

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ERNEST BRISBON and DEPARTMENT OF THE AIR FORCE,
AIR FORCE BASE, Charleston, SC

*Docket No. 00-1223; Submitted on the Record;
Issued March 21, 2001*

DECISION and ORDER

Before DAVID S. GERSON, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issue is whether appellant has a permanent impairment of the lungs that is ratable under the Federal Employees' Compensation Act.¹

On July 1, 1995 appellant, then a 47-year-old boiler plant operator, filed a claim for chronic obstructive pulmonary disease with bronchospasm and asbestos-related lung disease. On July 19, 1995 he filed a claim for a schedule award. By decision dated September 19, 1996, the Office of Workers' Compensation Programs accepted that appellant sustained asbestos-related lung disease, but found that his impairment was below ratable standards and that he was not entitled to a schedule award for the lungs.

By letter dated September 16, 1997, appellant requested reconsideration and submitted additional medical evidence. By decision dated November 18, 1997, the Office found that the new medical report showed a zero percent permanent impairment of the lungs. By letter dated February 11, 1998, appellant requested reconsideration and submitted additional medical evidence. By decision dated July 2, 1998, the Office found that the additional evidence showed a zero percent impairment and was not sufficient to warrant modification of its prior decisions. Appellant subsequently requested reconsideration three times and submitted additional medical evidence. By decisions dated November 25, 1998, May 26, 1999 and January 28, 2000, the Office found that the additional evidence showed a zero percent impairment and was not sufficient to warrant modification of its prior decisions.

The Board finds that the case is not in posture for decision.

¹ 5 U.S.C. 8101 *et seq.*

The schedule award provisions of the Act² and its implementing regulations³ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of specified members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment* has been adopted by the Office and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.⁴

The record contains pulmonary function studies from three physicians who are Board-certified in pulmonary diseases: appellant initially submitted an August 30, 1993 report from Dr. J. Allen Meadows, III accompanied by pulmonary function studies done on September 7, 1993; the Office referred appellant to Dr. William R. Cook, who submitted an August 21, 1996 report accompanied by pulmonary function studies done on August 27, 1996; and appellant submitted several reports from Dr. Cary E. Fechter accompanied by pulmonary function studies done on June 9, 1997, January 16 to February 2, June 5 and September 29, 1998.

An Office medical adviser reviewed the studies done by Dr. Cook and those done by Dr. Fechter on June 9, 1997, June 5 and September 29, 1998. This Office medical adviser applied the appropriate table⁵ of the fourth edition of the A.M.A., *Guides* to conclude that each of these pulmonary function studies showed a class 1 respiratory impairment, which is equivalent to a zero percent impairment.

The basis of the Office medical adviser's conclusion was that none of these studies, according to the doctors who performed them, showed forced vital capacity (FVC) below 80 percent of predicted, or forced expiratory volume in the first second (FEV₁) below 80 percent of predicted, or a diffusing capacity of carbon monoxide (D_{CO}) below 70 percent of predicted. While these are the proper criteria for assigning a class 1 respiratory impairment, it is not clear whether Drs. Cook or Fechter, whose predicted values differed, used the predicted values contained in Tables 2, 4 and 6 of Chapter 5 of the A.M.A., *Guides*, as adjusted for race.⁶ In addition, an Office medical adviser did not review the findings on pulmonary function studies done by Dr. Meadows, who is Board-certified in pulmonary diseases.

The case will be remanded for an Office medical adviser to use the predicted values contained in the appropriate tables of the A.M.A., *Guides* to determine if any of the pulmonary

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.304.

⁴ *Quincy E. Malone*, 31 ECAB 846 (1980).

⁵ Table 8 of Chapter 5.

⁶ Chapter 5 states: “[T]he following adjustments for predicted lung function in black persons should be followed: values given for predicted normal FVC in Tables 2 and 3 should be multiplied by 0.88; values for predicted normal FEV₁ in Tables 4 and 5 should be multiplied by 0.88; values for normal single-breath carbon monoxide diffusing capacity (D_{CO}) in Table 6 should be multiplied by 0.93.”

function studies that comply with the Office's requirements⁷ show a ratable impairment. The Office medical adviser should then designate a class of pulmonary impairment and provide rationale. The Office should then issue an appropriate decision on the percentage of permanent impairment of appellant's lungs.

The decisions of the Office of Workers' Compensation Programs dated January 28, 2000 and May 26, 1999 are set aside and the case is remanded to the Office for action consistent with this decision.⁸

Dated, Washington, DC
March 21, 2001

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member

⁷ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600, Exhibit 7 (December 1994) contains the Office's requirements for pulmonary function testing.

⁸ On appeal, appellant contends that the medical evidence shows that his pulmonary condition disables him from work. However, the only issue on the present appeal is whether appellant is entitled to a schedule award.