



## ISSUE

The issues are: (1) whether appellant met his burden of proof to expand his claim to include additional conditions; and (2) whether he established permanent impairment of his left upper and lower extremities as a result of the December 28, 2011 employment injury.

## FACTUAL HISTORY

On December 29, 2011 appellant, then a 43-year-old marine interdiction agent, filed a traumatic injury claim (Form CA-1) alleging that on December 28, 2011 he sprained his lower back and sustained contusions to his left elbow and knee when he was involved in a motor vehicle accident. The claim form does not indicate whether he stopped work. OWCP accepted appellant's claim for left elbow sprain, left knee and leg sprain, and lumbar sprain. Appellant received medical treatment. The last medical report was dated June 11, 2012.<sup>3</sup>

OWCP received appellant's claim for a schedule award (Form CA-7) on December 13, 2012. In a decision dated January 28, 2013, it denied his claim for a schedule award. On February 7, 2013 OWCP received appellant's request, through counsel, for a telephone hearing before an OWCP hearing representative. By decision dated July 23, 2013, an OWCP hearing representative affirmed the January 28, 2013 denial decision, finding that the medical evidence of record was insufficient to establish permanent impairment of a scheduled member of the body due to his December 28, 2011 employment injury.

Appellant filed another claim for a schedule award on March 31, 2015.

In a letter dated April 6, 2015, OWCP advised appellant that the evidence submitted was insufficient to establish his schedule award claim. It requested that he provide a medical report from his treating physician addressing whether he reached maximum medical improvement (MMI) and whether his accepted conditions caused permanent impairment pursuant to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). Appellant was afforded 30 days to submit the additional evidence.

OWCP denied appellant's claim for a schedule award by decision dated May 11, 2015. It found that the medical evidence of record failed to establish a permanent impairment according to the sixth edition of the A.M.A., *Guides* causally related to his accepted conditions.

On May 19, 2015 OWCP received appellant's request, through counsel, for a telephone hearing before an OWCP hearing representative.

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<sup>3</sup> The record reflects that appellant has other traumatic injury claims. OWCP accepted that on September 23, 2009 appellant sustained neck and thoracic sprains, brachial neuritis and radiculitis as a result of a boat bouncing over rough waves. (OWCP File No. xxxxxx738). On September 11, 2012 it paid schedule award benefits for six percent permanent impairment of the left upper extremity. On July 25, 2012 appellant claimed injury to the neck and shoulder due to bouncing of a boat over rough waves. (OWCP File No. xxxxxx948). This claim remains in denied status. Appellant sustained a traumatic injury on April 16, 2015 due to excessive and repetitive manipulation of a shotgun and repetitive recoil. (OWCP File No. xxxxxx637). This claim was accepted for neck strain, and appellant is receiving wage-loss compensation for loss of premium pay due to this injury.

By letter dated July 23, 2015, counsel indicated that he was enclosing a medical report from Dr. Samy F. Bishai, an orthopedic surgeon, which contained a statement that appellant had reached MMI and an impairment rating under the sixth edition of the A.M.A., *Guides*.

On July 23, 2015 OWCP received two reports from Dr. Bishai. In a May 5, 2015 report, Dr. Bishai related that appellant was involved in a motor vehicle accident at work on December 28, 2011. He reviewed appellant's medical history and conducted an examination. Dr. Bishai noted that appellant had sustained a previous injury in 2009 which has caused cervical disc herniations at C5-6. He reported tenderness and swelling overlying the medial and lateral joint lines of appellant's left knee joint. Dr. Bishai noted that examination of the left elbow revealed tenderness overlying the lateral humeral epicondyle of the humerus and some tenderness overlying the medial humeral epicondyle. Range of motion of the left elbow was full. Examination of the dorsolumbar spine showed tenderness and paraspinal spasm affecting the paraspinal muscles of the dorsolumbar region. Straight leg raise testing was 60 degrees on both right and left sides. Neurological examination of the lower extremities revealed diminished left ankle reflex and diminished sensation in the left thigh, leg, and foot. Dr. Bishai related that a magnetic resonance imaging (MRI) scan of the left knee showed partial intrasubstance tear of the proximal patellar tendon with soft tissue edema and myxoid degeneration of the posterior horn of the medial meniscus and a small joint effusion. He diagnosed internal derangement of the left knee joint, lateral humeral epicondylitis of the left elbow, and lumbar disc syndrome with radiculopathy of the left lower extremity. Dr. Bishai concluded that appellant suffered multiple injuries to his left knee joint, left elbow, and lower back in the vehicular accident that occurred on December 28, 2011.

In a May 7, 2015 report, Dr. Bishai noted that appellant complained of pain in his left knee, left elbow, and lower back radiating into the lower extremities, more severe on the left side. He related that a May 6, 2015 MRI scan of the lumbar spine revealed broad-based disc protrusion and herniation reducing the canal diameter more to the left at L4-5 with facet joint degenerative joint disc/overgrowth, mild central disc protrusion at L5-S1, and mild disc protrusion to the left at L2-3. Dr. Bishai diagnosed internal derangement of the left knee, partial intrasubstance tear of the proximal patellar tendon, myxoid degenerative changes of the posterior horn of the medial meniscus of the left knee joint, lateral humeral epicondylitis of the left elbow, herniated lumbar discs at L2-3, L4-5, and L5-S1, and radiculopathy of the left lower extremity. He explained that appellant suffered injuries to his left knee, left elbow, and back in a motor vehicle accident that occurred on December 28, 2011.

Dr. Bishai opined that appellant had reached MMI on May 5, 2015. He indicated that he used the sixth edition of the A.M.A., *Guides* to calculate an impairment rating for appellant's left knee joint condition because that was accepted by OWCP. Dr. Bishai referenced Table 16-23 on page 549 and explained that he used the stand alone range of motion to calculate impairment because the limitation in the range of motion of his left knee joint was the most disabling part of his injuries and was causing him a great deal of loss of function. He reported that appellant had -5 degrees extension lag for 10 percent left lower extremity impairment and 100 degrees flexion for 10 percent lower extremity impairment. Dr. Bishai combined the impairment rating for loss of flexion and extension for a total of 20 percent left lower extremity impairment. He concluded that appellant had 20 percent lower extremity impairment as a result of the December 28, 2011 employment injury.

On January 11, 2016 a hearing was held. Counsel contended that the May 11, 2015 decision was correct at the time it was issued, but now a May 7, 2015 evaluation by Dr. Bishai remedied the defect in appellant's claim. Counsel argued that the case should therefore be remanded to OWCP for further medical development. He specifically requested that OWCP refer appellant's schedule award claim to an OWCP medical adviser to review Dr. Bishai's May 7, 2015 impairment rating and provide an opinion regarding whether appellant sustained a permanent impairment causally related to the December 28, 2011 employment injury.

By decision dated February 26, 2016, an OWCP hearing representative affirmed the May 11, 2015 denial decision. She reported that Dr. Bishai's reports were insufficient to establish a permanent impairment due to appellant's employment injury because they were based on an inaccurate and incomplete history, included diagnosed conditions that were not accepted by OWCP, and did not contain sufficient medical rationale explaining how he sustained any permanent impairment causally related to the December 28, 2011 employment injury.

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

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.<sup>4</sup> The opinion of the physician must be based on a complete factual and medical background of the employee, 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 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**

By decision dated February 26, 2016, an OWCP hearing representative affirmed the May 11, 2015 decision which denied appellant's schedule award claim. She also determined that appellant failed to submit sufficient medical evidence to establish that he sustained additional medical conditions causally related to the December 28, 2011 employment injury. The Board finds that appellant has not met his burden of proof to expand his claim to include any additional conditions as a result of the December 28, 2011 employment incident.

Appellant submitted medical reports by Dr. Bishai dated May 5 and 7, 2015. He described appellant's December 28, 2011 employment injury and also noted that appellant had previously accepted injuries to his neck and left shoulder. Upon examination, Dr. Bishai reported tenderness and swelling of appellant's left knee and left elbow. Examination of appellant's spine also showed tenderness and paraspinal spasm. Dr. Bishai diagnosed internal derangement of the left knee joint, lateral humeral epicondylitis of the left elbow, and lumbar

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<sup>4</sup> *I.R.*, Docket No. 09-1229 (issued February 24, 2010); *D.I.*, 59 ECAB 158 (2007).

<sup>5</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

<sup>6</sup> *Jennifer Atkerson*, 55 ECAB 317 (2004).

disc syndrome with radiculopathy of the left lower extremity. He opined that appellant suffered these injuries to his left knee joint, left elbow, and lower back in a vehicular accident that occurred on December 28, 2011.

Although Dr. Bishai provided an opinion on causal relationship, he did not offer any medical rationale to support his conclusion. The Board finds that medical evidence that states a conclusion but does not offer any rationalized medical explanation on the cause of a claimant's condition is of limited probative value on the issue of causal relationship.<sup>7</sup>

The Board further notes that while Dr. Bishai mentioned appellant's previous 2009 injury, he did not reference appellant's 2012 and 2015 traumatic injury claims. The Board has held that medical reports must be based on a complete and accurate factual and medical background and medical opinions based on an incomplete or inaccurate history are of limited probative value.<sup>8</sup> Because Dr. Bishai did not provide a rationalized medical opinion based on a complete and accurate history explaining how appellant sustained additional conditions to his left knee, left elbow, and back as a result of the December 28, 2011 employment incident, rather than from his other injuries, his reports are insufficient to establish expansion of appellant's claim.

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. §§ 10.606 through 10.607.

### **LEGAL PRECEDENT -- ISSUE 2**

The schedule award provision of FECA<sup>9</sup> and its implementing regulations 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. FECA, however, does not specify the manner in which the percentage of loss of a member shall be determined. The method used in making such determination is a matter which rests in the sound discretion of OWCP. For consistent results and to ensure equal justice, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by OWCP as the appropriate standards for evaluating schedule losses.<sup>10</sup>

OWCP procedures provide that, if a claimant's physician provides an impairment rating, the case should be routed to OWCP's medical adviser for an opinion concerning the nature and

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<sup>7</sup> *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

<sup>8</sup> *J.R.*, Docket No. 12-1099 (issued November 7, 2012); *Douglas M. McQuaid*, 52 ECAB 382 (2001).

<sup>9</sup> *Id.*

<sup>10</sup> 20 C.F.R. § 10.404 (1999); *see also Jacqueline S. Harris*, 54 ECAB 139 (2002).

percentage of impairment in accordance with the A.M.A., *Guides*, with OWCP's medical adviser providing rationale for the percentage of impairment specified.<sup>11</sup>

### **ANALYSIS -- ISSUE 2**

OWCP accepted that appellant sustained sprains to the left elbow, knee, leg, and back due to a December 28, 2011 employment injury. On March 31, 2015 appellant filed a claim for a schedule award. In an impairment evaluation dated May 7, 2015, Dr. Bishai noted that appellant suffered injuries to his left knee, left elbow, and back in a motor vehicle accident that occurred on December 28, 2011 and provided findings on examination. He opined that appellant had reached MMI on May 5, 2015 and had 20 percent impairment of the left lower extremity according to Table 16-23 of the sixth edition of the A.M.A., *Guides*, due to his accepted left knee injury of December 28, 2011. OWCP denied appellant's claim finding that the medical evidence was insufficient to establish his schedule award claim. The Board finds that this case is not in posture for decision.

As Dr. Bishai did provide an impairment rating under the sixth edition of the A.M.A., *Guides*, the file should have been routed to OWCP's medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*.<sup>12</sup> OWCP's medical adviser is to provide rationale as to the degree of permanent impairment awarded.<sup>13</sup> The Board, therefore, will set aside the February 26, 2016 decision and remand the case to OWCP. On remand, OWCP should have a medical adviser evaluate Dr. Bishai's May 7, 2015 report and provide an opinion concerning the extent of appellant's impairment in accordance with the A.M.A., *Guides*. After such further development as may be necessary, it shall render a *de novo* decision.

### **CONCLUSION**

The Board finds that appellant has not met his burden of proof to expand his claim to include additional conditions causally related to the December 28, 2011 employment incident. The Board further finds that the case is not in posture for decision regarding whether appellant established permanent impairment to his left upper and lower extremities as a result of his accepted injuries.

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<sup>11</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(e) (February 2013); *Tommy R. Martin*, 56 ECAB 273 (2005).

<sup>12</sup> *Id.*

<sup>13</sup> See *M.R.*, Docket No. 13-1279 (issued December 5, 2013).

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 26, 2016 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: January 11, 2017  
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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