

chronic asthma; chronic frontal, ethmoidal, and sphenoidal sinusitis; other chronic sinusitis; chronic obstructive asthma; and other diseases of nasal cavity and sinuses.

On August 25, 2015 appellant filed a claim for a schedule award (Form CA-7). She submitted an October 19, 2015 report in which Dr. Douglas A. Swift, Board-certified in occupational medicine, described his review of medical records including test results dating from November 14, 2008 to November 17, 2014. Dr. Swift advised that, in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*),³ under Table 5-5, Asthma, appellant had a class 2 whole person permanent impairment of 17 percent.

OWCP referred the claim to a district medical adviser (DMA) to review the schedule award claim. In a January 24, 2016 report, Dr. Albert A. Rizzo, Board-certified in internal medicine and pulmonary disease serving as a DMA, noted his review of the record, including a November 18, 2015 statement of accepted facts, test results, and Dr. Swift's report. Dr. Rizzo reported that appellant was maintained on chronic-inhaled corticosteroids and had a post-bronchodilator forced expiratory volume in one second (FEV₁) of 85 percent, as shown in a November 2014 pulmonary function study. He advised that treatment had normalized her pulmonary function and indicated that, based on Table 5-4 and Table 5-5, the FEV₁ result placed her in class 0. The DMA also indicated that Table 5-5 could not be used to determine impairment in the absence of airflow limitation which, he indicated, described appellant, finding that although she was hyper-responsive, she had normal pulmonary function with treatment as shown on a on a November 17, 2014 post-bronchodilator which demonstrated FEV₁ of 85 percent predicted. He found that appellant had a class 0 impairment for her respiratory status. Therefore, the DMA concluded that appellant had a total of zero percent respiratory permanent impairment.

By decision dated April 19, 2016, OWCP denied appellant's schedule award claim, finding that the medical evidence of record was insufficient to establish permanent impairment of a scheduled member or function of the body.

On May 13, 2016 appellant requested a hearing before an OWCP hearing representative and submitted additional medical evidence. By decision dated March 29, 2017, the hearing representative affirmed the denial of appellant's schedule award claim, finding that the weight of the medical evidence rested with the opinion of Dr. Rizzo.

On April 12 and September 11, 2017 appellant requested reconsideration. By merit decisions dated July 5 and September 20, 2017, OWCP denied modification of the prior decisions.

Appellant again requested reconsideration on October 12, 2017 and submitted additional medical evidence. By nonmerit decision dated December 19, 2017, OWCP denied review of the merits of her claim. It found the evidence submitted was irrelevant or immaterial and of no bearing on the issue of whether she established permanent impairment to a scheduled member.

The Board finds this case is not in posture for decision. Pursuant to 20 C.F.R. § 501.2(c)(1), the Board's review of a case is limited to the evidence in the case record that was

³ A.M.A., *Guides* (6th ed. 2009).

before OWCP at the time of its final decision. Decisions on claims are based on the written record, which may include forms, reports, letters, and other evidence of various types such as photographs, videotapes, or drawings.⁴ Evidence may not be incorporated by reference, and evidence from another claimant's case file may not be used.⁵ All evidence that forms the basis of a decision must be in that claimant's case record.⁶

Both Dr. Swift, who provided an October 19, 2015 impairment evaluation for appellant and Dr. Rizzo, an OWCP medical adviser, referenced a November 17, 2014 pulmonary function study. In his March 29, 2017 decision, the hearing representative also referenced a November 17, 2014 pulmonary function study. He relied on this medical evidence in affirming the denial of appellant's schedule award claim. A report summarizing the findings of the November 17, 2014 pulmonary function study is not found in the case record before the Board in this appeal. Due to this oversight, the Board is not in a position to make an informed decision regarding appellant's schedule award claim.⁷

As the record lacks sufficient evidence for the Board to render an informed decision, the case shall be remanded to OWCP for further development. As noted, all evidence that forms the basis of a decision must be included in the case record.⁸ After OWCP has developed the record consistent with the above-noted directive, it shall issue a *de novo* decision regarding appellant's schedule award claim.⁹

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.5a (June 2011).

⁵ *Id.*

⁶ *Id.*

⁷ See *L.W.*, Docket No. 17-0526 (issued May 12, 2017).

⁸ *Id.*

⁹ See *D.G.*, Docket No. 17-1098 (issued October 26, 2017).

IT IS HEREBY ORDERED THAT the December 19 and September 20, 2017 decisions of the Office of Workers' Compensation Programs are set aside and the case remanded to OWCP for further proceedings consistent with this order of the Board.

Issued: January 31, 2019
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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