DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On June 13, 2005 appellant filed a timely appeal of the May 18, 2005 merit decision of the Office of Workers’ Compensation Programs, which granted a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d) the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant has more than a 25 percent impairment of the left and right lungs for which he received a schedule award.

FACTUAL HISTORY

Appellant, a 73-year-old retired maintenance foreman, has an accepted occupational disease claim for pleural thickening consistent with exposure to asbestos, which arose on or about December 7, 1990.1 Appellant later developed nonsmall cell lung cancer, which required

1 Appellant voluntarily retired on April 30, 1993.

On November 24, 2004 appellant wrote to the Office inquiring about possible entitlement to a schedule award. He submitted a November 1, 2004 report from Dr. David E. Corley, a Board-certified internist, who found a moderate pulmonary impairment based upon a recent pulmonary function study that revealed a FEV\textsubscript{1} of 1.61 liters. Dr. Corley explained that the FEV\textsubscript{1} value was 56 percent of the predicted value for appellant’s age.

The Office referred the record to an Office medical adviser who, in a report dated December 21, 2004, found that appellant had a Class 2 respiratory disorder that represented a 25 percent impairment of both the left and right lungs. He reached maximum medical improvement on November 1, 2004.

In a decision dated May 18, 2005, the Office granted appellant a schedule award for 25 percent impairment of the right lung and 25 percent impairment of the left lung. The award covered a period of 78 weeks, from November 1, 2004 to May 2, 2006.

**LEGAL PRECEDENT**

Section 8107 of the Federal Employees’ Compensation Act sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body. The Act, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The implementing regulations have adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the appropriate standard for evaluating schedule losses. Effective February 1, 2001, schedule awards are determined in accordance with the A.M.A., *Guides* (5th ed. 2001).

**ANALYSIS**

The Office based the May 18, 2005 schedule award on the medical adviser’s December 21, 2004 finding of a Class 2 respiratory disorder under Table 5-12, A.M.A., *Guides* 107. The Office medical adviser explained that Dr. Corley’s November 1, 2004 physical

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2 Appellant formally filed a claim for a schedule award (Form CA-7) on February 28, 2005.

3 5 U.S.C. § 8107(a), (c). With respect to the loss of use, of a lung, the applicable regulation provides that for a total or 100 percent loss of use, of a single lung, an employee shall receive 156 weeks of compensation. 20 C.F.R. § 10.404(a). Regarding loss of use, due to lung impairments, as in the instant case, the Office has determined that the percentage of impairment will be multiplied by 312 weeks (twice the award for loss of function of one lung) to obtain the number of weeks payable. Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.4 (November 1998).


examination findings and the pulmonary function studies results were consistent with a Class 2 respiratory disorder. He only differed with Dr. Corely with respect to the latter’s reliance on a prebronchodilator FEV1 value of 1.61 liters, which was 56 percent of predicted value. While the prebronchodilator FEV1 value represented a Class 3 respiratory disorder under Table 5-12, the postbronchodilator FEV1 value of 1.69 liters, which was 59 percent of predicted value, did not. In accordance with the A.M.A., Guides, the Office medical adviser properly relied on appellant’s postbronchodilator FEV1 value of 1.69 liters. He explained that this value was in keeping with the other pulmonary function studies values, which all fell within the parameters of a Class 2 respiratory disorder.

According to Table 5-12, a Class 2 respiratory disorder provides for a range of impairment from 10 to 25 percent. The Office medical adviser assigned a 25 percent impairment rating based on appellant’s carbon monoxide diffusing capacity of 15.8, which was 60 percent of the predicted value. As the Office medical adviser’s December 21, 2004 impairment rating conforms to the A.M.A., Guides (5th ed. 2001), his finding constitutes the weight of the medical evidence. Appellant has not provided any probative medical evidence that he has more than 25 percent impairment of both lungs.

CONCLUSION

The Board finds that appellant failed to establish that he has more than 25 percent impairment of the left and right lungs.

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6 Section 5.4d, A.M.A., Guides 93.

7 Bobby L. Jackson, 40 ECAB 593, 601 (1989).
ORDER

IT IS HEREBY ORDERED THAT the May 18, 2005 decision of the Office of Workers’ Compensation Programs is affirmed.

Issued: October 19, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board