

claim for a schedule award for permanent impairment of the brain.¹ The findings of fact and conclusions of law from the prior decision are hereby incorporated by reference.

In letters to the Office dated July through December 2001, appellant's representative contended that appellant's claim should be expanded to include injuries to his left knee, left elbow, right wrist and right hip. The Office, in a January 14, 2002 response, noted that rationalized medical opinion evidence from his attending physician related only the accepted condition of post-concussion syndrome to the August 5, 1998 employment injury.²

Appellant's representative, in a letter dated November 6, 2003, requested reconsideration of the finding that appellant was not entitled to a schedule award. He submitted a report dated October 21, 2003 from Dr. Harriett R. Steinert, a Board-certified surgeon, who discussed appellant's history of a closed head injury and noted his complaints of left elbow, left knee, right shoulder, right wrist, right hip, right leg, neck and back pain. On physical examination, Dr. Steinert listed findings of full range of motion of the left knee, left elbow, right wrist and right hip. She noted that appellant had crepitation of the left knee and complaints of pain with left knee, right wrist and right hip movements. Dr. Steinert opined that appellant had a seven percent impairment of both the right and left lower extremity due to findings of arthritis on x-ray.

By decision dated February 5, 2004, the Office denied appellant's claim for a schedule award on the grounds that the medical evidence was insufficient to show that he had a permanent impairment of the lower extremities due to his accepted employment injury.

LEGAL PRECEDENT

The Federal Employees' Compensation Act³ provides compensation for both disability and physical impairment. "Disability" means the incapacity of an employee, because of an employment injury, to earn the wages the employee was receiving at the time of injury.⁴ In such cases the Act compensates an employee for loss of wage-earning capacity. In cases of physical impairment the Act, under section 8107(a), compensates an employee, pursuant to a compensation schedule, for the permanent loss of use of certain specified members of the body, regardless of the employee's ability to earn wages.⁵

A claimant seeking compensation under the Act has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence. It is the claimant's burden to establish that he or she sustained a permanent

¹ Docket No. 02-1532 (issued November 12, 2002). On August 5, 1998 appellant, a 54-year-old able seaman, alleged that he sustained traumatic injuries to his left knee, left elbow, right wrist, right hip and head in the performance of duty. The Office accepted the claim for post-concussion syndrome.

² In a report dated September 20, 2001, Dr. Gerald D. Schuster, a Board-certified orthopedic surgeon, opined that appellant had no abnormality or disability due to a left knee condition.

³ 5 U.S.C. §§ 8101-8193.

⁴ *Lyle E. Dayberry*, 49 ECAB 369 (1998); *see also* 20 C.F.R. § 10.5(f).

⁵ *Renee M. Straubinger*, 51 ECAB 667 (2000); *see also* 20 C.F.R. § 10.404.

impairment of a scheduled member or function as a result of his or her employment injury entitling him or her to a schedule award.⁶

The evidence generally required to establish causal relationship is rationalized medical opinion evidence. The claimant must submit a rationalized medical opinion that supports a causal connection between his current condition and the employment injury.⁷ The medical opinion must be based on a complete factual and medical background with an accurate history of the claimant's employment injury and must explain from a medical perspective how the current condition is related to the injury.⁸

ANALYSIS

In this case, the Office accepted appellant's claim for post-concussion syndrome based on the findings of Dr. Charles S. Jervey, his attending physician. Appellant filed a claim for a schedule award. Dr. Jervey found that appellant had a ratable permanent impairment of the brain; however, on November 12, 2002 the Board affirmed the denial of his schedule award claim on the grounds that the Act does not provide a schedule award for a permanent impairment of the brain.⁹ Appellant's representative requested reconsideration and submitted a report dated October 21, 2003 from Dr. Steinert, who discussed appellant's complaints of pain in his left elbow, left knee, right shoulder, right wrist, right hip, right leg, neck and back. She found that he had a seven percent impairment of the right and left lower extremity due to findings of arthritis on x-ray.

While Dr. Steinert found that appellant had a permanent impairment of his lower extremities, she did not provide the necessary medical evidence to establish that the lower extremity conditions are due to the accepted employment injury. The Office has not accepted any condition other than post-concussion syndrome as related to the August 5, 1998 employment injury. As noted above, an employee seeking benefits under the Act has the burden of establishing the essential elements of his claim by the weight of the reliable, substantial and probative evidence, including that an injury was sustained in the performance of duty and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.¹⁰ It therefore remains appellant's burden of proof to establish a lower extremity condition as a result of his accepted employment injury. Dr. Steinert's report did not address the cause of appellant's lower extremity impairment resulting from arthritis. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹¹ Dr. Steinert did not attribute appellant's lower extremity impairment to his accepted condition of post-concussion syndrome.

⁶ See *Raymond E. Gwynn*, 35 ECAB 247 (1983).

⁷ *Manuel Gill*, 52 ECAB 282 (2001).

⁸ *Yvonne R. McGinnis*, 50 ECAB 272 (1999).

⁹ See 5 U.S.C. § 8101(20).

¹⁰ *Kathryn Haggerty*, 45 ECAB 383 (1994).

¹¹ *Michael E. Smith*, 50 ECAB 313 (1999).

The record is devoid of rationalized medical opinion evidence establishing that appellant sustained an injury to his lower extremities due to his August 5, 1998 employment injury. Without the necessary rationalized medical opinion evidence showing a causal relationship between appellant's diagnosed condition and resulting impairment and his accepted employment injury, he has failed to establish his entitlement to a schedule award.

On appeal, appellant's representative contends that the Office should further develop whether appellant sustained injuries in addition to the accepted condition of post-concussion syndrome due to his August 5, 1998 employment injury. However, it is appellant's burden to submit rationalized medical evidence establishing a causal relationship between a claimed condition and employment.¹²

CONCLUSION

The Board finds that appellant has not established that he has a permanent impairment of the lower extremities due to his accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 5, 2004 is affirmed.

Issued: October 12, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

¹² See *Leon Thomas*, 52 ECAB 202 (2001).