

In a March 25, 2013 diagnostic report, Dr. Parviz Nabavi, a diagnostic radiologist, confirmed by x-ray that appellant had a fracture at the radius head of her right arm without significant displacement, questionable minimal depression, and joint fluid.

After a period of physical therapy, appellant was released to work with no restrictions by Dr. Michael Birman, a Board-certified orthopedic surgeon. On examination of the right elbow Dr. Birman found that it was nontender at the radial head, there was reproducible popping, no pain associated with the popping, crepitus that occurred with elbow range of motion, 30 degrees of elbow extension, and 135 degrees of flexion.

Appellant returned to full-time work without restrictions on August 28, 2013.

Dr. Birman, in an October 7, 2013 report, advised that appellant was six months post elbow fracture. Appellant related that her pain resolved and that she was able to perform all home and work activities without difficulty. However, she expressed concern with the continued crepitus and popping with elbow range of motion. Dr. Birman noted that an x-ray of the right elbow revealed a healed radial head fracture and changes at the capitellum. He stated that he was concerned with the changes noted at the capitellum due to the potential for further progression of these changes over time. Dr. Birman discussed treatment options with appellant including surgery and noted that he would reevaluate her later to assess her progress.

In a January 6, 2014 report, Dr. Birman advised that appellant was still experiencing persistent clicking in the elbow with certain movements. He noted that she was functioning well despite mild residual elbow stiffness. Dr. Birman again discussed surgical treatment options to address the clicking and catching symptoms. He stated that appellant would take the next several weeks to decide whether to proceed with surgery. Dr. Birman advised that she would be at maximum medical improvement if she elected not to proceed with surgery although there would be a possibility of increased symptoms in the future.

Dr. Birman advised that appellant's condition was unchanged in a March 17, 2014 report. On physical examination he noted that the elbow had no tenderness, no swelling, full supination and pronation, reproducible elbow crepitus, and full wrist and hand range of motion. Dr. Birman reiterated that appellant had no pain and had returned to her usual activities, including full duty work. He advised that she was not interested in surgery, as she had resumed her usual activities without pain. Dr. Birman noted that appellant was at risk for progressive arthritis at the radio-capitellar joint and advised that if she experienced worsening symptoms in the future she could consider surgery at that time. He advised that appellant was at maximum medical improvement.

On April 29, 2014 appellant submitted a CA-7 claim form for a schedule award. Accompanying the claim was a March 18, 2014 attending physician's report from Dr. Birman. Dr. Birman noted that appellant was discharged from treatment, but had a loss of elbow extension and crepitus with elbow range of motion.

By letter dated May 12, 2014, OWCP advised appellant that the medical evidence was not sufficient to establish permanent impairment due to the accepted condition. It requested that she submit a detailed medical report with respect to any permanent impairment utilizing the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent*

Impairment (A.M.A., *Guides*). Appellant was allotted 30 days to submit the requested information, but no additional evidence was received.

In a December 29, 2014 decision, OWCP determined that appellant had not established permanent impairment to the right upper extremity based on the accepted condition.

LEGAL PRECEDENT

Section 8107 of FECA provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body due to employment, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.² Neither FECA nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.³ For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition.⁴

An employee seeking compensation for a permanent impairment under FECA has the burden of establishing the essential elements of the claim, including that an employment injury contributed to a permanent impairment of a scheduled member or function of the body.⁵ The medical evidence necessary to support a schedule award includes a physician's detailed report that provides a sufficient description of the impairment.⁶

ANALYSIS

OWCP accepted that appellant sustained right radius head fracture. However, there is no probative medical evidence addressing any permanent impairment to the right arm under the A.M.A., *Guides*. The medical evidence necessary to support a schedule award is evidence that describes the impairment in detail, shows the impairment has reached maximum medical improvement and provides an opinion as to the percentage of impairment under the A.M.A., *Guides*.⁷

² 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.404(a).

³ A. *George Lampo*, 45 ECAB 441 (1994).

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability*, Chapter 2.808.5a (February 2013).

⁵ See *A.B.*, Docket No. 12-1392 (issued January 24, 2013).

⁶ See *James E. Jenkins*, 39 ECAB 860 (1988); Federal (FECA) Procedure Manual, *supra* note 4 at Chapter 2.808.6(b) (February 2013).

⁷ See *A.W.*, Docket No. 13-621 (issued July 22, 2013); Federal (FECA) Procedure Manual, *id.* at Chapter 2.808.5(b) (February 2013).

There is no medical report describing a permanent impairment to the right hand or arm due to the accepted condition. Accompanying her claim for a schedule award was Dr. Birman's March 18, 2014 report noting, appellant's discharge from treatment, a loss of elbow extension, and crepitus with elbow range of motion. However, he did not otherwise address specific or findings essential to an impairment rating.

In a May 12, 2014 letter, OWCP asked appellant to provide a medical report addressing permanent impairment. No additional evidence was received. Appellant has failed to establish a permanent impairment to a scheduled member.

Appellant may request a schedule award or increased 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 has not established a permanent impairment to a scheduled member or function of the body.

ORDER

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

Issued: October 6, 2015
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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