

**United States Department of Labor
Employees' Compensation Appeals Board**

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J.J., Appellant)	
)	
and)	Docket No. 23-0440
)	Issued: December 21, 2023
U.S. POSTAL SERVICE, SOUTH JERSEY)	
PROCESSING & DISTRIBUTION CENTER,)	
Bellmawr, NJ, Employer)	
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Appearances:
Michael D. Overman, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On February 9, 2023 appellant, through counsel, filed a timely appeal from a September 21, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met his burden of proof to establish permanent impairment of his upper or lower extremities, warranting a schedule award.

FACTUAL HISTORY

This case has previously been before the Board on a different issue.³ The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On September 30, 2011 appellant, then a 67-year-old clerk, filed a traumatic injury claim (Form CA-1) alleging that on September 13, 2011 he sustained injuries to his right ankle, back, left hip, hands, and neck when his right foot caught on a safety bar causing him to fall on the concrete floor while in the performance of duty. He stopped work on September 15, 2011. By decision dated December 22, 2011, OWCP accepted the claim for lumbar and left hip strains. It paid appellant wage-loss compensation on the supplemental rolls from October 29, 2011 through July 8, 2012. Appellant was separated from the employing establishment on November 2, 2012.

By decision dated February 6, 2014, the Board reversed a March 13, 2013 OWCP decision which terminated appellant's medical and wage-loss compensation benefits effective July 9, 2012. The Board found a conflict in the medical opinion as to whether his accepted conditions had resolved.⁴

OWCP received a March 18, 2014 report by Dr. David Weiss, an osteopath Board-certified in orthopedic surgery, wherein he related appellant's physical examination findings regarding the upper and lower extremities. Dr. Weiss indicated that appellant reached maximum medical improvement (MMI) on that date. He noted that appellant had objective findings on physical examination of impairment sensation in the right L4, L5, and S1 distribution as well as tenderness over the left hip trochanteric bursae. Dr. Weiss opined that appellant had 14 percent permanent impairment of the right lower extremity, 1 percent permanent impairment of the left lower extremity, and 2 percent permanent impairment of each upper extremity, under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).⁵

On July 28, 2014 appellant filed a claim for compensation (Form CA-7) for a schedule award.

On November 25, 2014 Dr. Henry J. Magliato, a Board-certified orthopedic surgeon serving as an OWCP district medical adviser (DMA), reviewed the medical record, including Dr. Weiss' March 18, 2014 report. He concurred with Dr. Weiss' 14 percent right lower extremity permanent impairment rating and 1 percent left lower extremity permanent impairment rating. The

³ Docket No. 13-1656 (issued February 6, 2014).

⁴ *Id.*

⁵ A.M.A., *Guides* (6th ed. 2009).

DMA noted that the report from Dr. Stanley Askin, a Board-certified orthopedic surgeon, OWCP's second opinion physician, dated March 30, 2012 was not contained in the file and he did not know whether the report addressed appellant's schedule award claim. He requested to review Dr. Askin's report to determine whether his findings were markedly different from Dr. Weiss' findings.

On February 15, 2018 Dr. Magliato reviewed Dr. Askin's March 30, 2012 report, noting Dr. Askin's findings that appellant's September 13, 2011 employment injury had resolved, no further medical treatment was needed, and appellant could return to his former full-duty employment. The DMA concluded that there was a conflict in medical opinion between Dr. Askin and Dr. Weiss which required referral to an impartial medical examiner (IME).

On March 30, 2016 Dr. Mario J. Arena, a Board-certified orthopedic surgeon, provided an impartial medical evaluation. He opined that appellant's accepted work-related conditions had resolved and that appellant's ongoing symptoms were due to his underlying degenerative disc disease of the lumbar spine and hands and chronic venous disease of the bilateral lower extremities, right greater than left. Dr. Arena further opined that no further medical treatment was necessary regarding the accepted conditions and appellant could return to his date-of-injury position on a full-time basis. He advised that appellant had reached MMI. Dr. Arena determined that appellant had zero percent permanent impairment due to his accepted lumbar spine and left hip conditions under the sixth edition of the A.M.A., *Guides* and *The Guides Newsletter, Rating Spinal Nerve Extremity Impairment Using the Sixth Edition*, (July/August 2009) (*The Guides Newsletter*). He explained that his examination revealed no objective physical findings to substantiate appellant's reported symptoms or diagnoses of lumbar radiculopathy or any spinal nerve injury.

On June 17, 2016 Dr. Arthur S. Harris, a Board-certified orthopedic surgeon serving as a DMA, reviewed the medical evidence including, Dr. Arena's March 30, 2016 report. He found that MMI occurred on March 30, 2016. The DMA opined that appellant had zero percent permanent impairment of each lower extremity based on the sixth edition of the A.M.A., *Guides*. He explained that appellant's condition had improved at the time of Dr. Arena's March 30, 2016 impairment evaluation as there were no objective findings in either lower extremity. The DMA concluded that, contrary to Dr. Weiss' determination of a right ankle impairment rating, he did not calculate such an impairment rating because OWCP had not accepted a right ankle injury.

By decision dated June 23, 2016, OWCP denied appellant's schedule award claim as the medical evidence of record did not establish permanent impairment of a scheduled member of the body causally related to the accepted September 13, 2011 employment injury. It accorded the special weight of the medical evidence to the March 30, 2016 report of Dr. Arena as the IME.

On June 29, 2016 appellant, through then-counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review, which was held on October 5, 2016. By decision dated November 23, 2016, an OWCP hearing representative set aside the June 23, 2016 decision and remanded the case to OWCP to refer appellant for another impartial medical examination due to an unresolved conflict in the medical opinion evidence regarding whether appellant's accepted conditions had resolved, whether appellant sustained additional lumbar spine or other conditions causally related to his accepted employment injury, and if so, whether he had

permanent impairment to a scheduled member in accordance with the sixth edition of the A.M.A., *Guides* and *The Guides Newsletter*.

By decision dated May 23, 2018, OWCP expanded the acceptance of appellant's claim to include contusions of the right and left hands, temporary aggravation of degenerative joint disease of bilateral basilar joint, and right ankle sprain. It accorded the special weight of the medical evidence to the October 16 and 30, 2017 reports of Dr. Thomas J. O'Dowd, a Board-certified orthopedic surgeon, selected as the IME, who opined that the above-noted conditions were causally related to appellant's September 13, 2011 employment injury.

On August 27, 2018 OWCP referred appellant, along with a statement of accepted facts (SOAF), a list of questions, and the case record, to Dr. Roy Friedenthal, a Board-certified orthopedic surgeon, for an impartial evaluation to determine the extent of appellant's permanent impairment. In a January 7, 2019 report, Dr. Friedenthal related appellant's physical examination findings and opined that appellant had no continuing medical conditions due to his September 13, 2011 injury. He explained that appellant's current conditions were due to underlying and preexisting degenerative processes. Dr. Friedenthal noted that MMI was reached within three or four months of the accepted employment injury and certainly by March 2012, the date of Dr. Askin's impairment evaluation. In an April 17, 2019 addendum report, he opined that there were no current active medical conditions due to the employment injury and, thus, there was no permanent impairment due to that injury.

By decision dated April 29, 2019, OWCP denied appellant's claim for a schedule award. It accorded the special weight of the medical evidence to Dr. Friedenthal's impartial medical opinion.

On May 6, 2019 appellant, through then-counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review, which was held on August 22, 2019.

OWCP subsequently received a July 26, 2019 report from Dr. Weiss who reviewed Dr. Friedenthal's reports. Dr. Weiss noted the discrepancies in these reports and concluded that he stood by the bilateral upper and lower extremity permanent impairment ratings set forth in his March 18, 2014 report.

By decision dated October 24, 2019, an OWCP hearing representative set aside the April 29, 2019 decision, finding that Dr. Friedenthal was a second opinion physician and not an IME as there was no conflict in medical opinion regarding the extent of appellant's permanent impairment. The hearing representative further found that Dr. Friedenthal failed to provide adequate rationale to support his conclusions that appellant had no work-related permanent impairment and had a retroactive date of MMI. The hearing representative remanded the case for OWCP to refer an updated SOAF and Dr. Weiss' March 18, 2014 and July 26, 2019 reports to Dr. Friedenthal for a rationalized supplemental report regarding appellant's permanent impairment and date of MMI.

In a letter dated October 28, 2019, OWCP requested that Dr. Friedenthal review Dr. Weiss' March 18, 2014 and July 26, 2019 reports and address the deficiencies raised by the OWCP hearing representative's October 24, 2019 decision. The accompanying SOAF dated October 28,

2019 indicated that it superseded all prior versions. In a December 30, 2019 report, Dr. Friedenthal explained why appellant had no permanent impairment causally related to the September 13, 2011 work injury. He indicated that he stood by his previous opinion that appellant had no work-related permanent impairment as set forth in his January 7 and April 17, 2019 reports.

By decision dated March 5, 2020, OWCP denied appellant's claim for a schedule award based on Dr. Friedenthal's December 30, 2019 supplemental report.

On March 12, 2020 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review, which was held telephonically on July 14, 2020. By decision dated September 17, 2020, an OWCP hearing representative set aside the March 5, 2020 decision, finding that an unresolved conflict in medical opinion existed between Dr. Weiss, for appellant, and Dr. Friedenthal, OWCP's second opinion physician, regarding the extent of appellant's permanent impairment.

On December 7, 2020 OWCP referred appellant, along with the case record and a SOAF, for an impartial medical evaluation with Dr. Ian B. Fries, a Board-certified orthopedic surgeon, to resolve the conflict regarding appellant's permanent impairment.

In a June 6, 2021 report, Dr. Fries opined that appellant had reached MMI on May 18, 2021. He discussed appellant's history of injury and reviewed the medical record, including diagnostic test results, and presented examination findings. Dr. Fries provided an impression of bilateral thumb carpometacarpal (CMC) degenerative arthritis; age-related cervical and lumbar degenerative spondylosis and L4-5 degenerative spondylolisthesis; bilateral hip labral degeneration; possible right lower extremity peripheral neuropathies; and chronic bilateral lower extremity venous disease. He explained that appellant's degenerative bilateral thumb CMC arthritis with subluxations would be expected to worsen over the years, whether or not both joints sustained injury nine years ago. Dr. Fries also opined that it would be speculative to say nine years post fall that the fall had permanently aggravated these likely preexisting conditions. Dr. Fries indicated that, other than some minor lateral left hip tenderness, there were no significant left hip findings and no measurable residual from the work-related injury. He noted that appellant had depressed left biceps and brachioradialis reflexes with no other significant sensory or motor deficits in either upper extremity which would be sufficient to establish a right cervical radiculopathy or other significant neurological disorder. Dr. Fries found full range of motion of shoulder, elbow, wrist and finger, even at the degenerated thumb CMC joints, and age-related degenerative cervical spondylosis and multilevel lumbosacral degeneration not objectively supported by the work-related incident. Widespread sensory findings in the right lower extremity were more consistent with peripheral neuropathies than radiculopathy and there was bony swelling of the right ankle and modestly decreased motion, with no other findings. Dr. Fries opined that the accepted work conditions of left hip strain, bilateral hand contusions with temporary aggravation of bilateral degenerative basilar joint disease, and right ankle strain, which were sustained more than nine years ago, did not result in measurable aggravation, impairment or disability. He also opined that there were no continuing disabling residuals of the work-related conditions as they had resolved, appellant required no additional medical care to treat the work-related injury, and there was no evidence of permanent impairment due to the injury. Dr. Fries specifically stated that there were no permanent measurable residuals from the September 13, 2011 employment injury or any objective or measurable evidence of lumbar spine, left hip, right ankle,

or bilateral hand and thumb impairments due to the accepted work injury as appellant had fully recovered. Rather, he related that the medical evidence established preexisting degenerative conditions that had continued over the years on their expected course with no objective evidence of a change due to the work injury. Dr. Fries also provided permanent impairment assessment which he opined were not related to the September 13, 2011 work-related injury. He calculated six percent permanent impairment of the bilateral upper extremities due to the underlying degenerative joint disease of the thumb and zero percent permanent impairment of the right lower extremity, noting there was no objective evidence of a change in the underlying lumbar conditions due to the employment injury and that sensory complaints did not follow dermatomal/radicular pattern. Dr. Fries noted that findings in the ankle were not sufficient to support permanent impairment.

By decision dated August 9, 2021, OWCP denied appellant's claim for a schedule award. It accorded the special weight of the medical evidence to the impartial opinion of Dr. Fries, the IME.

On August 17, 2021 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review, which was held telephonically on December 17, 2021.

OWCP subsequently received a December 10, 2021 addendum report from Dr. Weiss who agreed with Dr. Fries' determination that appellant had six percent permanent impairment of the bilateral upper extremities due to CMC joint pathology. However, Dr. Weiss disagreed with the other findings provided by Dr. Fries. He noted that Dr. Fries had noted a sensory impairment of the right lower extremity, but erroneously attributed such sensory impairment to a peripheral neuropathy as it was unusual for a peripheral neuropathy to be only in one extremity. Dr. Weiss also noted that appellant's July 20, 2012 diagnostic testing was positive for right L4 and L5 radiculopathy. He concluded that he stood by his 14 percent permanent impairment of the right lower extremity and his 1 percent permanent impairment of trochanteric bursitis of the left lower extremity based on his report and findings of March 18, 2014.

By decision dated March 3, 2022, an OWCP hearing representative set aside the August 9, 2021 decision and remanded the case to OWCP for further development. The hearing representative instructed OWCP to prepare a corrected SOAF to exclude reference to the June 23, 2016 decision because it found that appellant had no permanent impairment and to forward this to Dr. Fries and request that he provide an opinion on appellant's permanent impairment.

On March 7, 2022 OWCP forwarded the updated SOAF of even date, case record, and list of questions to Dr. Fries and requested that he provide an opinion on appellant's current conditions and bilateral upper and lower extremity permanent impairment under the sixth edition of the A.M.A., *Guides*.

In a March 9, 2022 report, Dr. Fries disagreed with Dr. Weiss' 14 percent right lower extremity permanent impairment rating and 1 percent left lower extremity permanent impairment rating. Rather, he opined that appellant's conditions were age-related and there were no permanent residuals from the work injury/fall. Dr. Fries summarized that, after review of the amended SOAF, Dr. Weiss' December 10, 2021 addendum report and the March 3, 2022 hearing decision, there

was no reason to edit his permanent impairment calculations and diagnoses, or the date of MMI previously provided in his June 6, 2021 report.

By decision dated April 7, 2022, OWCP denied the claim for a schedule award. It found that the opinion of Dr. Fries, as the IME, represented the special weight of the medical evidence and established that appellant had no permanent impairment of a scheduled member or function of the body as a result of the accepted September 13, 2011 employment injury.

On April 12, 2022 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review, which was held telephonically on July 8, 2022.

By decision dated September 21, 2022, an OWCP hearing representative affirmed the April 7, 2022 decision.

LEGAL PRECEDENT

It is the claimant's burden of proof to establish permanent impairment of a scheduled member or function of the body as a result of an employment injury.⁶

The schedule award provisions of FECA⁷ and its implementing regulations⁸ 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 to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. Through its implementing regulations, OWCP adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule losses.⁹ As of May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (2009).¹⁰ The Board has approved the use by OWCP of the A.M.A., *Guides* for the purpose of determining the percentage loss of use of a member of the body for schedule award purposes.¹¹

The sixth edition of the A.M.A., *Guides* provides a diagnosis-based impairment (DBI) method of evaluation utilizing the *World Health Organization's International Classification of*

⁶ See *R.B.*, Docket No. 22-0954 (issued December 29, 2022); *T.H.*, Docket No. 19-1066 (issued January 29, 2020); *D.F.*, Docket No. 18-1337 (issued February 11, 2019); *Tammy L. Meehan*, 53 ECAB 229 (2001).

⁷ 5 U.S.C. § 8107.

⁸ 20 C.F.R. § 10.404.

⁹ *Id.* See also *Ronald R. Kraynak*, 53 ECAB 130 (2001).

¹⁰ See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); *id.* at Chapter 2.808.5.a (March 2017).

¹¹ *P.R.*, Docket No. 19-0022 (issued April 9, 2018); *Isidoro Rivera*, 12 ECAB 348 (1961).

Functioning, Disability and Health (ICF): A Contemporary Model of Disablement.¹² Under the sixth edition, the evaluator identifies the impairment class of diagnosis (CDX), which is then adjusted by a grade modifier for functional history (GMFH), grade modifier for physical examination (GMPE), and grade modifier for clinical studies (GMCS).¹³ The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).¹⁴

Neither FECA nor its implementing regulations provide for the payment of a schedule award for the permanent loss of use of the back/spine or the body as a whole.¹⁵ However, a schedule award is permissible where the employment-related spinal condition affects the upper and/or lower extremities.¹⁶ The sixth edition of the A.M.A., *Guides* provides a specific methodology for rating spinal nerve extremity impairment in *The Guides Newsletter*. It was designed for situations where a particular jurisdiction, such as FECA, mandated ratings for extremities and precluded ratings for the spine. The FECA-approved methodology is premised on evidence of radiculopathy affecting the upper and/or lower extremities. The appropriate tables for rating spinal nerve extremity impairment are incorporated in OWCP's procedures.¹⁷

Section 8123(a) of FECA provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.¹⁸ When there are opposing reports of virtually equal weight and rationale, the case must be referred to an IME, pursuant to section 8123(a) of FECA, to resolve the conflict in the medical evidence.¹⁹ Where a case is referred to an IME for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.²⁰

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish permanent impairment of his upper or lower extremities, warranting a schedule award.

¹² A.M.A., *Guides* (6th ed. 2009), page 3, section 1.3.

¹³ *Id.* at 494-531.

¹⁴ *Id.* at 411.

¹⁵ 5 U.S.C. § 8107(c); 20 C.F.R. § 10.404(a) and (b); *see A.G.*, Docket No. 18-0815 (issued January 24, 2019).

¹⁶ *Supra* note 10 at Chapter 2.808.5c(3) (March 2017).

¹⁷ *Id.* at Chapter 3.700, Exhibit 4 (January 2010); *B.M.*, Docket No. 19-1069 (issued November 21, 2019).

¹⁸ 5 U.S.C. § 8123(a). *See M.E.*, Docket No. 21-0281 (issued June 10, 2022); *R.C.*, Docket No. 18-0463 (issued February 7, 2020); *see also G.B.*, Docket No. 16-0996 (issued September 14, 2016).

¹⁹ *See M.E., id.*; *M.R.*, Docket No. 19-0526 (issued July 24, 2019); *C.R.*, Docket No. 18-1285 (issued February 12, 2019).

²⁰ *M.E., id.*; *P.B.*, Docket No. 20-0984 (issued November 25, 2020); *Darlene R. Kennedy*, 57 ECAB 414 (2006); *Gloria J. Godfrey*, 52 ECAB 486 (2001); *James P. Roberts*, 31 ECAB 1010 (1980).

OWCP properly found a conflict in medical opinion between Dr. Weiss, appellant's attending physician, and Dr. Friedenthal, a second opinion physician, regarding appellant's permanent impairment of the bilateral upper and lower extremities, and accordingly, referred appellant to Dr. Fries for an impartial medical examination, pursuant to 5 U.S.C. § 8123(a).

In a June 6, 2021 report, Dr. Fries opined that appellant reached MMI no later than May 18, 2021. He opined that there were no continuing injury-related residuals or any objective or permanent measurable residuals of the work-related lumbar spine, left hip, right ankle, or bilateral hand and thumb conditions, and thus, there was no evidence of permanent impairment due to the work-related injury. Dr. Fries discussed appellant's history of injury and reviewed the medical record, including diagnostic test results, and presented examination findings. He explained that appellant's degenerative bilateral thumb CMC arthritis with subluxations would be expected to worsen over the years, whether or not both joints sustained injury nine years ago. Other than minor lateral left hip tenderness, Dr. Fries found no significant left hip findings and no measurable residual from the work-related injury in the upper and lower extremities. He opined that the accepted work conditions of left hip strain, bilateral hand contusions with temporary aggravation of bilateral degenerative basilar joint disease and right ankle strain, which were sustained more than nine years ago, did not result in measurable aggravation, impairment or disability. Based on nonemployment-related conditions, Dr. Fries calculated a permanent impairment of the upper extremities, but found no impairments of the right lower extremity based on either the underlying accepted lumbar or right ankle conditions. In his March 9, 2022 addendum report, he reviewed the amended March 7, 2022 SOAF and indicated that he disagreed with Dr. Weiss that appellant had a permanent impairment as there were no permanent residuals from the work-related injury. Rather, Dr. Fries opined that appellant's conditions were age-related and that there were no permanent residuals from the work injury/fall. He concluded that he stood by his original findings and opinion set forth in his June 6, 2021 report that appellant had no impairment in either his upper or lower extremities due to the work-related injury.

As noted, when a case is referred to an IME for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.²¹ The Board finds that Dr. Fries' June 6, 2021 and March 9, 2022 reports are entitled to special weight and establish that appellant had no permanent impairment of the bilateral upper or lower extremities.²² Dr. Fries' opinion was based on a proper factual and medical history, which he reviewed, and his normal examination findings which demonstrated no permanency or residuals from the September 13, 2011 work-related injury. He provided medical rationale for his impairment rating.

Dr. Weiss, in his December 10, 2021 addendum report, maintained that Dr. Fries' June 6, 2021 opinion was not supported by sufficient evidence. As noted, however, Dr. Fries reviewed an amended March 7, 2022 SOAF and issued a March 9, 2022 addendum report, opining that appellant's conditions were age-related and that there were no residuals from the work injury/fall and, thus, no permanent impairment in either his bilateral upper or lower extremities due to the work-related injury. The Board also notes that Dr. Weiss was on one side of the conflict resolved

²¹ *Id.*

²² See *R.B.*, *supra* note 6; *M.E.*, *supra* note 18; *V.H.*, Docket No. 20-0012 (issued November 5, 2020).

by Dr. Fries. The Board has held that reports from a physician who was on one side of a medical conflict are generally insufficient to overcome the special weight accorded to the IME, or to create a new conflict.²³ Dr. Weiss' report is, therefore, insufficient to overcome the special weight accorded to Dr. Fries' opinion or to create a new conflict in medical opinion.²⁴ As the medical evidence of record is insufficient to establish permanent impairment of the bilateral upper or lower extremities, the Board finds that appellant has not met his burden of proof.

Appellant may request a schedule award or increased schedule award at any time based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased permanent impairment.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish permanent impairment of his upper or lower extremities, warranting a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the September 21, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 21, 2023
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board

²³ See *R.B., id.*; *R.H.*, Docket No. 19-1503 (issued February 2, 2022); *M.R.*, Docket No. 19-0526 (issued July 24, 2019); *M.R., id.*; *S.S.*, Docket No. 17-1361 (issued January 8, 2018); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Michael Hughes*, 52 ECAB 387 (2001).

²⁴ See *R.H., M.R., and S.S., id.*; *K.R.*, Docket No. 16-0542 (issued December 21, 2016).