



removal of his right middle lobe on December 24, 2003. On July 20, 2004 the Office accepted his lung cancer as employment related.

On November 24, 2004 appellant wrote to the Office inquiring about possible entitlement to a schedule award.<sup>2</sup> 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<sub>1</sub> of 1.61 liters. Dr. Corley explained that the FEV<sub>1</sub> 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.<sup>3</sup> 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.<sup>4</sup> Effective February 1, 2001, schedule awards are determined in accordance with the A.M.A., *Guides* (5<sup>th</sup> ed. 2001).<sup>5</sup>

### **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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<sup>2</sup> Appellant formally filed a claim for a schedule award (Form CA-7) on February 28, 2005.

<sup>3</sup> 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).

<sup>4</sup> 20 C.F.R. § 10.404 (1999).

<sup>5</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 (June 2003); FECA Bulletin No. 01-05 (issued January 29, 2001).

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 FEV<sub>1</sub> value of 1.61 liters, which was 56 percent of predicated value. While the prebronchodilator FEV<sub>1</sub> value represented a Class 3 respiratory disorder under Table 5-12, the postbronchodilator FEV<sub>1</sub> value of 1.69 liters, which was 59 percent of predicated value, did not. In accordance with the A.M.A., *Guides*, the Office medical adviser properly relied on appellant's postbronchodilator FEV<sub>1</sub> value of 1.69 liters.<sup>6</sup> 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* (5<sup>th</sup> ed. 2001), his finding constitutes the weight of the medical evidence.<sup>7</sup> 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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<sup>6</sup> Section 5.4d, A.M.A., *Guides* 93.

<sup>7</sup> *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