

chronic cough, pan sinusitis, gastroesophageal reflux disease, hypertension, benign prostatic hypertrophy, vocal cord dysfunction and history of anxiety/depression.

On November 10, 2002 the Office referred appellant to Dr. Ronald Elkin, a Board-certified internist with subspecialties in pulmonary disease and critical care medicine, for a second opinion. In a medical report dated December 29, 2003, he diagnosed “pneumoconiosis – interstitial pulmonary fibrosis, more likely than not related to occupational exposures.” Dr. Elkin noted that appellant’s cough and dyspnea were related to this problem. On January 9, 2004 the Office accepted appellant’s claim for interstitial pulmonary fibrosis.

By memorandum dated January 9, 2004, the Office asked an Office medical consultant to evaluate appellant’s condition for schedule award purposes. In a report dated January 13, 2004, Dr. Charles C. McDonald, a Board-certified internist with a subspecialty in pulmonary disease, indicated that it was unclear which agents were imputed to be the cause or contributing factors to appellant’s interstitial fibrosis. He further stated:

“At this time, it appears as though [appellant] has no significant respiratory impairment due to his interstitial lung disease. As of [July 9, 2002], his oxygen consumption was 1.176 liters per minute which is 120 [percent] of the predicted value at National Jewish Hospital.

“Dr. Elkin has detailed that [appellant] is limited by his orthopedic problems. He also is having difficulty with a recent stroke and poor memory. It is unlikely therefore that the history obtained from [appellant] could be further clarified regarding his exposure. It is also unlikely that a repeat exercise test will be possible. As his pulmonary function tests on [July 8, 2003] were normal, it is possible to state that the degree of respiratory impairment secondary to the fifth edition of the [American Medical Association, *Guides to the Evaluation of Permanent Impairment*] is 0 [percent].”

By decision dated February 9, 2004, the Office denied appellant’s claim for a schedule award.

On March 2, 2004 appellant requested an oral hearing, which was held on December 1, 2004. Following the hearing appellant submitted a radiology consultation report dated December 18, 2003 by Dr. Raymond Cummins, a Board-certified radiologist. He listed his impression as “findings compatible with interstitial pulmonary fibrosis.”

In a decision dated March 7, 2005, the hearing representative affirmed the February 9, 2004 decision denying appellant’s claim for a schedule award.

LEGAL PRECEDENT

Under section 8107 of the Federal Employees’ Compensation Act¹ and section 10.404 of the implementing federal regulation, schedule awards are payable for permanent impairment of

¹ 5 U.S.C. § 8107.

specified body members, functions or organs.² The Act, however, does not specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for 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 A.M.A., *Guides* has been adopted by the Office and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.³ Chapter 5 of the fifth edition of the A.M.A., *Guides* provides that permanent impairment of the lungs is determined on the basis of pulmonary function tests.⁴

ANALYSIS

The Board finds that appellant failed to establish entitlement to a schedule award based on his accepted condition of interstitial pulmonary fibrosis. Appellant has the burden of proof to establish that he sustained a permanent impairment causally related to the accepted condition under the criteria set forth in the A.M.A., *Guides*.⁵ Neither Dr. Gottschall, appellant's attending physician, nor Dr. Elkin, the Office's second opinion specialist, found that appellant had pulmonary impairment under the A.M.A., *Guides*. The Office properly referred appellant to its Office medical consultant, Dr. McDonald, to determine whether appellant had any permanent impairment pursuant to the A.M.A., *Guides*. He noted that appellant's pulmonary function tests of July 8, 2003 were normal. Dr. McDonald explained that testing at The National Jewish Medical Center revealed that appellant's oxygen consumption was 1.176 liters per minute, which is 120 percent of the predicted value. He concluded that appellant had no pulmonary impairment under the A.M.A., *Guides*. Dr. McDonald's opinion is based on a thorough evaluation of appellant's case record and medical testing, including pulmonary function tests. There is no medical opinion that establishes appellant sustained a permanent impairment to his lungs under the Act.

Subsequent to the oral hearing, appellant submitted a radiology report by Dr. Cummins who assessed that appellant had findings compatible with interstitial pulmonary fibrosis, the condition the Office accepted as employment related. As he provided no impairment rating, the Board finds that the report is not relevant for schedule award purposes.

CONCLUSION

The Board finds that appellant has not established that he is entitled to a schedule award based on permanent impairment to his lungs.

² The Board notes that the lungs are not a specified body member under the Act. The Act was amended effective September 7, 1974 authorizing a schedule award for loss or loss of use of any other important external or internal organ of the body as determined by the Secretary. Pursuant to regulation, the Office has provided for a schedule award for lung impairment. 20 C.F.R. § 10.404; *Eugene Van Dyke*, 53 ECAB 706 (2002).

³ See *Joseph Lawrence, Jr.*, 53 ECAB 331 (2002); *James J. Jhort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 706 (2002).

⁴ A.M.A., *Guides* 107.

⁵ *Edward W. Spohr*, 54 ECAB 806 (2003).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 15, 2005 is affirmed.

Issued: July 19, 2006
Washington, DC

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

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