



through his attorney, he requested an increased schedule award. Appellant submitted a July 13, 2005 pulmonary function study which showed that his forced vital capacity (FVC) was 80 percent of predicted, forced expiratory volume in one second (FEV<sub>1</sub>) 67 percent of predicted, FEV<sub>1</sub>/FVC ratio 84 percent of predicted and diffusing capacity of carbon monoxide (Dco) 61 percent of predicted.<sup>1</sup> In an undated report, an Office medical adviser analyzed the July 13, 2005 pulmonary values in accordance with the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*).<sup>2</sup> The medical adviser concluded that, under Table 5-12, appellant had a Class 2 impairment and thus was not entitled to an increased schedule award. By decision dated January 23, 2006, the Office found that appellant was not entitled to an additional schedule award.

### **LEGAL PRECEDENT**

Under section 8107 of the Federal Employees' Compensation Act<sup>3</sup> and section 10.404 of the implementing federal regulation,<sup>4</sup> schedule awards are payable for permanent impairment of specified body members, functions or organs. 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*<sup>5</sup> has been adopted by the Office, and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.<sup>6</sup>

Chapter 5 provides the framework for assessing respiratory impairments<sup>7</sup>: Table 5-12 describes 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 FVC, FEV<sub>1</sub> or Dco measured by their respective predicted values. If one of the three ventilatory function measures, FVC, FEV<sub>1</sub> or Dco or the ratio of FEV<sub>1</sub> to FVC, stated in terms of the observed values, is abnormal to the degree described in Classes 2 to 4 of the table, 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.<sup>8</sup>

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<sup>1</sup> The studies were conducted for Dr. Daniel DuPont, a Board-certified osteopath specializing in pulmonary diseases.

<sup>2</sup> A.M.A., *Guides* (5<sup>th</sup> ed. 2001); *Joseph Lawrence, Jr.*, 53 ECAB 331 (2002).

<sup>3</sup> 5 U.S.C. § 8107.

<sup>4</sup> 20 C.F.R. § 10.404.

<sup>5</sup> A.M.A., *Guides*, *supra* note 2.

<sup>6</sup> See *Joseph Lawrence, Jr.*, *supra* note 2; *James J. Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

<sup>7</sup> A.M.A., *Guides*, *supra* note 2 at 87-115.

<sup>8</sup> *Id.* Table 5-12 at 107; see *Boyd Haupt*, 52 ECAB 326 (2001).

**ANALYSIS**

The record in this case includes pulmonary function studies dated July 13, 2005 which demonstrate an FVC at 80 percent of predicted, FEV<sub>1</sub>, at 67 percent of predicted, FEV<sub>1</sub>/FVC ratio at 84 percent of predicted and Dco at 61 percent of predicted. As noted by the Office medical adviser, under Table 5-12, appellant's reported predicted values for FVC of 80 percent and 67 percent for FEV<sub>1</sub> would equal Class 2 impairments respectively. His Dco of 61 percent of predicted would fall in the Class 2 impairment category and his FEV<sub>1</sub>/FVC ratio would not indicate any change.<sup>9</sup> The maximum impairment under Class 2 is 25 percent.<sup>10</sup> The Board therefore finds that the Office medical adviser's analysis of the July 13, 2005 pulmonary function studies establishes that appellant has a 25 percent lung impairment bilaterally, for which he previously received a schedule award.

**CONCLUSION**

The Board finds that appellant has failed to establish that he is entitled to more than a bilateral 25 percent lung impairment rating.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated January 23, 2006 be affirmed.

Issued: July 13, 2006  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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

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<sup>9</sup> A.M.A., *Guides*, *supra* note 2, Table 5-12 at 107.

<sup>10</sup> Office procedures provide that impairment to the lungs should be evaluated in accordance with the A.M.A., *Guides* insofar as possible. The percentage of "whole man" impairment is to be multiplied by 312 weeks (twice the award for loss of function of one lung) to obtain the number of weeks payable. All such awards are to be based on the loss of use of both lungs. Federal (FECA) Procedure Manual, Part 2 – Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(a)(1) (August 2002).