



adjudication. Appellant visited an emergency room on January 14, 2002 and received a diagnosis of supraspinatus strain of her left shoulder.<sup>2</sup> She obtained follow-up care on January 25, 2002 from Dr. Ernest R. Rubbo, an attending Board-certified orthopedic surgeon, who diagnosed left rotator cuff tendinitis and released her to return to her regular work with no restrictions effective January 25, 2002.

On February 20, 2004 appellant filed a new traumatic injury claim alleging that she sustained pain, tightness, and stiffness in her neck and both shoulders due to engaging in repetitive lifting and twisting with her right arm while casing mail on December 27, 2003.<sup>3</sup>

The present claim was dormant for the following seven years. On February 19, 2009 appellant stopped work and filed a claim alleging a recurrence of disability on February 19, 2009 caused by her January 13, 2002 work injury. She asserted that she had sustained a permanent injury on January 13, 2002. OWCP reopened the present claim for formal adjudication and, by decision dated March 9, 2009, accepted that appellant had sustained a work-related supraspinatus tendon sprain of her left shoulder on January 13, 2002. A March 9, 2009 development letter noted that on January 25, 2002 she had been returned to unrestricted work by her treating physician and asked for evidence of how her current condition was related to her on January 13, 2002.

By decision dated April 8, 2009, OWCP denied appellant's claim for a recurrence of disability caused by her January 13, 2002 work injury, noting that she had failed to connect her current medical condition to her January 13, 2002 sprain injury.

Appellant filed a second claim for recurrence of disability, alleging wage loss beginning August 18, 2009.<sup>4</sup> Following development, OWCP denied this recurrence of disability in a January 12, 2010 decision. By decision dated July 14, 2010, it affirmed its January 12, 2010 decision.

The record reflects that no action was taken on appellant's claim between late-2010 and late-2013. On December 6, 2013 appellant filed a claim for a schedule award for alleged impairment caused by her January 13, 2002 work injury. She submitted an April 17, 2013 letter in which Dr. Rubbo stated that she had reached maximum medical improvement and was not in need of any treatment "that would cure [appellant's] work-related condition." Dr. Rubbo did not identify the date or describe the injury in question but he cited the claim number for the present claim.

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<sup>2</sup> Appellant returned to limited-duty work for the employing establishment.

<sup>3</sup> This claim was given a different file number (xxxxxx694). Appellant did not stop work and no work injury was accepted. She was seen on December 30, 2003 and an attending physician provided a diagnosis of myofascial pain of her left trapezius. Appellant was seen for follow-up care on January 30, 2004 and there has been no further activity in the file for this claim.

<sup>4</sup> Appellant underwent left shoulder surgery on November 25, 2009, including acromioplasty, subacromial bursectomy, and debridement of partial rotator cuff tear and degenerative labral tear. It does not appear from the record that this surgery was authorized by OWCP.

In a letter dated December 6, 2013, OWCP requested that appellant submit additional evidence in support of her schedule award claim, including a medical report containing an impairment rating conducted in accordance with the standards of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (6<sup>th</sup> ed. 2009). Appellant was provided 30 days to submit such evidence, but she did not do so within the allotted time.

By decision dated January 9, 2014, OWCP denied appellant's schedule award claim because she did not submit medical evidence showing that she had a left arm impairment due to her January 13, 2002 work injury.

Appellant requested a hearing with an OWCP hearing representative in connection with the denial of her schedule award claim. She submitted a January 14, 2014 report of Dr. David Weiss, an attending osteopath, who noted that she sustained a work-related left shoulder injury on January 13, 2002 due to lifting and pulling at work. Dr. Weiss reported a diagnosis of left shoulder acromioclavicular arthritis given by Dr. Rubbo in August 2009 and indicated that appellant had left shoulder acromioplasty, subacromial bursectomy, and that debridement surgery had been performed on November 25, 2009.<sup>5</sup>

Dr. Weiss detailed his physical examination findings for appellant's left shoulder. These included the results of range of motion testing, tenderness to palpation, and the results of various diagnostic tests for active pathology. Dr. Weiss diagnosed chronic post-traumatic subacromial bursitis with impingement of the left shoulder, partial thickness left shoulder rotator cuff tear, left shoulder glenoid labral tear, aggravation of preexisting left shoulder pathology with 1999 surgery, status post arthroscopic surgery on November 25, 2009. Making reference to Table 15-34 on page 475 of the sixth edition of the A.M.A., *Guides*, Dr. Weiss calculated appellant's left arm impairment using the range of motion method and arrived at six percent impairment due to range of motion deficits. He then applied a functional history grade modifier to arrive at a final rating of eight percent impairment of the left arm. Dr. Weiss stated, "The work-related injury sustained on January 13, 2002 was the competent producing factor for the claimant's subjective and objective findings of today." He indicated that maximum medical improvement had been reached as of the date of his examination, January 14, 2014.

During the hearing held on July 15, 2014, counsel argued that the January 14, 2014 impairment rating on Dr. Weiss supported the awarding of schedule award compensation. The record remained open for 30 days in order to allow appellant to submit additional evidence containing an opinion on permanent impairment.

In a September 29, 2014 decision, the hearing representative affirmed OWCP's January 9, 2014 decision denying appellant's schedule award claim. He found that the medical evidence of record, including the January 14, 2014 report of Dr. Weiss, did not contain a rationalized opinion that her current deficits were due to the January 13, 2002 work injury.

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<sup>5</sup> Dr. Weiss also noted a prior left shoulder capsulorrhaphy in 1999, but the record does not contain a surgical report for such a procedure.

## LEGAL PRECEDENT

An employee seeking compensation under FECA has the burden of establishing the essential elements of his or her claim, including that he or she sustained an injury in the performance of duty as alleged and that an employment injury contributed to the permanent impairment for which schedule award compensation is alleged.<sup>6</sup> The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>7</sup>

## ANALYSIS

In 2009, OWCP accepted that on January 13, 2002 appellant sustained a work-related supraspinatus tendon sprain of her left shoulder. On January 25, 2002 Dr. Rubbo, an attending Board-certified orthopedic surgeon, had released her to return to her regular work with no restrictions effective January 25, 2002. Appellant did in fact return to regular duties in January 2002 and continued in that capacity over a period of years. Her claim for the January 13, 2002 injury remained dormant until, in 2009, she filed a claim alleging that she sustained a recurrence of disability. OWCP denied appellant's claim for recurrence of disability, noting that she did not submit sufficient medical evidence to support her claim.

Appellant submitted a January 14, 2014 report in which Dr. Weiss, an attending osteopath, concluded that she had an eight percent permanent impairment of her left arm. In his report, Dr. Weiss noted that she sustained a work-related left shoulder injury on January 13, 2002 due to lifting and pulling at work. He reported his physical examination findings of appellant's left shoulder and diagnosed several conditions including chronic post-traumatic subacromial bursitis with impingement of the left shoulder, partial thickness left shoulder rotator cuff tear, and left shoulder glenoid labral tear. Making reference to Table 15-34 of the sixth edition of the A.M.A., *Guides*, Dr. Weiss calculated her left arm impairment using the range of motion method and concluded that she had an eight percent permanent impairment due to range of motion deficits.<sup>8</sup> He stated, "The work-related injury sustained on January 13, 2002 was the competent producing factor for [appellant's] subjective and objective findings of today."

The Board notes that Dr. Weiss did not provide any explanation for his opinion that a soft-tissue injury could persist for 12 years. Such medical rationalize is particularly necessary in

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<sup>6</sup> See *Bobbie F. Cowart*, 55 ECAB 476 (2004). In *Cowart*, the employee claimed entitlement to a schedule award for permanent impairment of her left ear due to employment-related hearing loss. The Board determined that appellant did not establish that an employment-related condition contributed to her hearing loss and, therefore, it denied her claim for entitlement to a schedule award for the left ear.

<sup>7</sup> *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

<sup>8</sup> A.M.A., *Guides* 475, Table 15-34.

the present case because appellant returned to regular duty shortly after January 13, 2002 and there is no bridging medical evidence showing that the work-related condition continued until the time of Dr. Weiss January 2014 evaluation. Dr. Weiss suggested that other left shoulder medical conditions were work related, including subacromial bursitis with impingement, rotator cuff tear, and glenoid labral tear. However, these conditions have not been accepted as work related and the medical evidence does not otherwise show that work factors caused or contributed to them.<sup>9</sup>

The Board notes that there is no well-rationalized medical opinion in the record which supports a work-related diagnosis of left supraspinatus tendon sprain continuing since 2002. The record does not contain medical evidence, with adequate medical rationale, which demonstrates that any left arm impairment is related to the soft-tissue injury appellant sustained 12 years prior or to any other work-related injury.<sup>10</sup>

For these reasons, OWCP properly denied appellant's claim for schedule award compensation. Appellant may request a schedule award based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

### **CONCLUSION**

The Board finds that appellant did not meet her burden of proof to establish that she is entitled to schedule award compensation for permanent impairment of her left arm.

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<sup>9</sup> Dr. Weiss mentioned that appellant underwent left shoulder surgery on November 25, 2009, including acromioplasty, subacromial bursectomy, and debridement of partial rotator cuff tear and degenerative labral tear. However, it does not appear that this surgery was authorized by OWCP and there is no medical evidence in the record containing a rationalized medical opinion relating this surgery to the January 13, 2002 work injury.

<sup>10</sup> Appellant claimed that she sustained a December 27, 2003 injury to her neck and shoulders. That claim, which was given a separate file number, was denied by OWCP for a work-related injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 29, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 6, 2015  
Washington, DC

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

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

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