

<sup>2</sup> The Board notes that, following the July 5, 2024 decision, OWCP received additional evidence. The Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

## **ISSUE**

The issue is whether appellant has met her burden of proof to establish a permanent impairment of the lungs, warranting a schedule award.

## **FACTUAL HISTORY**

On January 26, 2021 appellant, then a 50-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that on December 19, 2020 she contracted COVID-19 while in the performance of duty. She stopped work on the date of injury, returned to part-time work on March 25, 2021, and returned to full-time work on September 20, 2023. OWCP accepted the claim for COVID-19 and subsequently expanded its acceptance of the claim to include post-COVID-19 condition, unspecified. It paid appellant wage-loss compensation on the supplemental rolls from January 2, 2021 through May 13, 2022.

In an August 16, 2022 medical report, Dr. Gretchen Louise Brunworth, a Board-certified physiatrist, noted the history of the December 19, 2020 employment injury. She also noted that appellant had a history of fibromyalgia and was recently diagnosed with sarcoidosis and breast cancer, for which she was receiving chemotherapy. Dr. Brunworth indicated that appellant related complaints of mood swings, brain fog, increased fatigue, dyspnea, and tingling in her feet, legs, and arms, which she attributed to COVID-19. She performed a physical examination, which revealed 96 percent oxygen saturation, intact sensation and strength, and multiple tender points due to fibromyalgia. Dr. Brunworth diagnosed post-COVID syndrome and post viral fatigue syndrome. She noted that in order to perform an impairment rating under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),<sup>3</sup> she would need to review appellant's most recent pulmonary function test.

In a September 21, 2022 follow-up report, Dr. Brunworth performed an electromyography and nerve conduction velocity (EMG/NCV) study, which was unremarkable.

In an October 18, 2022 impairment rating evaluation report, Dr. Brunworth noted that a pulmonary function test dated August 2022 did not include the necessary standard ranges and, therefore, could not be used in determining impairment under the A.M.A., *Guides*. She reported that appellant complained of fatigue and dyspnea and noted her current medications of albuterol, Tylenol, and Singulair. Referring to Table 5-4, page 88, of the A.M.A., *Guides*, Dr. Brunworth found a Class 1 impairment with a severity of grade C based upon the "information I have available today," which resulted in six percent permanent impairment of the whole person for pulmonary dysfunction. She opined that one percent was attributable to sarcoidosis and the remaining five percent to employment-related COVID-19.

On October 18, 2023 appellant filed a claim for compensation (Form CA-7) for a schedule award.

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<sup>3</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

In an October 25, 2023 development letter, OWCP requested additional medical evidence from appellant in support of her schedule award claim and afforded her 30 days for a response.

On January 11, 2024 OWCP routed Dr. Brunworth's October 18, 2022 report, along with the case record and a statement of accepted facts (SOAF), to Dr. David Krohn, a Board-certified internist serving as an OWCP district medical adviser (DMA), for review and a determination of appellant's date of maximum medical improvement (MMI) and permanent impairment under the sixth edition of A.M.A., *Guides*.

In a January 21, 2024 report, Dr. Krohn reviewed the medical record, including Dr. Brunworth's October 18, 2022 medical report, and noted that appellant's claim was accepted for COVID-19 and post COVID-19 condition, unspecified. He indicated that there was insufficient information to calculate an impairment rating of the lungs, as the record did not include pulmonary function testing data. Dr. Krohn disagreed with Dr. Brunworth's rating of five percent permanent impairment of the whole person, noting that she did not have pulmonary function test values and that FECA did not allow for apportionment.

OWCP continued to receive evidence, including a report of pulmonary function result trends for June 15, 2021 through November 30, 2023, and a lymph node pathology report dated July 6, 2021.

In a March 11, 2024 addendum report, Dr. Krohn, the DMA, indicated that he had reviewed the pulmonary function "trends" report, which contained serial measurements of the individual components of spirometry with only the absolute value for each component. He indicated that the information provided did not contain the predicted value for each component or the percentage of the predicted value for each component. Dr. Krohn requested that OWCP provide him with a full spirometry report in order to evaluate appellant's permanent impairment under the A.M.A., *Guides*.

On April 24, 2024 OWCP received a spirometry report dated November 30, 2023 by Dr. Jeffrey Sippel, a Board-certified pulmonary disease, internal medicine, and critical care specialist, who noted pulmonary function values and indicated that the testing met the American Thoracic Society (ATS) standards for acceptability and repeatability.

In a June 26, 2024 addendum report, Dr. Krohn, the DMA, reviewed the case record, including the November 30, 2023 spirometry data. Referring to Table 5-4, page 88, of the A.M.A., *Guides*, he noted that appellant's forced vital capacity (FVC), forced expiratory value in the first second (FEV<sub>1</sub>), and ratio of these measurements (FEV<sub>1</sub>/FVC) all corresponded with a Class 0 impairment and, therefore, a zero percent whole person impairment. Dr. Krohn found that appellant reached MMI on November 30, 2023.

By decision dated July 5, 2024, OWCP denied appellant's schedule award claim, finding that he had not established permanent impairment of a scheduled member or function of the body.

## LEGAL PRECEDENT

The schedule award provisions of FECA<sup>4</sup> and its implementing regulations<sup>5</sup> 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. FECA, however, does not specify the manner in which the percentage of loss of a member shall be determined. OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants. As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.<sup>6</sup>

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. OWCP procedures provide that lung impairment should be evaluated in accordance with the A.M.A., *Guides* insofar as possible. It further provides that schedule 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.<sup>7</sup>

The A.M.A., *Guides* provide that most pulmonary impairments should be rated using Table 5-4, Pulmonary Dysfunction. It provides:

“The examiner should note that throughout this chapter the objective test results are used as the primary or ‘key’ factor in the impairment rating for the condition, or range of conditions. Well-validated organ-specific functional test measures exist for the pulmonary system that correlate well with levels of impairment. It is therefore appropriate to choose ‘objective test results’ as the primary determinant of impairment class rating in this chapter.”<sup>8</sup>

The A.M.A., *Guides* specifies that in rating pulmonary impairment the examiner should assign an impairment class using the key impairment factor, objective test results, and that “only the key factor can be used to assign the impairment class.” It further provides that “[w]hen non-key factors such as history and physical exam[ination] are relevant to the rating, they are each assigned a relative class value, which in turn is used to move the impairment rating up or down in the same class.... Regardless of the discrepancy of impairment classes between the key factor and

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<sup>4</sup> *Supra* note 1.

<sup>5</sup> 20 C.F.R. § 10.404.

<sup>6</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a. (March 2017); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

<sup>7</sup> *Id.* at Chapter 2.808.5c(1); *id.* at Chapter 3.700.4d(1)(c).

<sup>8</sup> A.M.A., *Guides* 87.

non-key factors, the impairment rating should never move out of the class to which it was initially assigned, using only the key factor.”<sup>9</sup>

OWCP’s procedures provide that, after obtaining all necessary medical evidence, the file should be routed to an OWCP medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with OWCP’s medical adviser providing rationale for the percentage of impairment specified.<sup>10</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a permanent impairment of the lungs, warranting a schedule award.

In an impairment evaluation dated October 18, 2022, Dr. Brunworth noted that pulmonary function tests dated August 2022 did not include the necessary standard ranges and, therefore, could not be used in determining impairment under the A.M.A., *Guides*. Referring to Table 5-4, page 88, of the A.M.A., *Guides*, she found a Class 1 impairment with a severity of grade C based upon the “information I have available today,” which resulted in six percent permanent impairment of the whole person for pulmonary dysfunction. Dr. Brunworth opined that one percent was attributable to sarcoidosis and the remaining five percent to employment-related COVID-19.

Dr. Krohn, the DMA, reviewed Dr. Brunworth’s impairment evaluation and disagreed with her findings, noting that she did not rely upon pulmonary function test data and that FECA did not allow for apportionment. He reviewed the November 30, 2023 spirometry data and, referencing Table 5-4, page 88, of the A.M.A., *Guides*, found that appellant’s FVC, FEV<sub>1</sub>, and FEV<sub>1</sub>/FVC corresponded with a Class 0 impairment and, therefore, a zero percent whole person impairment. The Board has reviewed the opinion of Dr. Krohn and finds that it has reliability, probative value, and convincing quality with respect to its conclusions regarding the relevant issue. Dr. Krohn correctly noted that Dr. Brunworth’s October 18, 2022 opinion was not supported by objective pulmonary function testing data as required by the A.M.A., *Guides*.<sup>11</sup> Accordingly, OWCP properly accorded the weight of the medical evidence to Dr. Krohn’s opinion regarding permanent impairment under the A.M.A., *Guides*.<sup>12</sup>

There is no current medical evidence in conformance with the sixth edition of the A.M.A., *Guides* establishing a permanent impairment of the lungs. Accordingly, appellant has not met her burden of proof.<sup>13</sup>

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<sup>9</sup> *Id.*

<sup>10</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6e (March 2017).

<sup>11</sup> *Supra* note 9.

<sup>12</sup> *See C.S.*, Docket No. 21-1345 (issued February 21, 2023).

<sup>13</sup> *See J.C.*, Docket No. 21-0426 (issued October 12, 2021).

Appellant may request a schedule award or increased schedule award at any time based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased permanent impairment.

**CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish a permanent impairment of the lungs, warranting a schedule award.

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 5, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 2, 2025  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board