

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GEORGE W. KEMBRO, JR. and DEPARTMENT OF THE NAVY,
NAVAL AIR STATION, WHITING FIELD, Milton, FL

*Docket No. 01-77; Submitted on the Record;
Issued August 17, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
PRISCILLA ANNE SCHWAB

The issue is whether appellant has more than a 10 percent permanent impairment of each lung for which he has received a schedule award.

On December 18, 1992 appellant, then a 57-year-old planner and estimator, filed a claim for asbestosis, which he related to asbestos exposure at work.¹ The Office of Workers' Compensation Programs accepted appellant's claim for asbestosis. In a May 23, 1994 decision, the Office issued a schedule award for a 10 percent permanent impairment of each lung.

On November 4, 1999 appellant filed a claim for an increased schedule award. In a February 4, 2000 decision, the Office denied appellant's request on the grounds that a recent medical report showed that appellant's condition had not worsened. Appellant requested a written review of the record. In a July 28, 2000 decision, the Office hearing representative affirmed the Office's February 4, 2000 decision.

The Board finds that appellant has no more than a 10 percent permanent impairment of each lung.

The schedule award provisions of the Federal Employees' Compensation Act² and its implementing regulations³ set forth the number of weeks of compensation to be paid for permanent loss, or loss of use, of members or functions of the body listed in the schedule. However, neither the Act nor its regulations specify the manner in which the percentage loss of a member shall be determined. For consistent results and to ensure equal justice to all claimants,

¹ The employing establishment indicated that appellant had stopped working on January 3, 1992 due to a back condition and was receiving temporary total disability compensation due to that condition.

² 5 U.S.C. § 8107(c).

³ 20 C.F.R. § 10.304.

the Office has designated the American Medical Association, *Guides to the Evaluation of Permanent Impairment*⁴ as the standard for evaluating schedule losses.

Under the A.M.A., *Guides*, permanent impairment of the lungs is determined on the basis of pulmonary function tests, the forced vital capacity (FVC) and the forced vital capacity in one second, (FEV₁), the ratio between FEV₁ and FVC and diffusion of carbon monoxide in the blood (D_{co}). If the FVC and FEV₁ are above 80 percent of the predicted value for a claimant's height and age, the FEV₁/FVC ratio is above 70 percent of the predicted value and the D_{co} is above 70 percent of the predicted value, then a claimant has a Grade I impairment which is equivalent to no permanent impairment of the lungs. A claimant's condition is classified as a Grade II impairment, equaling 10 to 25 percent permanent impairment, if either the FVC or FEV₁ is between 60 to 79 percent of the predicted value, or the FEV₁/FVC ratio is between 60 and 69 percent of the predicted value, or the D_{co} is between 60 to 69 percent of the predicted value.⁵

In a May 16, 1994 memorandum, an Office medical adviser reported that pulmonary function tests from December 31, 1992 showed an FVC that was 77 percent of predicted values, an FEV₁ that was 98 percent of predicted values, an FEV₁/FVC ratio that was 127 percent of predicted values and a D_{co} that was 87 percent of predicted values. The Office medical adviser concluded that appellant had a 10 percent permanent impairment of each lung.

In support of his request for an increase in his schedule award, appellant submitted an August 3, 1999 report from Dr. Steven J. Schang, a cardiologist, who stated that tests performed on June 15, 1999 showed appellant's total lung capacity to be in the normal range but his vital capacity and forced vital capacity were at the lower limits of normal at 66 percent and 73 percent respectively. He noted that the FEV₁/FVC ratio increased with bronchodilators. Dr. Schang indicated that appellant's diffusion capacity was markedly reduced but corrected for alveolar ventilation. He questioned the reliability of the result.

Dr. Schang commented that appellant's prior diffusion capacity was normal and expressed the belief that appellant's current diffusion capacity was also normal. He stated that a B reader did x-rays studies on July 12, 1999 which showed continued evidence of asbestosis with parenchymal fibrosis on both sides and diffuse moderate scarring to the point of conglomerate changes in the right lower lung. Dr. Schang reported that appellant had bilateral pleural thickening with several small calcific and noncalcific plaques. He concluded that appellant had pulmonary and parenchymal asbestosis based on work exposure history and slowly progressive disease. Dr. Schang estimated that appellant was approximately 10 percent worse than his evaluation four years previously but noted that his estimate was a guess.

The Office referred appellant to Dr. Thomas B. Williams, a Board-certified pulmonologist, for an examination and second opinion. In a January 20, 2000 report, Dr. Williams stated that pulmonary function tests showed normal total lung volume capacity consistent with no evidence of restrictive ventilatory impairment. He indicated that diffusion studies, when adjusted for volume, were normal. Dr. Williams reported that appellant's FEV₁

⁴ *Id.*

⁵ A.M.A., *Guides*, p. 162, Table 8.

was 2.96 liters in the December 1992 pulmonary function tests and 2.81 liters in the most recent tests. He compared appellant's current pulmonary function tests to the tests done in December 1992 and commented that the change in the tests over time was consistent with normal reduction over an eight-year period. Dr. Williams stated that appellant had a history of asbestos exposure with only evidence of calcification of the left hemidiaphragm or calcified plaque of the left hemidiaphragm. He concluded that appellant did not have asbestosis. Dr. Williams stated that, with no change in pulmonary function, he found no evidence of any significant pulmonary abnormality.

Dr. Williams submitted a copy of his test results. The tests showed that the FVC was 79 percent of the predicted values, the FEV₁ was 89 percent of the predicted values, the FEV₁/FVC ratio was over 100 percent and the D_{co} was 85 percent of the predicted values. In a February 1, 2000 memorandum, the Office medical adviser again concluded that appellant had a 10 percent permanent impairment of each lung.

The pulmonary functions tests performed in December 1992 and January 2000 showed that only the forced vital capacity test results reached the level of a Grade II permanent impairment of the lungs, yielding 77 percent of the predicted values in 1992 and 79 percent of the predicted values in 2000. None of the other test results reflected a Grade II permanent impairment. None of the test results showed a Grade III permanent impairment of the lungs. The February 2, 2000 report of Dr. Williams, accompanied by his pulmonary function tests, showed that appellant's permanent impairment due to his pulmonary condition had not changed since the schedule award was issued. Appellant, therefore, has not established that he had a greater permanent impairment of the lungs.

The decisions of the Office of Workers' Compensation Programs, dated July 28 and February 4, 2000, are hereby affirmed.

Dated, Washington, DC
August 17, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member