

shoulder subscapularis tear. On April 4, 2007 he underwent an authorized open subscapularis repair of the right shoulder. On May 11, 2007 appellant returned to modified employment.

On June 18, 2013 appellant filed a claim for a schedule award. On June 25, 2013 OWCP requested a report from his attending physician addressing the extent of any permanent impairment in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6th ed. 2009) (A.M.A., *Guides*). By letter dated July 16, 2013, appellant's representative advised OWCP that his physician did not provide impairment ratings and requested a second opinion evaluation.

On August 13, 2013 OWCP referred appellant to Dr. Stanley W. Collis, a Board-certified orthopedic surgeon, for a second opinion examination. In a report dated September 3, 2013, Dr. Collis discussed appellant's history of injury and current complaints of pain with right shoulder motion. He diagnosed status postsurgical repair of the right rotator cuff with a good result. On examination Dr. Collis found no weakness, muscle atrophy or loss of motion of the right upper extremity. He noted that appellant experienced discomfort with motion in the front of his shoulder. Dr. Collis stated, "[Appellant] has good right shoulder function. I think he does have some discomfort of the right shoulder as he states, especially at night, and I think that is due to the developmental bursitis, not work related." Dr. Collis advised that appellant had no impairment of the right upper extremity according to Table 14-34 on page 475 of the A.M.A., *Guides*.

On September 25, 2013 an OWCP medical adviser reviewed Dr. Collis' report and concurred with his finding that appellant had no impairment of the right upper extremity. He noted that appellant had normal range of motion and strength and that the surgical repair of the partial thickness rotator cuff tear of April 4, 2007 was successful.

By decision dated October 8, 2013, OWCP denied appellant's claim for a schedule award on the grounds that the weight of the evidence did not show that he had a permanent impairment of an extremity.

A September 6, 2013 magnetic resonance imaging scan study of the right shoulder, received by OWCP on October 22, 2013, showed findings not well visualized due to metal artifacts. A right shoulder arthrogram obtained on September 25, 2013 revealed a complete tear of the supraspinatus tendon and amorphous extravasation of contrast in the subscapularis region and muscle.

On October 28, 2013 appellant, through his representative, requested a review of the written record. By decision dated March 20, 2014, an OWCP hearing representative affirmed the October 8, 2013 decision.

On appeal appellant asserts that at the time of the impairment evaluation Dr. Collis was around 85 years old and no longer a practicing physician. He also alleges that the examination lasted less than three minutes. He told Dr. Collis that he believed that he had return his arm because of the increased pain. Appellant alleged that Dr. Collis found that his examination was normal even though he had a completed severed rotator cuff tear at the time of his examination as established by the arthrogram.

LEGAL PRECEDENT

The schedule award provision of FECA,² and its implementing federal regulations,³ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. However, FECA does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law for all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.⁴ As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.⁵ The claimant has the burden of proving that the condition for which a schedule award is sought is causally related to his employment.⁶

ANALYSIS

OWCP accepted that appellant sustained a right shoulder contusion, right shoulder sprain and an acute subscapularis tear of the right shoulder due to a January 13, 2007 fall. On April 4, 2007 he underwent a repair of the subscapularis tear.

On June 18, 2013 appellant requested a schedule award. As his attending physician did not provide impairment evaluations, OWCP referred him to Dr. Collis for a second opinion examination. On September 3, 2013 Dr. Collis diagnosed a repair of the right rotator cuff with a good result. On examination he found no weakness, atrophy or loss of motion of the right upper extremity. Dr. Collis discussed appellant's complaints of pain in the right shoulder but found that it resulted from nonemployment-related bursitis. He concluded that he had no impairment of the right upper extremity. On September 25, 2013 an OWCP medical adviser concurred with Dr. Collis' determination that appellant had no right upper extremity impairment. The Board finds that Dr. Collis provided a comprehensive medical examination based on a detailed physical examination and review of the radiographic evidence and determined that appellant had no impairment due to the January 13, 2007 employment injury. Dr. Collis' opinion thus represents the weight of the evidence and establishes that appellant is not entitled to a schedule award.⁷

On appeal appellant asserts that Dr. Collis performed a cursory examination, that he had reached an advanced age and that he was no longer practicing. He has not, however, submitted any evidence showing that Dr. Collis was not competent to render a medical opinion.

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404.

⁴ 20 C.F.R. § 10.404(a).

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5(a) (February 2013); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

⁶ *See Veronica Williams*, 56 ECAB 367 (2005).

⁷ *See J.D.*, Docket No. 12-612 (issued November 2, 2012); *L.H.*, Docket No. 12-519 (issued August 20, 2012).

Appellant additionally notes that diagnostic studies showed that he had return his rotator cuff. The diagnostic studies, however, were obtained subsequent to Dr. Collis' examination and provide no discussion of impairment or relationship to the accepted condition. Further, OWCP has not accepted a return rotator cuff as employment related. As noted, the claimant has the burden of proving that the condition for which a schedule award is sought is causally related to his employment.⁸

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 that he is entitled to a schedule award for a permanent impairment of the right upper extremity.

ORDER

IT IS HEREBY ORDERED THAT the March 20, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 4, 2014
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

⁸ *Id.*