predicted value and FVC of 3.66 liters, which is 79 percent of the predicted value, and a Dco of 24.8 ml/mmhg per minute, which is 60 percent of the predicted value. None of these tests recorded values sufficient to entitle appellant to a minimum Class 2 impairment accorded under the A.M.A., *Guides,* which is predicated on 60 percent (or less) of predicted values, in accordance with Table 5-12, page 107.[4] The Office medical adviser properly determined that appellant's test results place him in the Class 1 category under Table 5-12, which is not sufficient to provide a basis for a schedule award under the Act. Based on this evidence, the Office medical adviser properly found that appellant had no ratable permanent impairment under the A.M.A., *Guides*.

As there is no other medical evidence establishing that appellant sustained any permanent impairment of a schedule member, the Office properly found that appellant was not entitled to a schedule award due to his accepted pleural thickening condition.

[1] 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

[2] 5 U.S.C. § 8107(c)(19).

[3] 20 C.F.R. § 10.404.

[4] Dr. Thomas also stated that pulmonary function tests and arterial blood gas performed in room air did not show any significant functional impairment from appellant's asbestos-related lung disease. He advised that the changes noted in the pulmonary function tests were due to obstructive impairment secondary to smoking-related lung disease.

CONCLUSION

The Board finds that appellant has not sustained any permanent impairment to a scheduled member of his body causally related to his accepted pleural thickening condition, thereby entitling him to a schedule award under 5 U.S.C. § 8107.

ORDER

IT IS HEREBY ORDERED THAT the July 5, 2006 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: October 23, 2006
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