

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT R. BLANTON and DEPARTMENT OF LABOR,
MINE & SAFETY HEALTH ADMINISTRATION, Barbourville, KY

*Docket No. 98-986; Submitted on the Record;
Issued September 3, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issues are: (1) whether appellant is entitled to a greater than 20 percent impairment for loss of use of both his lungs, for which he received a schedule award; and (2) whether he is entitled to compensation benefits for wage loss during the period between May 22 and December 15, 1997, for which he has received a schedule award.

On May 17, 1994 appellant, then a 52-year-old coal mine inspector, filed a claim for pneumoconiosis which was accepted by the Office of Workers' Compensation Programs.

The medical evidence of record pertinent to appellant's schedule award includes a May 23, 1997 report from Dr. J. Dale Sargent, an impartial medical specialist, Board-certified in pulmonary disease, critical care medicine and internal medicine, and a certified B-reader. In his report, Dr. Sargent noted that the lung volumes and spirometry were normal, but that appellant had a slightly diminished diffusion capacity.

On November 13, 1997 the Office medical adviser reviewed the May 22, 1997 pulmonary function study report of Dr. Sargent and, using the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fourth edition), determined that appellant had a 10 percent impairment in each lung as based upon a FEV-1/FVC ratio of 79 percent¹ and Table 8 at 162 that he had a Class II respiratory impairment.

By decision dated December 15, 1997, the Office issued appellant a schedule award of 31.2 weeks for a 10 percent impairment of each lung totaling 20 percent. The period of the award ran from May 22 to December 26, 1997. By decision dated January 13, 1998, the Office

¹ The Office medical adviser noted that appellant's best value of FVC was 93 percent and best value of FEV-1 was 100 percent which would cause appellant to be in Class I. However, based upon his FEV-1/FVC ratio, the Office medical adviser determined that appellant was a Class II.

denied appellant's request for reconsideration as appellant did not submit any new or relevant evidence.

The Board finds that appellant does not have greater than a 20 percent impairment of both his lungs.

Under section 8107 of the Federal Employees' Compensation Act² and section 10.304 of the implementing federal regulations,³ 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 all claimants. The A.M.A., *Guides* have been adopted by the Office, and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.⁴ In this case, the Office medical adviser considered appellant's respiratory impairment utilizing the factors discussed in Table 8, page 162 of the fourth edition of the A.M.A., *Guides*. The Board has reviewed the Office medical adviser's determination, pursuant to the A.M.A., *Guides*, and concludes that it was proper.⁵ The Board also rejects appellant's contention that he is entitled to compensation for 312 weeks in a schedule award as the Board has found that the schedule award appellant received was proper.

Next, the Board finds that appellant is not entitled to compensation benefits for wage loss during the period between May 22 and December 15, 1997, for which he has received a schedule award.

Under the Act,⁶ compensation for disability or physical impairment may be paid in only two situations, pursuant to sections 8105 and 8106 for a loss of wage-earning capacity which an employee sustained because of his injury or pursuant to section 8107 for the permanent loss or loss of use of certain specified members or functions of the body by means of a schedule award.⁷ While section 8107 states that schedule award compensation is "in addition" to compensation to temporary total or partial disability,⁸ the Act's implementing regulations⁹ and Board precedent

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.304.

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 *Lena P. Huntley*, 46 ECAB 643 (1995).

⁶ 5 U.S.C. §§ 8101-8193.

⁷ *Daniel G. Jones*, 27 ECAB 405, 408 (1973).

⁸ 5 U.S.C. § 8107(a)(3).

⁹ Section 10.304(c)(3) states that compensation is payable in addition to but not concurrently with compensation for temporary total or partial disability. 20 C.F.R. § 10.304(c)(3).

provide that an injured employee cannot concurrently receive wage-loss compensation and schedule award payments.¹⁰

As the Board explained in *Joseph R. Waples*, when the statute provides parallel remedies for the same injury, it is not intended that a claimant should receive both remedies at the same time.¹¹ Thus, the Board found in that case that the Office properly converted appellant's wage-loss compensation to schedule award benefits and appellant received schedule award payments in lieu of wage-loss compensation.

On appeal appellant argues that he is entitled to have his partial disability benefits for wage loss continue while he receives monetary compensation for his schedule award. As noted above, appellant is precluded under the statute from receiving concurrently compensation for wage loss for his partial disability and a schedule award for the same injury. The Board thus finds that the Office properly did not interrupt appellant's wage-loss compensation during the period he received his schedule award. The Office properly denied reconsideration on January 13, 1998 under 20 C.F.R. § 10.138.

The decisions of the Office of Workers' Compensation Programs dated December 15, 1997 and January 13, 1998 are affirmed.

Dated, Washington, D.C.
September 3, 1999

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

¹⁰ *Marie J. Born*, 27 ECAB 623, 629 (1976).

¹¹ *Joseph R. Waples*, 44 ECAB 936, 939 (1993).