

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EDWARD C. CHEEVER and DEPARTMENT OF THE NAVY,
NAVY AVIATION DEPOT, Cherry Point, N.C.

*Docket No. 96-2385; Submitted on the Record;
Issued September 18, 1998*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant is entitled to receive a schedule award for permanent impairment of his lungs.

The Board has duly reviewed the case record and concludes that appellant is not entitled to a schedule award.

On April 9, 1993 appellant, then a 57-year-old blade and vane repairer, filed an occupational disease claim, alleging that inhalation of paint fumes on November 5, 1991 caused significant reactive pulmonary disease. He had been absent from work from January 17 to February 10, 1992, when he returned to regular duty. On July 19, 1993 the Office of Workers' Compensation Programs accepted that he sustained employment-related allergic asthma and his leave was reinstated. On September 30, 1994 he filed a claim for a schedule award. By decision dated April 25, 1995, the Office of Workers' Compensation Programs found that under the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*), appellant had a Class 1, zero percent impairment. Appellant, through counsel, timely requested reconsideration and submitted additional medical evidence. In a May 7, 1996 decision, the Office declined to modify the prior decision. The instant appeal follows.

Under section 8107 of the Federal Employees' Compensation Act¹ and section 10.304 of the implementing federal regulations,² schedule awards are payable for permanent impairment of specified body members, functions or organs. However, neither the Act nor the regulations specify the manner, in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.304.

all claimants. The A.M.A., *Guides*³ have been adopted by the Office, and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.⁴

The Office has established guidelines for schedule award claims for pulmonary conditions. These require that the medical reports used to determine the extent of any pulmonary disability include pulmonary function studies, which include measurement of forced vital capacity (FVC) and forced expiratory volume in one second (FEV₁) and the FEV₁/FVC ratio (FEV₁ percent) computed from these results.⁵ The guidelines further suggest that the A.M.A., *Guides* be used to determine the percentage of pulmonary impairment.⁶ Section 5.2 of the A.M.A., *Guides* describes the quantitative basis on which the evaluation of respiratory system impairment rests.⁷

The relevant medical evidence in this case includes reports dated September 12 and November 23, 1994 and June 1, 1995, in which Dr. Jeffrey Garland, a pulmonologist who is Board-certified in internal medicine, diagnosed asthma, most likely caused by employment-related toxic fume exposure. Dr. Garland also furnished pulmonary function studies dated May 1 and 8, 1992 and September 12, 1994. In a March 28, 1995 report, an Office medical adviser utilized Chapter 5 of the A.M.A., *Guides*, and advised that appellant had a Class 1, zero percent impairment based on the September 12, 1994 pulmonary function study.

Table 8 of Chapter 5 of the A.M.A., *Guides* describes the four classes of respiratory impairment.⁸ Tests demonstrating that pulmonary function measurements for FVC and FEV₁ are equal to or above 80 percent of predicted indicate a Class 1 or 0 percent impairment. In this case, appellant's most recent pulmonary function study, dated September 12, 1994, falls into this category as his pre and post-bronchodilator FVC measured 108 and 107 percent of predicted value respectively, his FEV₁ measured 98 and 101 percent of predicted value respectively, and his FEV₁/FVC ratio measured 70.10 and 73.02, all of which indicate 0 percent impairment under Table 8. As the Office applied the proper standards to appellant's September 12, 1994 pulmonary

³ American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993).

⁴ See *James J. Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

⁵ See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.4(c)(1) (October 1990).

⁶ *Id.*

⁷ A.M.A., *Guides* at 159.

⁸ *Id.* at 162.

function study in determining that he had no ratable impairment of his lungs, he is, therefore, not entitled to any schedule award for his accepted condition of allergic asthma.⁹

The decision of the Office of Workers' Compensation Programs dated May 7, 1996 is hereby affirmed.

Dated, Washington, D.C.
September 18, 1998

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁹ The Board notes that, while the values of appellant's May 1 and May 8, 1992 pulmonary function studies demonstrate qualifying values under Table 8, the Office medical adviser permissibly used the most recent study, that performed on September 12, 1994, in finding that appellant had a zero percent impairment, as the A.M.A., *Guides* provide that an individual should be evaluated after he or she has received optimum therapy or is in optimum health; *see Tracy Hines*, 47 ECAB ____ (Docket No. 95-480, issued May 6, 1996).