

Board-certified in pulmonary disease, failed to address whether the employment-related asbestos-related pleural plaquing disease contributed to appellant's restrictive lung disease. The Board set aside the decision of the Office dated July 14, 2003 and remanded the case for further proceedings. The facts of the case as set forth in the Board's prior decision are hereby incorporated by reference.

The Office requested clarification from Dr. Marmostein regarding whether appellant's employment-related asbestos-related pleural plaquing disease contributed to his restrictive lung disease, whether the reduction in lung capacity was due to his federal employment asbestosis exposure and whether appellant had any permanent impairment due to his asbestosis exposure. In a report dated June 30, 2005, Dr. Marmostein concluded that appellant had no permanent impairment as a result of his employment-related asbestos exposure pleural plaquing disease. With regard to the question of whether the pleural plaquing contributed to appellant's restrictive lung disease, Dr. Marmostein noted that "[t]he presence of such plaquing is not unique to the presence of asbestosis exposure" and "had never been definitely associated with abnormalities in pulmonary function." Dr. Marmostein stated that pleural plaquing "is primarily a marker for asbestos exposure." He opined that appellant's restrictive lung disease was not related to the pleural plaquing as there was no progression of abnormality in his lung capacity as in the vast majority of cases. The pleural plaquing was not so severe as to cause an impaired lung function. As to the question of whether appellant's reduction in total lung capacity was due to his asbestosis exposure, Dr. Marmostein concluded that the reduction was not due to asbestosis exposure. He stated that the reduction in total lung capacity and vital capacity were nonspecific findings "for which there are potentially other explanations." Dr. Marmostein also noted the lack of a diagnosis of pulmonary fibrosis to support his conclusion that the decreased lung capacity was unrelated to appellant's asbestosis exposure. He noted that appellant did have pleural plaquing, but there was "no convincing evidence that he has parenchymal lung disease accounting for his symptoms and his reduction in lung capacity." Dr. Marmostein concluded that appellant's reduced lung capacity was not employment related.

By decision dated August 24, 2005, the Office denied appellant's request for a schedule award. It found that the weight of the medical evidence rested with the June 30, 2005 supplemental report of Dr. Marmostein, the impartial medical specialist. Dr. Marmostein concluded that appellant had no permanent impairment of his lungs due to his accepted asbestos-related pleural plaquing disease.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act² and its implementing regulation³ sets forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of scheduled members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be

exposure to asbestos.

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404.

determined. For consistent results and to ensure equal justice under the law to 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.⁴ The American Medical Association, *Guides to the Evaluation of Permanent Impairment* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.⁵

Section 8123(a) of the Act provides, in pertinent part, “If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.”⁶ Where a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.⁷

ANALYSIS

The Board notes that, before application of the A.M.A., *Guides*, the Office must review appellant’s entitlement to a schedule award by determining whether the impairment of the scheduled member is causally related to an accepted work injury.⁸ It referred appellant to Dr. Marmostein, Board-certified in pulmonary disease, for an impartial medical examination. Dr. Marmostein was asked to render an opinion on the issue of whether the accepted asbestos-related pleural plaquing disease contributed to appellant’s restrictive lung disease. In its prior decision, the Board found that Dr. Marmostein failed to address whether the employment-related asbestos-related pleural plaquing disease contributed to his restrictive lung disease. The case was remanded to obtain a supplemental report from Dr. Marmostein to clarify this issue.

In a June 30, 2005 supplemental report, Dr. Marmostein opined that appellant’s pleural plaquing did not cause or contribute to the restrictive lung disease or decreased lung volume. He noted that “[t]he presence of such plaquing is not unique to the presence of asbestosis exposure” and “had never been definitely associated with abnormalities in pulmonary function.” Dr. Marmostein stated that appellant’s restrictive lung disease was not related to the pleural plaquing due to the lack of any progression of abnormality in appellant’s lung capacity. As to appellant’s reduction in total lung capacity, Dr. Marmostein noted the reduction in total lung capacity and vital capacity were nonspecific findings “for which there are potentially other explanations.” He also noted the lack of a diagnosis of pulmonary fibrosis to support that the decrease in lung capacity was due to appellant’s asbestosis exposure. While appellant did have

⁴ *James R. Mirra*, 56 ECAB ____ (Docket No. 05-998, issued September 6, 2005).

⁵ *D.R.*, 57 ECAB ____ (Docket No. 06-668, issued August 22, 2006); *Carol A. Smart*, 57 ECAB ____ (Docket No. 05-1873, issued January 24, 2006).

⁶ 5 U.S.C. § 8123(a); *Darlene R. Kennedy*, 57 ECAB ____ (Docket No. 05-1284, issued February 10, 2006).

⁷ *John E. Cannon*, 55 ECAB ____ (Docket No. 03-347, issued June 24, 2004).

⁸ See *Veronica Williams*, 56 ECAB ____ (Docket No. 04-2120, issued February 23, 2005) (a schedule award can only be paid for a condition related to an employment injury).

pleural plaquing, there was “no convincing evidence that he has parenchymal lung disease accounting for his symptoms and his reduction in lung capacity.”

Where a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.⁹ Dr. Marmostein’s medical opinion is based on a proper background and is sufficiently well rationalized. His opinion that appellant’s his restrictive lung disease was not related or contributed to by his accepted exposure or pleural plaquing disease is afforded the special weight given to an impartial medical specialist.¹⁰ Dr. Marmostein resolved the issue of whether appellant had any permanent impairment causally related to the employment-related pleural plaquing as he found that decreased lung volume and restrictive lung disease was not causally related to the employment injury.

CONCLUSION

The Board finds that appellant has not met his burden of proof in establishing that he has any permanent lung impairment causally related to his accepted asbestos-related pleural plaquing disease. Therefore, he is not entitled to a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers’ Compensation Programs dated August 24, 2005 is affirmed.

Issued: October 30, 2006
Washington, DC

David S. Gerson, Judge
Employees’ Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees’ Compensation Appeals Board

⁹ See *Darlene R. Kennedy*, 57 ECAB ____ (Docket No. 05-1284, issued February 10, 2006); *Roger Dingess*, 47 ECAB 123 (1995).

¹⁰ *Bryan O. Crane*, 56 ECAB ____ (Docket No. 05-232, issued September 2, 2005).