

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of RALEIGH P. DEBORD and TENNESSEE VALLEY AUTHORITY,  
OFFICE OF POWER, Knoxville, Tenn.

*Docket No. 96-1669; Submitted on the Record;  
Issued April 21, 1998*

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DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether appellant has more than a 30 percent permanent impairment in both lungs.

In the present case, the Office of Workers' Compensation Programs accepted that appellant's asbestosis was causally related to his federal employment. By decision dated January 11, 1996, the Office issued a schedule award for 30 percent permanent impairment to both lungs.

The Board has reviewed the record and finds that the case is not in posture for decision.

Section 8107 of the Federal Employees' Compensation Act provides that, if there is permanent disability involving the loss, or loss of use, of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.<sup>1</sup> Neither the Act nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants the Office has adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the uniform standard applicable to all claimants.<sup>2</sup>

The schedule award in this case was based on the findings of a second opinion referral physician, Dr. Donald D. Graham, Jr., a Board-certified internist. An Office medical adviser noted the results from Dr. Graham and found that under the A.M.A., *Guides*, appellant had a 30 percent impairment based on Table 8, which provides classes of respiratory impairments.<sup>3</sup> Table

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<sup>1</sup> 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.304(b).

<sup>2</sup> A. *George Lampo*, 45 ECAB 441 (1994).

<sup>3</sup> A.M.A., *Guides* 162, Table 8 (4th ed. rev., 1993)

8 indicates that a Class 3 moderate impairment results in a range of 26 to 50 percent impairment. A Class 3 impairment is properly found when there is an FVC (forced vital capacity) between 51 percent and 59 percent of predicted, or an FEV<sub>1</sub> (forced expiratory volume in the first second) between 41 percent and 59 percent of predicted, or DCO (carbon monoxide diffusing capacity) between 41 percent and 59 percent of predicted.<sup>4</sup>

The Office medical adviser found that the FVC was 81 percent of predicted, the FEV<sub>1</sub> was 57 percent of predicted, and the DCO was 55 percent of predicted. These values would appear to place appellant at the lower end of the 26 to 50 percent range provided under Class 3, and the use of 30 percent would appear to be reasonable, given the stated percentages of predicted values. The problem in this case, however, is the predicted values used by the Office medical adviser. Under the A.M.A., *Guides*, there are specific tables for predicted normal FVC, FEV<sub>1</sub>, and DCO, based on age, sex, and height of the individual. The medical adviser does not refer to these tables, but appears to accept the predicted values as provided by Dr. Grahams' computerized report on the respiratory tests. The Board notes that in these reports appellant's age is listed as 71, although his actual age on November 29, 1995 was 70, and the reported height was 69 inches, or 175 centimeters, even though Dr. Grahams' narrative report indicated that appellant was 68 inches, or 172 centimeters. In any case, the predicted values provided in the respiratory test results do not correspond to the predicted values in the A.M.A., *Guides*. For example, the Office medical adviser uses a predicted value of 21.5 for DCO, while under Table 6, the predicted value for a 70-year-old male would be 29.5 (based on a height of 172 centimeters) or 30.3 (based on a height of 174 centimeters).<sup>5</sup> Using the actual value of 11.9, the percentage of predicted would be either 40 percent (for 172 centimeters) or 39 percent (for 174 centimeters), rather than the 55 percent reported. A DCO of 39 to 40 percent of predicted could result in a Class 4 impairment under Table 8, or an impairment of 51 to 100 percent.

In summary, the medical evidence is not sufficient to properly establish the percentage of permanent impairment to the lungs under the A.M.A., *Guides*, because there is no explanation as to the predicted values used by the medical adviser. On remand the Office should further develop the medical evidence as necessary to ensure that appellant's impairment to the lungs is properly calculated according to the relevant provisions of the A.M.A., *Guides*. After such further development, the Office should issue an appropriate decision.

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<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 160, Table 6.

The decision of the Office of Workers' Compensation Programs dated January 11, 1996 is set aside and the case remanded to the Office for further action consistent with this decision of the Board.

Dated, Washington, D.C.  
April 21, 1998

George E. Rivers  
Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member