



October 19, 1993.<sup>2</sup> He was off work until July 9, 1994. On May 22, 1998 OWCP accepted the claim for aggravation of preexisting asthma.

By decision dated April 12, 2007, OWCP found that the evidence was insufficient to establish a permanent impairment to the lungs. In a decision dated January 3, 2008, an OWCP hearing representative remanded the case for further development of the medical evidence. OWCP referred appellant for a second opinion examination on May 19, 2008 by Dr. Rex Bolin, a pulmonologist. In a report dated August 12, 2008, an OWCP medical adviser reviewed Dr. Bolin's report and opined that appellant had an 18 percent permanent impairment to each lung under the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.

In a decision dated August 15, 2008, OWCP granted a schedule award for an 18 percent impairment to the lungs. The period of the award was 56.16 weeks from May 19, 2008.

On April 12, 2012 appellant submitted a claim for compensation (Form CA-7) indicating he was claiming an additional schedule award. He submitted a May 1, 2012 report from Dr. Michael McManus, who stated that appellant reported gradually worsening symptoms. Dr. McManus provided brief results on examination and stated that appellant would need a pre and postbronchodilator study or inhalation challenge for an impairment rating.

By letter dated April 13, 2012, OWCP advised appellant he needed to submit a report from a physician regarding an employment-related permanent impairment, including the recommended percentage of impairment under the sixth edition of the A.M.A. *Guides*. Appellant submitted a computerized tomography (CT) scan of the chest dated June 1, 2012 and results on pulmonary function tests dated May 29, 2012.

In a report dated May 31, 2012, Dr. Roger Eagan, a Board-certified pulmonologist, stated that appellant presented for asbestos evaluation. He reported that appellant had a long history of pleural thickening from his exposure to asbestos as an insulator and appellant stated that he had a mild increase in his dyspnea symptoms. Dr. Eagan provided results on examination and stated that laboratory and diagnostic test results showed "AMA Class 1" pleural thickening and the forced vital capacity (FVC) showed an "AMA Class 2" impairment.

By decision dated September 10, 2012, OWCP found appellant was not entitled to an additional schedule award. It found the medical evidence was not sufficient to establish an increased permanent impairment.

Appellant argues on appeal that he was told the case would be submitted to an OWCP medical adviser for review. He also noted that he had never received a letter requesting additional evidence.

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<sup>2</sup> Although appellant filed a traumatic injury claim from chemical exposure on October 19, 1993, subsequent development of the evidence considered appellant's exposure to asbestos, resin and other substances until his retirement in 2005.

## LEGAL PRECEDENT

Section 8107 provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.<sup>3</sup> Neither FECA nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.<sup>4</sup> For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition.<sup>5</sup>

A claimant seeking compensation under FECA<sup>6</sup> has the burden to establish the essential elements of her claim.<sup>7</sup> With respect to a schedule award, it is appellant's burden of proof to establish an increased schedule award.<sup>8</sup> A claimant may seek an increased schedule award if the evidence establishes that she sustained an increased impairment causally related to an employment injury.<sup>9</sup> The medical evidence must include a detailed description of the permanent impairment.<sup>10</sup>

## ANALYSIS

In the present case, appellant received a schedule award for an 18 percent permanent impairment to the lungs.<sup>11</sup> He seeks an increased schedule award. As noted above, it is appellant's burden of proof to establish an increased permanent impairment.

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<sup>3</sup> 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.404(a).

<sup>4</sup> *A. George Lampo*, 45 ECAB 441 (1994).

<sup>5</sup> FECA Bulletin No. 09-03 (issued March 15, 2009).

<sup>6</sup> 5 U.S.C. §§ 8101-8193.

<sup>7</sup> *John W. Montoya*, 54 ECAB 306 (2003).

<sup>8</sup> *Edward W. Spohr*, 54 ECAB 806, 810 (2003).

<sup>9</sup> *See Rose V. Ford*, 55 ECAB 449 (2004).

<sup>10</sup> *See Vanessa Young*, 55 ECAB 575 (2004). OWCP procedures provide that the medical evidence must include a detailed report with an explanation as to how the impairment rating was calculated. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(c) (January 2010).

<sup>11</sup> OWCP procedures state that impairment to the lungs should be evaluated in accordance with the A.M.A., *Guides*, insofar as possible, noting that the percentage of whole man impairment will 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 will be based on the loss of use of both lungs. *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(a)(1) (January 2010). Although the August 15, 2008 OWCP decision refers to a 36 percent impairment to the lungs (based on 18 to each lung), the impairment was an 18 percent impairment to the lungs resulting in 56.16 weeks of compensation (18 percent of 312 weeks).

Appellant did not submit probative medical evidence with respect to a permanent impairment to the lungs. Dr. McManus indicated that additional testing must be obtained to provide an impairment rating. Dr. Eagan briefly referred to class 1 and class 2 impairments, without discussing the specific results of laboratory and diagnostic tests, referring to specific tables in the A.M.A., *Guides* or otherwise providing a probative medical opinion as to an employment-related permanent impairment to the lungs. The Board finds that appellant did not meet his burden of proof to establish an increased schedule award.

On appeal, appellant states that he was told the case would be referred to an OWCP medical adviser for review. As noted above, he has the burden to submit a sufficiently detailed medical report with respect to a permanent impairment. OWCP procedures indicate the case is referred to an OWCP medical adviser after “all necessary medical evidence” has been obtained.<sup>12</sup> The necessary medical evidence was not submitted in this case. Appellant also states on appeal that he did not receive a letter requesting additional evidence. To the extent he is referring to the April 13, 2012 OWCP letter, the copy in the case record contains his address of record and is presumed to have been received by the addressee.<sup>13</sup> The Board notes that appellant may, at any time, submit probative evidence to OWCP with respect to an increased schedule award and receive a decision on the merits of the claim.<sup>14</sup> Evidence submitted to the Board that was not before OWCP at the time of its September 10, 2012 decision cannot be reviewed by the Board on this appeal.<sup>15</sup>

### CONCLUSION

The Board finds the evidence does not establish appellant has more than an 18 percent permanent impairment to the lungs.

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<sup>12</sup> Federal (FECA) Procedure Manual, *id.* at Chapter 2.808(d) (January 2010).

<sup>13</sup> See *Larry L. Hill*, 42 ECAB 596, 600 (1991).

<sup>14</sup> See *Linda T. Brown*, 51 ECAB 115 (1999) (the claimant’s submission of new evidence with respect to an increased impairment was not a request for reconsideration and claimant was entitled to a merit decision).

<sup>15</sup> 20 C.F.R. § 501.2(c)(1).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated September 10, 2012 is affirmed.

Issued: April 17, 2013  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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