



work. OWCP accepted appellant's claim for bursitis of the right shoulder and bilateral carpal tunnel syndrome. On February 24, 2005 it accepted his claim for a recurrence of disability on February 13, 2003. Appellant received compensation benefits.

In a May 27, 2012 letter, appellant stated that in February 1987, he was in an accident when he worked for the employing establishment. He also noted his August 2002 work injury. Appellant stated that his right shoulder, arm and hand pain had increased since 2002. He had cervical spine surgery in November 2011 which eliminated his shoulder pain and carpal tunnel symptoms but rendered his right arm partially paralyzed. Appellant asked that his claim be reopened.<sup>2</sup> On November 4, 2012 he filed a claim for a schedule award.

By letter dated April 1, 2013, OWCP requested that appellant provide an opinion from his treating physician as to whether he had reached maximum medical improvement and to provide an impairment rating utilizing the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (6<sup>th</sup> ed. 2009) (A.M.A., *Guides*). No response was received.

In a May 3, 2013 decision, OWCP denied appellant's claim for a schedule award. It found that the medical evidence did not establish any permanent impairment to his upper extremities.

On July 20, 2013 appellant requested reconsideration. In a letter dated July 27, 2013, he noted that he was not in the area when the request for additional information was sent. Appellant had requested that his physician submit additional information and it was received on July 17, 2013. He enclosed additional medical evidence that included treatment notes from Veterans' Affairs facilities.

In an undated handwritten response to OWCP's request for an impairment rating, received on August 1, 2013, Dr. Catherine E. Porter, a Board-certified neurologist, rated appellant with 50 percent loss of cervical spine range of motion. Appellant also had diminished strength in the right arm, and chronic neck and right arm pain. Dr. Porter opined that appellant had 60 percent loss of use of the right arm. She found he had not reached maximum medical improvement.

By decision dated October 28, 2013, OWCP modified the May 3, 2013 decision to deny appellant's schedule award claim on the grounds that he had not reached maximum medical improvement.

In a letter dated November 9, 2013, appellant requested reconsideration. He argued that he was entitled to a schedule award. Appellant did not believe that his physician meant that he was going to get better, but rather, his condition would probably worsen.

In a November 6, 2013 report, Dr. Mahmoud Abdelrazek, a neurologist, noted that appellant had a work-related injury leading to weakness of the right arm due to cervical spine

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<sup>2</sup> The Board notes that the record before the Board contains no indication that any claim for a 1987 injury was filed or accepted. The record also does not indicate that OWCP authorized the 2011 cervical spine surgery.

degenerative disease. He stated that appellant complained of the inability to use his right arm to lift heavy objects or carry out tasks requiring the use of his right arm leading to an estimated loss of 60 percent of function of his arm. Dr. Abdelrazek opined that it seemed “unlikely that he will ever regain full function of the right arm. There is unlikely to be further improvement of appellant’s impairment as he has reached the maximum medical improvement possible.”

By decision dated February 10, 2014, OWCP denied appellant’s claim for a schedule award. It found the medical evidence did not establish permanent impairment pursuant to the sixth edition of the A.M.A., *Guides*.

### **LEGAL PRECEDENT**

Section 8107 of FECA sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.<sup>3</sup> 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.<sup>4</sup> The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.<sup>5</sup>

A schedule award can be paid only for a condition related to an employment injury. The claimant has the burden of proving that the condition for which a schedule award is sought is causally related to his or her employment.<sup>6</sup>

### **ANALYSIS**

The evidence of record is insufficient to establish that appellant sustained any permanent impairment causally related to his accepted bursitis of the right shoulder or bilateral carpal tunnel syndrome.

In an undated report received on August 1, 2013, Dr. Porter stated generally that appellant had 60 percent loss of use of the right arm. However, she also advised that appellant had not yet reached maximum medical improvement. The Board notes this rating is of diminished probative value. Dr. Porter did not address how any impairment was due to the accepted conditions. Thus, her report is insufficient to establish permanent impairment of the right arm due to the accepted conditions.<sup>7</sup>

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<sup>3</sup> 5 U.S.C. § 8107.

<sup>4</sup> *Ausbon N. Johnson*, 50 ECAB 304, 311 (1999).

<sup>5</sup> 20 C.F.R. § 10.404.

<sup>6</sup> *Veronica Williams*, 56 ECAB 367 (2005).

<sup>7</sup> *See D.S.*, Docket No. 08-885 (issued March 17, 2009) (it is well established that a schedule award cannot be paid until a claimant has reached maximum medical improvement).

In a November 6, 2013 report, Dr. Abdelrazek noted that appellant had 60 percent impairment of his right arm and had reached maximum medical improvement. However, he did not base his impairment rating upon the A.M.A., *Guides*,<sup>8</sup> nor did he explain how the impairment was causally related to the accepted conditions.<sup>9</sup> Consequently, Dr. Abdelrazek's report is of limited probative value. Appellant did not submit any other medical evidence to establish that his accepted right shoulder bursitis or bilateral carpal tunnel syndrome caused permanent impairment under the A.M.A., *Guides*. For these reasons, the evidence of record is insufficient to establish entitlement to a schedule award.

On appeal, appellant argued that his physicians followed the A.M.A., *Guides*. As noted, the medical evidence does not provide an impairment rating in accordance with the A.M.A., *Guides*. Further, his physicians did not explain how any impairment was causally related to the accepted right shoulder bursitis or bilateral carpal tunnel syndrome.

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 his burden of proof to establish permanent impairment.

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<sup>8</sup> See *Shalanya Ellison*, 56 ECAB 150, 154 (2004) (schedule awards under FECA are to be based on the A.M.A., *Guides*; an estimate of permanent impairment is irrelevant and not probative where it is not based on the A.M.A., *Guides*).

<sup>9</sup> Although Dr. Abdelrazek advised that appellant had a work-related injury, he attributed appellant's symptoms to cervical spine degenerative disease. OWCP has not accepted cervical spine degenerative disease. The Board notes that, for a condition not accepted or approved by OWCP, appellant has the burden of proof to establish that the condition is causally related to the employment injury. *Jaja K. Asaramo*, 55 ECAB 200 (2004).

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 10, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 18, 2014  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

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

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