

¹ 5 U.S.C. § 8101 *et seq.*

On appeal, counsel contends that OWCP's November 16, 2010 decision is contrary to fact and law.

FACTUAL HISTORY

OWCP accepted that on September 19, 2006 appellant, then a 31-year-old transportation security screener, sustained a strain of the right shoulder rotator cuff as a result of lifting a bag onto a baggage belt. Appellant underwent manipulation and arthroscopy of the right shoulder with subacromial decompression on May 1, 2007 which was performed by Dr. Gordon P. Nutik, an attending Board-certified orthopedic surgeon.

On June 12, 2009 appellant filed a claim for a schedule award. In a January 25, 2008 medical report, Dr. Nutik provided his findings on physical examination of the right shoulder and advised that she had reached maximum medical improvement. He discharged appellant from his medical care and stated that she could return to her regular work duties.

By letter dated June 25, 2009, OWCP requested that Dr. Nutik submit a medical report that included a finding that appellant had attained maximum medical improvement and provided a detailed description of the impairment and a schedule award rating according to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).² Dr. Nutik did not respond.

On December 21, 2009 OWCP referred appellant, together with the medical record and a statement of accepted facts, to Dr. Christopher E. Cenac, a Board-certified orthopedic surgeon, for a second opinion.

In a January 19, 2010 report, Dr. Cenac reviewed a history of the employment injury and appellant's medical treatment. Appellant complained about occasional discomfort in her right shoulder associated with activities. On physical examination, Dr. Cenac reported healed arthroscopic portals on the right shoulder. Appellant had full and unrestricted actively passive motion of the right shoulder, elbow and wrist. There was no crepitation or evidence of a click. Appellant was right handed and grip strength testing was symmetrical with a dynamometer. Shoulder strength was 5/5 and equal bilaterally. There was no point tenderness noted about the right shoulder. There was no atrophy of either shoulder girdle. Reflex testing was normal in both upper extremities. There were no sensory deficits to pinprick or light touch in the upper extremities. Dr. Cenac reviewed appellant's medical record and stated that a November 2, 2009 electromyogram/nerve conduction study of the right arm was normal. A June 19, 2008 magnetic resonance imaging (MRI) scan study only revealed decompression surgery residual diagnostically. No structural injury was identified.

Dr. Cenac found no objective evidence of orthopedic mechanical dysfunction or neurological deficits in the right upper extremity causally related to the September 19, 2006 employment incident. He agreed with Dr. Nutik's finding that appellant had reached maximum medical improvement on January 25, 2008 and that she could be released to return to her prior

² On March 15, 2009 the Director issued FECA Bulletin No. 09-03 advising that the sixth edition of the A.M.A., *Guides* would be made applicable to rating impairment effective May 1, 2009.

occupation without impairment or physical limitations. Dr. Cenac concluded that no anatomical impairment was found.

On April 8, 2010 Dr. Ronald Blurn, an OWCP medical adviser, reviewed Dr. Cenac's January 19, 2010 findings. He determined that appellant reached maximum medical improvement on January 25, 2008. Dr. Blurn noted Dr. Cenac's findings of no objective evidence of orthopedic mechanical dysfunction or neurologic deficits in the right upper extremity related the accepted employment injury and no impairment. He agreed that appellant did not have any permanent impairment of her right upper extremity under the sixth edition of the A.M.A., *Guides*.

In an April 30, 2010 decision, OWCP denied appellant's schedule award claim. It found that the medical evidence established that appellant did not have any employment-related impairment of the right upper extremity.

By letter dated May 6, 2010, appellant, through her attorney, requested a telephone hearing.

In a November 16, 2010 decision, OWCP's hearing representative affirmed the April 30, 2010 decision. She found that the weight of the medical evidence rested with Dr. Blurn's April 8, 2010 opinion, which was based on the findings and conclusions of Dr. Cenac.

LEGAL PRECEDENT

The schedule award provision of FECA³ and its implementing federal regulations⁴ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of scheduled members, functions and organs of the body. FECA, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice for all claimants under the law, good administrative practice requires the use of uniform standards applicable to all claimants.⁵ The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.⁶ Effective May 1, 2009, OWCP adopted the sixth edition of the A.M.A., *Guides*⁷ as the appropriate edition for all awards issued after that date.⁸

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404.

⁵ *Ausbon N. Johnson*, 50 ECAB 304 (1999).

⁶ *Supra* note 2.

⁷ A.M.A., *Guides* (6th ed. 2009).

⁸ Federal (FECA) Procedure Manual, Part 3 -- Claims, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 9, 2010).

A claimant seeking compensation under FECA has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence.⁹ A claimant seeking a schedule award, therefore, has the burden of establishing that her accepted employment injury caused permanent impairment of a scheduled member, organ or function of the body.¹⁰

ANALYSIS

OWCP accepted appellant's claim for a strain of the right shoulder rotator cuff resulting from her September 19, 2006 employment injury. Appellant contends that she is entitled to a schedule award for permanent impairment to her right arm. The Board finds, however, that she has not established that she has sustained any permanent impairment to her right upper extremity due to her employment-related right shoulder condition.

Dr. Nutik, an attending physician, found that appellant had reached maximum medical improvement on January 25, 2008 with regards to her accepted right shoulder condition. However, he did not address the issue of employment-related impairment under the sixth edition of the A.M.A., *Guides* as requested by OWCP in its June 25, 2009 developmental letter. The Board finds, therefore, that his report is of diminished probative value.

OWCP subsequently referred appellant for a second opinion examination with Dr. Cenac, who opined that appellant did not have any impairment causally related to the September 19, 2006 employment injury and that she had reached maximum medical improvement on January 25, 2008 and could return to her regular work duties without impairment or physical limitations. Dr. Cenac reviewed a history of the accepted condition and appellant's medical treatment. He noted her current complaint of occasional discomfort in the right shoulder associated with activities. Dr. Cenac reported normal findings on physical examination of the bilateral shoulders and right elbow and wrist. He stated that the right shoulder, elbow and wrist had full and unrestricted actively passive motion. Dr. Cenac found no crepitation or evidence of a click. He noted that appellant was right handed and found that grip strength testing with a dynamometer was symmetrical. Dr. Cenac advised that shoulder strength was 5/5 and equal bilaterally. He found no point tenderness about the right shoulder or atrophy of either shoulder girdle. Dr. Cenac stated that reflex testing was normal and there were no sensory deficits to pinprick or light touch in the upper extremities. He reviewed diagnostic test results and found that they were essentially normal with the exception of the June 19, 2008 MRI scan study which only revealed decompression surgery residual diagnostically. Dr. Cenac further concluded that there was no objective evidence of orthopedic mechanical dysfunction or neurological deficits in the right upper extremity causally related to the accepted condition. He concluded that no anatomical impairment was applicable. On April 8, 2010 Dr. Blurn, OWCP's medical adviser, reviewed Dr. Cenac's findings and concurred with his conclusion that appellant did not have any impairment of the right upper extremity due to the September 19, 2006 employment-related condition.

⁹ *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

¹⁰ See *Annette M. Dent*, 44 ECAB 403 (1993).

The Board finds that Dr. Cenac's opinion is sufficiently well rationalized and based upon a proper factual and medical background. Dr. Cenac's report was of sufficient detail such that others reviewing the file could clearly visualize the impairment.¹¹ The weight of the medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided the care of analysis manifested and the medical rationale expressed in support of stated conclusions.¹² Dr. Cenac fully discussed the history of injury and related his comprehensive examination findings in support of his opinion that appellant did not have any permanent impairment causally related to her accepted condition. Dr. Blurn, OWCP's medical adviser properly applied the A.M.A., *Guides* to Dr. Cenac's report to find that there was no basis for permanent impairment of the right arm causally related to appellant's accepted right shoulder rotator cuff strain. Therefore, appellant is not entitled to a schedule award.

On appeal, appellant contended that OWCP's decision was contrary to fact and law. For reasons stated above, the Board finds that the weight of the medical evidence does not establish any entitlement to a schedule award.

CONCLUSION

The Board finds that appellant has not established that she is entitled to a schedule award for permanent impairment of her right upper extremity, causally related to the September 19, 2006 employment injury.

¹¹ See *Robert B. Rozelle*, 44 ECAB 616 (1993).

¹² See *Ann C. Leanza*, 48 ECAB 115 (1996).

ORDER

IT IS HEREBY ORDERED THAT the November 16, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 22, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

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

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