

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BOYD HAUPT and DEPARTMENT OF THE NAVY,
PEARL HARBOR NAVAL SHIPYARD, Pearl Harbor, HI

*Docket No. 00-1683; Submitted on the Record;
Issued March 29, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has more than a five percent permanent impairment of his lungs for which he received a schedule award.

Appellant, a 56-year-old mobile equipment operator, filed a notice of occupational disease on April 23, 1993 alleging that he developed exacerbation of asthma due to factors of his federal employment. The Office of Workers' Compensation Programs accepted his claim for aggravation of asthma on November 15, 1993. Appellant filed a notice of recurrence of disability on July 10, 1997 alleging that on June 24, 1996 he sustained a recurrence of disability due to his accepted employment injury. The Office accepted his claim on September 17, 1996. Appellant requested a schedule award for impairment to his lungs on July 27, 1999. By decision dated March 14, 2000, the Office granted appellant a schedule award for five percent impairment of his lungs.¹

The Board finds this case not in posture for decision.

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 for all claimants the Office adopted the American Medical

¹ Following this decision, appellant submitted additional new evidence. As the Office did not review this evidence in reaching a final decision, the Board will not consider it for the first time on appeal. 20 C.F.R § 501.2(c).

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.304 (1999).

Association, *Guides to the Evaluation of Permanent Impairment*⁴ as a standard for determining the percentage of impairment and the Board has concurred in such adoption.⁵

With regard to respiratory or pulmonary impairment, the A.M.A., *Guides* provides a table consisting of four classes of respiratory impairment based on a comparison of observed values for certain ventilatory function measures and their respective predicted values. The appropriate class of impairment is determined by the observed values for either the forced vital capacity (FVC), forced expiratory volume in one second (FEV-1) or diffusing capacity of carbon monoxide (DCO) measures by their respective predicted values. If one of the three ventilatory function measures, FVC, FEV-1 or DCO or the ratio of FEV-1 to FVC, stated in terms of the observed values, is abnormal to the degree described in Classes 2 to 4, then the individual is deemed to have an impairment which would fall into that particular class of impairments, either Class 2, 3 or 4, depending on the severity of the observed value.⁶

In this case, in a report dated November 20, 1998, Dr. Roy S. Adaniya, a Board-certified internist specializing in pulmonary diseases, provided findings on examination and the results of pulmonary function testing, but he did not provide an opinion of appellant's permanent impairment based upon the A.M.A., *Guides*. This report indicated that appellant was a 61-year-old caucasian male with a height of 71 inches and revealed: FVC, predicted 4.84 liters, appellant's best 3.12 liters, which was 64 percent of predicted; FEV-1, predicted 3.77 liters, appellant's best 2.45 liters, which was 65 percent of predicted; his FEV-1/FVC ratio of 79; and diffusing capacity of carbon monoxide, predicted 35.2, appellant's average 26.3; DCO/VA, predicted 5.01, appellant's average, 5.40. He noted that the tests showed FVC moderately reduced with moderate restriction, that expiratory flow was normal and that diffusion capacity was normal when corrected for volume reduction.

In a report dated September 28, 1999, Dr. Charles C. McDonald, an Office medical consultant and a Board-certified internist, reviewed appellant's history of injury and medical records. He concluded that appellant had exacerbations of asthma with respiratory tract infections. Dr. McDonald stated, "His impairment level is difficult to interpret as it is primarily related to short-term exacerbations due to respiratory tract infections. Given the lack of documentation of obstructive airways physiology in the file and current complaints related primarily to deconditioning, the claimant's level of impairment is low." He concluded that appellant had a five percent respiratory impairment secondary to work-related asthma based on the mild and infrequent nature of exacerbations documented in the file. Dr. McDonald did not make reference to the A.M.A., *Guides* in reaching his impairment rating.

In a report dated March 9, 2000, Dr. Ellen Pichey, the Office medical adviser and a physician Board-certified in physical medicine and rehabilitation, stated in the entirety, "It would appear that the five percent is for the total lungs; *i.e.*, 2½ percent impairment for each lung." She did not make reference to the A.M.A., *Guides* in reaching her impairment rating.

⁴ A.M.A., *Guides* (4th ed. 1993).

⁵ *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

⁶ A.M.A., *Guides*, 162, Table 8.

As there is no medical report of record which conforms to the A.M.A., *Guides*, this case must be remanded for further development of the medical evidence. On remand, this case should be referred to an appropriate medical specialist for an evaluation of appellant's permanent impairment which is consistent with the evaluation procedures of the A.M.A., *Guides*.

The March 14, 2000 decision of the Office of Workers' Compensation Programs is hereby set aside and remanded for further development consistent with this opinion.

Dated, Washington, DC
March 29, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member