



## **FACTUAL HISTORY**

On April 28, 2014 appellant, then a 62-year-old motor vehicle operator, filed a traumatic injury claim (Form CA-1) alleging that on April 25, 2014 he was attacked and pushed into a glass frame by a volunteer while at work. He stated that this caused left shoulder pain and a contusion and abrasions to the left elbow. Appellant did not stop work. An employing establishment police investigation confirmed that the assault took place.

In an emergency room report dated April 25, 2014, Dr. Wahied Gendi, a Board-certified internist, described the injury and appellant's complaints of left shoulder pain and an abrasion of the left arm. Physical examination demonstrated a superficial elbow abrasion and no obvious shoulder deformity. Dr. Gendi diagnosed left shoulder pain and a superficial left arm abrasion. Appellant was discharged on pain medication. A left shoulder x-ray demonstrated mild degenerative arthritis and no acute traumatic injury of the bone or joint. On April 29, 2014 Melissa E. Nixon, a nurse practitioner, described the injury and reported that appellant's left shoulder had improved 70 percent but was still stiff and sore and that his left elbow abrasion had scabbed without infection.<sup>2</sup>

On June 13, 2014 OWCP accepted left shoulder contusion and left elbow abrasion. The employing establishment indicated that appellant missed no days from work and was working full time.

Appellant filed a schedule award claim (Form CA-7) on July 28, 2014. By letter dated August 11, 2014, OWCP informed him of the evidence needed to support a schedule award claim. This was to include, in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*),<sup>3</sup> an opinion that his condition had reached a permanent and fixed state (maximum medical improvement), a diagnosis on which the impairment was based, and an impairment rating specific to the conditions accepted by OWCP as work related. Appellant was given 30 days to provide the requested information. No additional information was provided.

By decision dated September 11, 2014, OWCP denied appellant's claim for a schedule award as appellant had not submitted the requested medical information.

On April 20, 2015 appellant requested reconsideration and an expansion of his claim. In a February 3, 2015 treatment note, Melissa S. Stevens, a physician assistant, noted appellant's complaints of left shoulder pain, clicking, and popping that had occurred since an assault on April 25, 2014. The shoulder was nontender to palpation on examination. Shoulder range of motion was diminished. Ms. Stevens diagnosed left shoulder impingement, possible rotator cuff tear, and ordered a magnetic resonance imaging (MRI) scan. A March 19, 2015 MRI scan of the left shoulder demonstrated an undersurface tear with possible pinhole full thickness component.

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<sup>2</sup> The record also includes a May 8, 2014 x-ray of the right hand that demonstrated a healing fracture of the proximal phalanx of the second finger. This was from a February 6, 2014 nonemployment-related injury.

<sup>3</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2<sup>nd</sup> prtg. 2009).

By decision dated June 4, 2015, OWCP found that appellant had not met his burden of proof to expand his claim to include an additional medical condition caused, aggravated, or accelerated by the April 25, 2014 assault and that no permanent impairment had been established.

### **LEGAL PRECEDENT -- ISSUE 1**

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.<sup>4</sup> 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 employee.<sup>5</sup> Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.<sup>6</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that appellant has not met his burden of proof to expand her claim to include any additional conditions related to the April 25, 2014 injury. The medical record is devoid of medical evidence from a physician who diagnosed an additional condition.

The March 19, 2015 MRI scan does not contain an opinion as to the cause of the diagnosed condition. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.<sup>7</sup>

The treatment note from Ms. Stevens dated February 3, 2015 is of no probative value. Section 8101(2) of FECA provides that "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law.<sup>8</sup> Reports from a physician assistant are not considered medical evidence as a physician assistant is not considered a physician under FECA.<sup>9</sup>

Appellant did not meet his burden of proof to establish an additional condition caused by the April 25, 2014 employment injury.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

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<sup>4</sup> *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>5</sup> *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>6</sup> *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

<sup>7</sup> *Willie M. Miller*, 53 ECAB 697 (2002).

<sup>8</sup> 5 U.S.C. § 8101(2); *see Roy L. Humphrey*, 57 ECAB 238 (2005).

<sup>9</sup> *Ricky S. Storms*, 52 ECAB 349 (2001).

## LEGAL PRECEDENT -- ISSUE 2

The schedule award provision of FECA<sup>10</sup> and its implementing federal regulations<sup>11</sup> 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 second printing of the sixth edition of the A.M.A., *Guides* as the uniform standard applicable to all claimants.<sup>12</sup> For decisions after May 1, 2009, the sixth edition of the A.M.A., *Guides* will be used.<sup>13</sup>

The sixth edition of the A.M.A., *Guides* provides a diagnosis-based method of evaluation utilizing the World Health Organization's International Classification of Functioning, Disability and Health (ICF).<sup>14</sup> Under the sixth edition, for upper extremity impairments the evaluator identifies the impairment Class of Diagnosis (CDX) condition, which is then adjusted by grade modifiers based on Functional History (GMFH), Physical Examination (GMPE) and Clinical Studies (GMCS).<sup>15</sup> The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).<sup>16</sup>

## ANALYSIS -- ISSUE 2

As noted above, the accepted conditions in this case are left shoulder contusion and left elbow abrasion. It is the claimant's burden to establish that he sustained a permanent impairment of a scheduled member or function as a result of the accepted employment injury.<sup>17</sup> OWCP procedures provide that to support a schedule award, the file must contain medical evidence which shows that the impairment has reached a permanent and fixed state and indicates the date on which this occurred, and describes the impairment in sufficient detail.<sup>18</sup> The percentage of impairment should be computed in accordance with the sixth edition of the A.M.A., *Guides*. Appellant submitted no such evidence in this case.

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<sup>10</sup> 5 U.S.C. § 8107.

<sup>11</sup> 20 C.F.R. § 10.404.

<sup>12</sup> *Id.* at § 10.404(a).

<sup>13</sup> See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); see also, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.5a (February 2013).

<sup>14</sup> *Supra* note 3 at 3, section 1.3, "The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement."

<sup>15</sup> *Id.* at 385-419.

<sup>16</sup> *Id.* at 411.

<sup>17</sup> *D.F.*, Docket No. 09-1463 (issued August 12, 2010).

<sup>18</sup> *Supra* note 13 at Chapter 2.808.5b.

There is no medical evidence of record that provides an impairment rating. On August 11, 2014 OWCP advised appellant of the type of medical evidence needed to support a claim for a schedule award. Appellant did not submit responsive evidence. Thus, there is no medical report of record containing an opinion supporting that appellant's accepted conditions caused any permanent impairment to a scheduled member. Consequently, there is no medical basis to support entitlement to a schedule award.<sup>19</sup>

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.

**CONCLUSION**

The Board finds that appellant failed to meet his burden of proof to expand his claim to include additional medical conditions or to establish permanent impairment to his right upper extremity impairment caused by the accepted April 25, 2014 employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 4, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 5, 2015  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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

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<sup>19</sup> See *H.G.*, Docket No. 09-88 (issued June 3, 2009).