

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CRISTOBAL M. DURAN and DEPARTMENT OF THE ARMY,
ARMY NATIONAL GUARD, Santa Fe, NM

*Docket No. 03-286; Submitted on the Record;
Issued March 17, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issues are: (1) whether appellant has sustained any permanent impairment to a schedule member of his body causally related to his accepted condition of asthma, thereby entitling him to a schedule award under 5 U.S.C. § 8107; and (2) whether appellant has met his burden of proof in establishing that he was disabled and entitled to wage loss as a result of the accepted asthma condition from October 28 through November 17, 2001.

On March 9, 2001 appellant, then a 28-year-old mechanic, filed an occupational disease claim, alleging that he developed an asthma condition causally related to factors of his federal employment. He specifically claimed that he was exposed to exhaust fumes while working in an enclosed space and that he first became aware that this condition was caused or aggravated by his employment on February 20, 2001. On June 15, 2001 the Office accepted appellant's claim for asthma.

On November 1, 2001 appellant filed a Form CA-7 claim for a schedule award based on his accepted asthma condition.

Appellant submitted an October 22, 2001 report from Dr. Charles A. Riley, Board-certified in internal medicine and a specialist in pulmonary diseases, who administered a pulmonary function test and diagnosed asthmatic bronchitis manifested by an increased sensitivity to solvents, fumes and dust. He advised that appellant's symptoms would probably not decrease unless his environment was significantly changed. Dr. Riley rated him at a five to seven percent permanent impairment of the whole person.

Appellant also submitted a November 13, 2001 Form CA-7 requesting compensation for wage loss from October 28 to November 17, 2001. He indicated on the form that he was filing the claim for wage loss incurred when he was unable to deploy to Germany for three weeks with his National Guard Unit due to occupational illness caused by employment factors.

By letter dated July 8, 2002, the Office requested that appellant submit medical evidence in support of his wage-loss claim. The Office requested that he submit this evidence within 30 days. Appellant did not respond to this request within 30 days.

In a memorandum dated July 11, 2002, an Office medical adviser stated that Dr. Riley needed to render an impairment evaluation based upon the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed.) (A.M.A., *Guides*).

By letter dated July 19, 2002, the Office asked Dr. Riley to submit an assessment of permanent impairment pursuant to the A.M.A., *Guides*, with specific reference to page 104, Tables 5.9 and 5.10 as guidelines for his rating. He did not respond to this request.

By decision dated October 10, 2002, the Office denied appellant's claim for a schedule award. The Office stated that the medical evidence of record did not support appellant's claim that he had sustained an employment-related permanent impairment.

By decision dated October 10, 2002, the Office denied appellant's claim for compensation based on wage loss, finding that appellant failed to submit sufficient medical evidence establishing that the claimed condition and/or disability was caused or aggravated by factors of his employment.

The Board finds that appellant has not sustained a permanent impairment to a schedule member of his body causally related to his accepted asthma condition, thereby entitling him to a schedule award under 5 U.S.C. § 8107.

The schedule award provision of the Federal Employees' Compensation Act¹ set forth the number of weeks of compensation to be paid for permanent loss or loss of use of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use.² However, the Act does not specify the manner in which the percentage of loss of use of a member is to be determined. For consistent results and to ensure equal justice under the law to all claimants, the Office has adopted the A.M.A., *Guides* (5th ed.) as the standard to be used for evaluating schedule losses.

In the instant case, Dr. Riley, in his October 22, 2001 report, stated that appellant had a five to seven percent permanent impairment of the whole person based on his examination, the medical records and pulmonary function tests. This impairment rating, however, does not conform with the A.M.A., *Guides*. The Office advised Dr. Riley in its July 19, 2001 letter that he could perform an impairment evaluation, pursuant to the applicable tables in the A.M.A., *Guides*, for a scheduled award for impairment of the affected member of appellant's anatomy resulting from the accepted condition. Dr. Riley, however, did not respond to this request. Therefore, the rating assigned by him does not provide a basis for a schedule award under the Act.

¹ 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

² 5 U.S.C. § 8107(c)(19).

As there is no other medical evidence establishing that appellant sustained any permanent impairment of a schedule member, the Office properly found that he was not entitled to a schedule award due to his accepted asthma condition.³

The Board finds that appellant has not established that he was disabled due to the aggravation of his preexisting asthma condition from October 28 through November 17, 2001.

In this case, appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between his claimed disability from October 28 to November 17, 2001 and the accepted employment-related condition. This burden includes providing medical evidence from a physician who concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.⁴

If the employment causes only a temporary aggravation of an underlying condition, with no permanent residuals, compensation is payable only for the period of disability related to the actual aggravation.⁵

In this case, the Office requested in its July 8, 2001 letter that appellant submit medical evidence establishing that he was disabled from October 28 through November 17, 2001. Appellant, however, did not submit any medical evidence explaining how or why his preexisting asthma condition was affected by or related to factors of employment during the period from October 28 through November 17, 2001.⁶ Causal relationship must be established by rationalized medical opinion evidence. Appellant has failed to submit such evidence, which would indicate that his asthma condition caused any wage loss for the period claimed.

Consequently, appellant has not met his burden of proof, as he failed to establish that he sustained any employment-related disability for the period claimed. Therefore, the Office properly found in its October 10, 2002 decision that appellant was not entitled to temporary total disability compensation for the period October 28 to November 17, 2001.

³ Appellant submitted additional evidence to the Board; however, the jurisdiction of the Board is limited to the evidence that was before the Office at the time it issued its final decision; *see* 20 C.F.R. § 501.2(c). This decision does not preclude appellant from submitting additional evidence to the Office along with a request for reconsideration.

⁴ *See Nicolea Brusco*, 33 ECAB 1138, 1140 (1982).

⁵ *Charles D. Bickel*, 32 ECAB 568 (1981).

⁶ *William C. Thomas*, 45 ECAB 591 (1994).

The decisions of the Office of Workers' Compensation Programs dated October 10, 2002 are hereby affirmed.

Dated, Washington, DC
March 17, 2003

Alec J. Koromilas
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member