

**United States Department of Labor
Employees' Compensation Appeals Board**

T.E., Appellant)	
)	
and)	Docket No. 25-0785
)	Issued: November 21, 2025
U.S. POSTAL SERVICE, SAINT PAUL POST OFFICE, Saint Paul, MN, Employer)	
)	
)	

Appearances:

Case Submitted on the Record

Appellant, pro se

Office of Solicitor, for the Director

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge

PATRICIA H. FITZGERALD, Deputy Chief Judge

JANICE B. ASKIN, Judge

JURISDICTION

On August 19, 2025 appellant filed a timely appeal from a May 20, 2025 merit decision and a June 24, 2025 nonmerit decision of the Office of Workers' Compensation Programs (OWCP).¹ Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

¹ Appellant submitted a timely oral argument request before the Board. 20 C.F.R. § 501.5(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). Appellant asserts on appeal that he was entitled to 109 weeks of schedule award compensation for the permanent impairment of his lungs. The Board, in exercising its discretion, denies his request for oral argument because the argument on appeal can adequately be addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, the oral argument request is denied and this decision is based on the case record as submitted to the Board.

² 5 U.S.C. § 8101 *et seq.*

ISSUES

The issues are: (1) whether appellant has greater than 35 percent permanent impairment of the lungs, for which he previously received a schedule award; and (2) whether OWCP properly denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On December 27, 2023 appellant, then a 61-year-old retired clerk,³ filed an occupational disease claim (Form CA-2) alleging that he had developed a lung condition causally related to factors of his federal employment including exposure to asbestos. He noted that he first learned of his lung disease and its relationship to factors of his federal employment on June 9, 2023. OWCP accepted the claim for pleural plaque with presence of asbestos.

In a March 12, 2025 impairment rating report, Dr. James Brien, a Board-certified anesthesiologist, recounted appellant's injury history regarding working in multiple buildings that were undergoing asbestos abatement. He documented appellant's subjective complaints and examination findings and reviewed his spirometry results. Using Table 5-4 on page 88 of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),⁴ Dr. Brien found a Class 2 impairment of the lung due to pulmonary dysfunction, which yielded a grade C default value of 17 percent whole person impairment based on 62 percent of predicted diffusing capacity for carbon monoxide. He applied a grade modifier functional history (GMFH) of 3 for intermittent severe dyspnea despite continuous treatment with two daily inhalers and a rescue inhaler and a grade modifier (GMPE) of 3 for physical findings of significant coughing and discomfort. Utilizing the net adjustment formula yielded a final adjustment of +2 resulting in Class 2, grade E or 23 percent whole person permanent impairment. Referencing the FECA Procedure Manual,⁵ Dr. Brien divided the 23 percent whole person impairment by 65 percent to find a 35 percent permanent lung impairment. He concluded that pursuant to the FECA Manual⁶ (312 weeks x 35 percent) appellant was entitled to 109 weeks of compensation. Dr. Brien determined appellant's date of maximum medical improvement (MMI) to be March 12, 2024.

On March 21, 2025 appellant filed a claim for compensation (Form CA-7) for a schedule award.

In an April 24, 2025 report, Dr. Michael Minev, a Board-certified internist serving as an OWCP District Medical Adviser (DMA), reviewed the medical evidence including Dr. Brien's impairment findings. He concurred with Dr. Brien's impairment rating of 35 percent for both lungs. Dr. Minev found a Class 2, Grade C impairment of the lungs, with a default rating of 17

³ Appellant retired on disability from the employing establishment effective May 10, 2010.

⁴ A.M.A., *Guides* (6th ed. 2009).

⁵ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.4 (January 2010).

⁶ *Id.*

percent. He applied a GMFH of 3 for intermittent severe dyspnea despite continuous treatment with two daily inhalers and a rescue inhaler and a GMPE of 3 for physical findings of significant coughing and discomfort. Dr. Minev explained that as both of the non-key factors were 1 grade higher than the key factor of 2, utilizing the net adjustment formula yielded a final adjustment of +2 resulting in Class 2, grade E or 23 percent whole person permanent impairment. Next, he divided the 23 percent whole person impairment by 65 percent to find a 35 percent permanent bilateral lung impairment. Dr. Minev concluded that he agreed with Dr. Brien's rating. He determined appellant's MMI to be March 12, 2024, the date of Dr. Brien's report.

By decision dated May 20, 2025, OWCP granted appellant a schedule award for 35 percent permanent impairment of the left and right lungs. The period of the award ran for 54.6 weeks covering the period March 12, 2025 through March 29, 2026.

On June 9, 2025 appellant requested reconsideration. No additional argument or evidence was received.

By decision dated June 24, 2025, OWCP denied appellant's request for reconsideration.

LEGAL PRECEDENT -- ISSUE 1

The schedule award provisions of FECA⁷ and its implementing federal regulations,⁸ set 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, FECA does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law for all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.⁹ As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.¹⁰

No schedule award is payable for a member, function, or organ of the body that is not specified in FECA or in the implementing regulations.¹¹ The list of schedule members includes the eye, arm, hand, fingers, leg, foot, and toes. Additionally, FECA specifically provides for compensation for loss of hearing and loss of vision.¹² By authority granted under FECA, the Secretary of Labor expanded the list of schedule members to include the breast, kidney, larynx,

⁷ 5 U.S.C. § 8107.

⁸ 20 C.F.R. § 10.404.

⁹ *Id.* at § 10.404(a).

¹⁰ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5(a) (February 2013); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

¹¹ *L.A.*, Docket No. 23-0212 (issued May 22, 2023); *J.G.*, Docket No. 16-1533 (issued March 15, 2018); *W.C.*, 59 ECAB 372, 374-75 (2008); *Anna V. Burke*, 57 ECAB 521, 523-24 (2006).

¹² 5 U.S.C. § 8107(c)(13) and (14).

lung, penis, testicle, tongue, ovary, uterus/cervix and vulva/vagina, and skin.¹³ Neither FECA nor the regulations provide for the payment of a schedule award for the permanent loss of use of the back or the body as a whole.¹⁴ Compensation for total loss of use of a single lung is 156 weeks.¹⁵

Although FECA does not specifically provide for compensation for whole person impairment, the measurement of lung function warrants special consideration. Table 5-4, Pulmonary Dysfunction, A.M.A., *Guides* page 88, provides whole person impairment ratings based on a designated class (0-4) of impairment. Depending on the assigned class, the range of whole person impairment due to pulmonary dysfunction is 0 to 65 percent.¹⁶

OWCP's procedures provide that lung impairment should be evaluated in accordance with the A.M.A., *Guides* insofar as possible. Awards are based on the loss of use of both lungs, and the percentage for the particular class of whole person respiratory impairment will be multiplied by 312 weeks (twice the award for loss of function of one lung) to obtain the number of weeks payable.¹⁷

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed to OWCP's DMA for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the DMA providing rationale for the percentage of impairment specified.¹⁸

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met his burden of proof to establish greater than 35 percent permanent impairment of the lungs.

In an impairment evaluation dated March 12, 2025, Dr. Brien diagnosed pleural plaque with presence of asbestos. He documented appellant's subjective complaints and examination findings and reviewed his spirometry results. Using Table 5-4 on page 88 of the A.M.A., *Guides*, Dr. Brien found a Class 2 impairment of the lungs, with a GMFH of 3 and GMPE of 3, which yielded a default value of 23 percent whole person. Next, he divided the 23 percent whole person impairment by 65 percent to find a 35 percent permanent bilateral lung impairment.

In accordance with its procedures,¹⁹ OWCP properly referred the evidence of record to Dr. Minev, serving as the DMA. The DMA, Dr. Minev, concurred with Dr. Brien's permanent

¹³ *Id.* at § 8107(c)(22); 20 C.F.R. § 10.404(b).

¹⁴ *Id.* at § 8107(c); *id.* at § 10.404(a); *see Jay K. Tomokiyo*, 51 ECAB 361, 367 (2000).

¹⁵ *Id.* at § 10.404(b).

¹⁶ *See A.M.*, Docket No. 24-0899 (June 26, 2025).

¹⁷ *Supra* note 10 at Chapter 2.808.5(c)(1); *supra* note 10 at Chapter 3.700.4d(1)(c).

¹⁸ *See supra* note 10 at Chapter 2.808.6(f) (March 2017); *see also J.S.*, Docket No. 23-0456 (issued October 2, 2023); *R.M.*, Docket No. 18-1313 (issued April 11, 2019); *C.K.*, Docket No. 09-2371 (issued August 18, 2010).

¹⁹ *Id.*

rating of 35 percent. He found the date of MMI to be March 12, 2025, the date of Dr. Brien's report.

As both the treating physician and the DMA properly utilized the A.M.A., *Guides* to rate appellant's permanent impairment and concurred that he had 35 percent permanent impairment of the lungs, the Board finds that appellant has not met his burden of proof to establish greater than the 35 percent permanent bilateral lung impairment.

However, the Board further finds that the case is not in posture for decision with regard to OWCP's determination of the number of weeks of schedule award compensation.

On appeal, appellant asserts that he is entitled to a total of 109 weeks of schedule award compensation, rather than the 54.6 weeks provided by the May 20, 2025 schedule award. As explained above, OWCP's procedures provide that in determining an award for impairment of both lungs, the percentage for the particular class of whole person respiratory impairment is multiplied by 312 weeks to obtain the number of weeks of compensation.²⁰ OWCP, in its May 20, 2025 decision, however, determined the number of weeks of compensation by multiplying appellant's impairment by 156 weeks, which is the compensation for total loss of use of only a single lung.²¹

As OWCP failed to apply its procedures for total loss of use of both lungs, the case shall be remanded for further development. On remand, OWCP shall apply the appropriate procedures and then recalculate the number of weeks of schedule award compensation, followed by a *de novo* decision.²²

CONCLUSION

The Board finds that appellant has not established greater than 35 percent permanent impairment of the lungs. However, the Board further finds that the case is not in posture for decision with regard to OWCP's determination of the number of weeks of schedule award compensation.

²⁰ *Supra* note 17.

²¹ *Supra* note 15.

²² In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.

ORDER

IT IS HEREBY ORDERED THAT the May 20, 2025 decision is affirmed in part and set aside in part. The June 25, 2025 nonmerit decision of the Office of Workers' Compensation Programs is set aside as moot.

Issued: November 21, 2025
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board