

<sup>2</sup> Appellant submitted a timely request for oral argument before the Board, explaining his disagreement with OWCP's decisions. He alleged that the medical evidence of record supported his recurrence claims. 20 C.F.R. § 501.5(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). The Board, in exercising its discretion, denies appellant's request for oral argument as the case can adequately be addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, the oral argument request is denied, and this decision is based on the case record as submitted to the Board.

## **ISSUES**

The issues are: (1) whether appellant has met his burden of proof to establish a recurrence of disability for the period March 11 through April 1, 2022 and commencing April 15, 2022, causally related to his accepted employment injury; and (2) whether appellant has met his burden of proof to establish greater than six percent permanent impairment of his right upper extremity, for which he previously received a schedule award.

## **FACTUAL HISTORY**

On October 26, 2016, appellant, then a 28-year-old mail processing clerk, filed an occupational disease claim (Form CA-2) alleging that he sustained right elbow lateral epicondylitis due to factors of his federal employment, including repetitive lifting of oversized packages, more than eight hours per day, six days per week. He stopped work on August 3, 2016. By decision dated May 16, 2018, OWCP accepted appellant's claim for right elbow lateral epicondylitis. It paid him wage-loss compensation on the supplemental rolls effective May 10, 2016.

On July 26, 2019, appellant filed a claim for compensation (Form CA-7) for a schedule award.<sup>3</sup>

By decision dated November 22, 2021, OWCP granted appellant a schedule award for six percent permanent impairment of the right upper extremity, based on a September 13, 2021 report of Dr. Ralph D'Auria, an attending Board-certified physiatrist, and an October 28, 2021 report of Dr. Todd Fellars, a Board-certified orthopedic surgeon serving as an OWCP district medical adviser (DMA). The award ran for 18.72 weeks from September 13, 2021 through January 22, 2022.

On March 24, 2022, appellant filed a notice of recurrence (Form CA-2a) alleging that on March 11, 2022 he sustained a recurrence of disability causally related to his accepted employment injury. He also noted that he had permanent restrictions. Appellant indicated that, since leaving the employing establishment, he worked in a truck driver-in-training position in the private sector from July 2021 through September 2021 and as a truck driver in the private sector from February 2022 through March 2022. He claimed compensation for lost wages for the period March 11 through April 1, 2022.

Appellant submitted an April 5, 2022 work excuse note by Dr. Jonathan Williams, an osteopathic orthopedic surgeon, and Dr. Terry Smith, a neurosurgeon, who advised that appellant was to remain off work for two weeks until his next follow-up appointment.

OWCP subsequently received an April 5, 2022 report by Glenn Mason, a family nurse practitioner, who provided assessments of right elbow pain and ulnar neuropathy of the right upper extremity.

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<sup>3</sup> An August 13, 2021 notice of personnel action (PS Form 50) indicated that appellant's last day in pay status was March 5, 2021 and that he voluntarily resigned from the employing establishment, effective June 2, 2021, due to personal reasons.

In a development letter dated April 8, 2022, OWCP informed appellant of the deficiencies of his recurrence claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence.

In an April 28, 2022 report, Dr. Williams provided assessments of right elbow pain and ulnar neuropathy of the right upper extremity. He advised that appellant may return to work next week and increase his activity as tolerated with his right elbow.

In a May 10, 2022 work status report, Dr. D'Auria advised that appellant was unable to work through June 14, 2022. In a prescription note of even date, he diagnosed the accepted condition of right elbow lateral epicondylitis and ordered physical therapy.

In a May 10, 2022 e-mail, M.C., an employee at a private sector transportation company, informed appellant that his employment would be terminated, effective May 11, 2022, because he was unable to complete the training and he would be eligible for rehire upon completion of the training.

On May 12, 2022, appellant filed an additional Form CA-2a alleging a recurrence of disability commencing April 14, 2022 causally related to his accepted employment injury. He stopped work on April 15, 2022.

By decision dated June 24, 2022, OWCP denied appellant's claim for a recurrence of disability commencing April 15, 2022, due to his accepted employment injury. It explained that the medical evidence of record was insufficient to establish that he was disabled from work commencing April 15, 2022 due to a material change/worsening of his accepted work-related condition.

On July 7, 2022, appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review regarding the June 24, 2022 recurrence decision, which was held on November 15, 2022.

OWCP subsequently received additional medical evidence from Dr. D'Auria. In a May 10, 2022 office visit note, Dr. D'Auria discussed his examination findings of the right elbow, which included tenderness over the extensor tendons and lateral epicondyle. He placed appellant off work for one month. In a November 23, 2022 report, Dr. D'Auria related that appellant appeared to have an aggravation of the accepted condition of lateral epicondylitis. He noted that appellant was not currently working as he had been fired from his truck driver position due to problems stemming from his accepted employment injury. In a December 5, 2022 office note, Dr. D'Auria again noted that appellant was not working.

By decision dated January 31, 2023, an OWCP hearing representative vacated the June 24, 2022 recurrence decision and remanded the case for further development of appellant's claim for a work-related recurrence of disability for the periods March 11 through April 1, 2022 and commencing April 15, 2022. The hearing representative directed OWCP to refer appellant to a second opinion physician to determine whether he sustained a recurrence of disability during the claimed periods due to a worsening of his accepted employment-related condition.

On March 8, 2023, OWCP referred appellant, along with the case record, a statement of accepted facts (SOAF), and a series of questions, to Dr. Samuel Meredith, Jr., a Board-certified orthopedic surgeon, for a second opinion evaluation.

In an April 10, 2023 report, Dr. Meredith noted his review of the SOAF and medical record, discussed his findings on physical examination, and reviewed diagnostic test results. He provided an impression of mild residual discomfort secondary to chronic lateral epicondylitis and surgical release of the extensor mechanism. In response to OWCP's questions, Dr. Meredith diagnosed the accepted condition of right elbow lateral epicondylitis, noting that the condition had become chronic over time, and necessitated two surgical procedures. He advised that the work-related condition had not completely resolved because appellant had not been able to return to a full range of normal activities due to intermittent recurrent discomfort in his elbow. Dr. Meredith, however, advised that no further medical treatment was needed, and appellant had reached maximum medical improvement (MMI). He opined that appellant could not return to his original work, work with restrictions. Dr. Meredith further opined that there was no evidence that he experienced a worsening of his accepted condition. He explained that relevant medical findings during the claimed periods of disability included both an unremarkable magnetic resonance imaging (MRI) scan of the right elbow and a nondiagnostic electrodiagnostic study both performed in 2022. Additionally, Dr. Meredith opined that there was no evidence that appellant became disabled from performing the required duties of his private sector job as a truck driver due to an increase in disability causally related to the accepted employment injury. He explained that there was simply no evidence that the accepted condition worsened during that claimed period. Dr. Meredith noted that there was only appellant's account that he experienced increased discomfort with heavy and repetitive steering wheel manipulation operating the truck. In an accompanying Form OWCP-5c dated April 10, 2023, he reiterated his opinion regarding appellant's work capacity and set forth his work-related restrictions.

By *de novo* decision dated May 31, 2023, OWCP denied appellant's claim for a recurrence of disability for the periods March 11 through April 1, 2022 and commencing April 15, 2022, due to his accepted employment injury. It accorded the weight of the medical evidence to Dr. Meredith, the second opinion physician, who opined that appellant did not sustain a recurrence of disability due to a material worsening of his accepted right elbow condition.

On June 7, 2023, appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

Subsequently, OWCP received additional medical evidence from Dr. D'Auria. In an April 6, 2023 office note, Dr. D'Auria reported appellant's complaint of right elbow pain and discussed his physical examination findings. He continued to note that appellant was not working at that time.

In a May 11, 2023 report, Dr. D'Auria noted a history of the accepted employment injury and appellant's medical treatment. He presented findings on examination of the right elbow, which included three separate range of motion (ROM) measurements, revealing 140 degrees of flexion (full ROM), 10 degrees of extension, 50 degrees of supination, and 80 degrees of pronation (full ROM). Dr. D'Auria continued to diagnose the accepted condition of right elbow lateral epicondylitis. He advised that appellant had reached MMI on May 11, 2023. Dr. D'Auria referred

to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*)<sup>4</sup> and utilized the diagnosis-based impairment (DBI) rating method to find, that under Table 15-4, (Elbow Regional Grid), page 399, the class of diagnosis (CDX) for appellant's lateral epicondylitis resulted in a Class 1 impairment (status postsurgical release of extensor origins with residual symptoms) with a default value of five percent. He assigned a grade modifier for functional history (GMFH) of 2 (pain/symptoms with normal activity; ability to perform self-care with modifications, but unassisted; and a *QuickDASH* score of 43). Dr. D'Auria assigned a grade modifier for physical examination (GMPE) of 2 (moderate palpatory findings). He indicated that a grade modifier for clinical studies (GMCS) was not applicable. Dr. D'Auria utilized the net adjustment formula, which raised the default to a severity grade of E and resulted in a final impairment rating of seven percent of the right upper extremity based upon the DBI rating methodology. Utilizing the ROM rating methodology, he found that under Table 15-33 (Elbow/Forearm Range of Motion), page 474, appellant's ROM findings of 10 degrees of extension resulted in two percent permanent impairment and 50 degrees of supination resulted in one percent permanent impairment of the right elbow, for a total of three percent right upper extremity permanent impairment. Dr. D'Auria determined that the three percent ROM impairment rating represented a grade modifier of 1 under Table 15-35, page 477. He assigned a grade modifier of 2 for GMFH due to pain/symptoms with normal activity; ability to perform self-care with modifications, but unassisted; and avoidance of twisting motions, pulling, pushing, heavy lifting, and repetitive movements and a *QuickDASH* score of 43 under Table 15-7, page 406. Dr. D'Auria referred to Table 15-36, page 477, and explained that since, the GMFH was one grade higher than the ROM grade modifier, appellant's total impairment was increased by 5 percent for a total of 3.15 percent which was rounded down to 3 percent permanent impairment of the right upper extremity. As the DBI method produced the higher impairment rating, he concluded that appellant had seven percent permanent impairment of the right upper extremity.

On June 21, 2023, appellant filed a Form CA-7 claim for an additional schedule award.

On July 17, 2023, OWCP referred appellant, along with the case record, a SOAF, and a series of questions, to Dr. Meredith for a second opinion examination and evaluation under the standards of the sixth edition of the A.M.A., *Guides*.

In an August 14, 2023 report, Dr. Meredith again reviewed the SOAF and medical record. He discussed his findings on examination of the right elbow, including three separate ROM measurements, which revealed 140 degrees of flexion, 0 degrees of extension, 80 degrees of pronation, and 45 degrees of supination. Dr. Meredith diagnosed the accepted condition of right elbow lateral epicondylitis. He referred to the sixth edition of the A.M.A., *Guides* and utilized the DBI rating method to find that, under Table 15-4, appellant's CDX of status postsurgical release resulted in a Class 1 impairment. Dr. Meredith assigned a grade modifier of 1 each for GMFH and GMPE, and a grade modifier of 0 for GMCS, which resulted in a grade B impairment or four percent permanent impairment of the right upper extremity. Utilizing the ROM method to rate impairment of the right elbow under Table 15-33, page 474, he found that 140 degrees of flexion resulted in 0 percent impairment, 0 degrees of extension resulted in 0 percent impairment, 80 degrees of pronation resulted in 0 percent impairment, and 45 degrees of supination resulted in 2

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<sup>4</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

percent impairment, for a total of two percent permanent impairment of the right upper extremity. Dr. Meredith determined that appellant had reached MMI on August 14, 2023, the date of his impairment evaluation.

On September 19, 2023, OWCP routed Dr. Meredith's August 14, 2023 report, along with the case record, and a SOAF, to Dr. William Tontz, Jr., a Board-certified orthopedic surgeon serving as an OWCP DMA, for review and a determination of appellant's date of MMI and any permanent impairment of his right upper extremity under the sixth edition of the A.M.A., *Guides*. It further requested that Dr. Tontz review Dr. Meredith's August 14, 2023 report and provide an opinion addressing whether he agreed with its findings.

In a September 30, 2023 report, Dr. Tontz noted his review of the SOAF and medical record. Utilizing the DBI method to rate impairment of appellant's right elbow, he referred to Table 15-4, page 399, and noted that a CDX for lateral epicondylitis status post release was a default value of one percent permanent impairment. Dr. Tontz also utilized the ROM rating method, he referred to Table 15-33, page 474, and noted that 45 degrees of supination resulted in two percent permanent impairment. As the ROM method produced the higher impairment rating, he concluded that appellant had three percent permanent impairment of the right upper extremity. The DMA noted that his three percent ROM impairment rating included any prior schedule award for the right upper extremity. He concurred with Dr. Meredith's August 14, 2023 right upper extremity impairment rating. The DMA determined that appellant had reached MMI on August 14, 2023.

A hearing was held on October 12, 2023 with regard to the May 31, 2023 recurrence decision.

On October 19, 2023, OWCP requested that the DMA, Dr. Tontz, provide an addendum report addressing appellant's prior schedule award for six percent permanent impairment of the right upper extremity, for which he previously received a schedule award.

In an addendum report dated October 31, 2023, the DMA, Dr. Tontz, opined that appellant had five percent DBI permanent impairment of the right upper extremity for his accepted condition of lateral epicondylitis status postsurgical release under Table 15-4, page 399, of the sixth edition of the A.M.A., *Guides*. He advised that no additional impairment was given for ROM permanent impairment as the ROM rating method was not permitted for appellant's diagnosis under Section 15.7f (Forearm/Elbow Motion), page 471,<sup>5</sup> of the A.M.A., *Guides*. The DMA further advised that appellant's five percent right upper extremity permanent impairment rating included his prior percentage awarded as there was no indication of any additional impairment. He agreed with Dr. Meredith's five percent DBI right upper extremity impairment rating as set forth in his

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<sup>5</sup> The Board notes that it appears that the DMA, Dr. Tontz, inadvertently cited Section 15.7e (Wrist Motion Impairment), page 474 rather than Section 15.7f, page 471 in his October 31, 2023 report.

August 14, 2023 report.<sup>6</sup> The DMA reiterated his prior finding that MMI was reached on August 14, 2023.

By decision dated November 1, 2023, OWCP denied appellant's claim for an additional schedule award, finding that the medical evidence of record was insufficient to establish greater than six percent permanent impairment of the right upper extremity.

On November 7, 2023 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review regarding the November 1, 2023 schedule award decision.

By decision dated January 26, 2024, an OWCP hearing representative affirmed the May 31, 2023 recurrence decision, finding that appellant had failed to provide sufficient medical evidence to establish that his claimed disability was due to a material worsening of his accepted condition without any intervening cause. The hearing representative accorded the weight of the medical evidence to the April 10, 2023 report of Dr. Meredith, the second opinion physician.

Subsequently, OWCP received a February 7, 2024 report by Dr. D'Auria who noted that he had initially evaluated appellant on September 13, 2021 for his accepted condition of right elbow lateral epicondylitis for which appellant received a schedule award for six percent permanent impairment of the right upper extremity. Dr. D'Auria later evaluated him on May 10, 2022 and noted appellant's complaint of an exacerbation of his right elbow pain, which appellant attributed to manipulating a large steering wheel while driving a truck in March 2022. On physical examination, he reported exquisite tenderness over the insertion of the extensor tendons at the lateral epicondyle consistent with an aggravation of appellant's epicondylitis. Dr. D'Auria indicated that appellant was kept off work for one month until his next follow-up visit to avoid further aggravation of his condition. He opined that although he did not see appellant until May 10, 2022, he believed that appellant was disabled from work beginning in March 2022 or April 2022 when his condition was initially aggravated by history. Dr. D'Auria noted that his opinion considered the mechanism of injury, which was compatible with an aggravation of epicondylitis, and his findings on physical examination.

On February 9, 2024, appellant, through counsel, requested reconsideration of the January 26, 2024 recurrence decision.

By decision dated February 15, 2024, OWCP denied modification of the January 26, 2024 recurrence decision, finding that Dr. D'Auria's February 7, 2024 report was insufficient to establish that appellant's claimed disability during the period March 11 through April 1, 2022 and commencing April 15, 2022 was causally related to a material worsening of his accepted condition without an intervening cause.

On February 16, 2024, appellant requested reconsideration of the February 15, 2024 recurrence decision. He resubmitted Mr. Mason's April 5, 2022 report.

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<sup>6</sup> Dr. Meredith found that appellant had four percent permanent impairment of the right upper extremity, utilizing the DBI methodology.

By decision dated February 21, 2024, OWCP denied modification of the February 15, 2024 recurrence decision.

On February 23, 2024, appellant requested reconsideration of the February 21, 2024 recurrence decision. In an accompanying undated statement, he contended that although Mr. Mason's April 5, 2022 report was found to lack probative value, it showed that he sought medical attention for his accepted employment injury before he was rehired by the private sector transportation company, and therefore the chain of causation was not broken. Appellant explained that Dr. D'Auria provided an inaccurate statement that his truck driver position caused his recurrence because his narrative was written without knowledge of his previous doctor visits. He claimed that his recurrence of disability had already occurred and was aggravated after the fact. Appellant further contended that Dr. Meredith referenced that his work injury had not resolved and was recurrent. Lastly, he contended that Dr. D'Auria also explained how the history of his injury could cause a recurrence.

In support of his request for reconsideration, appellant submitted an employment record indicating that he was originally hired as a driver-student at a private sector transportation company on September 21, 2021, was rehired on April 11, 2022, and was terminated on May 12, 2022.

In a subsequent letter dated February 26, 2024, appellant explained the discrepancy regarding the dates of his employment as a truck driver at a private sector transportation company. He related that he was hired multiple times by the company, but he only worked there from April 11 through 16, 2022. Appellant noted that he had resigned from the employing establishment on June 2, 2021.

In a February 23, 2024 letter, Dr. D'Auria, acknowledged that although appellant was seen in his office on November 23, 2022 and reported that his pain had become exacerbated after he began driving a truck in March 2022, appellant currently advised him that he had his dates mixed up and he did not actually begin driving trucks until April 2022. He noted that appellant provided an e-mail dated April 8, 2022 between himself and his private employer indicating that he had not yet completed his new employee orientation. Dr. D'Auria opined that since appellant had provided documentation that he did not start his new job driving trucks until sometime in April 2022 and his aggravation of symptoms began in March 2022, the exacerbation occurred prior to his new employment. He related that it was likely that his symptoms were further aggravated by the activities performed while driving trucks, however, the exacerbation had already occurred prior to that time. For this reason, Dr. D'Auria opined that causation was established prior to appellant's subsequent truck driver job.<sup>7</sup>

OWCP, by decision dated February 26, 2024, denied modification of the February 21, 2024 recurrence decision.

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<sup>7</sup> In a memorandum of telephone call (Form CA-110) dated February 26, 2024, appellant clarified the dates he worked for a private sector employer. He only worked for the private sector employer for one week in April 2022 participating in truck driver orientation, but he could not recall the specific dates of his employment.



On February 28, 2024, appellant requested reconsideration of the February 26, 2024 recurrence decision.

By decision dated March 4, 2024, OWCP denied modification of the February 26, 2024 recurrence decision.

On March 8, 2024, appellant requested reconsideration of the March 4, 2024 decision, contending that his claimed recurrence of disability was caused by spontaneous changes in his medical conditions before any intervening causes. In support thereof, he resubmitted portions of Dr. Meredith's April 10, 2023 second opinion report, and a partial copy of Dr. D'Auria's February 7, 2024 report.

By decision dated March 12, 2024, OWCP denied appellant's request for reconsideration of the merits of his recurrence claim, pursuant to 5 U.S.C. § 8128(a).

On March 13, 2024, appellant requested reconsideration of the March 4, 2024 recurrence decision. In a March 13, 2024 report, Dr. D'Auria opined that appellant sustained a recurrence in March 2022 that was due to routine use of his right arm and not a new injury. He explained that there was nothing to support a new injury and again attributed appellant's right elbow symptoms to an exacerbation of his previous injury, which occurred prior to his employment in April 2022 as a truck driver.

By decision dated March 20, 2024, OWCP denied appellant's request for reconsideration of the merits of his recurrence claim, pursuant to 5 U.S.C. § 8128(a).

On March 20, 2024, appellant requested reconsideration, contending that Dr. D'Auria's March 13, 2024 letter constituted pertinent new and relevant evidence.

By decision dated April 8, 2024, OWCP vacated the March 20, 2024 decision, finding that appellant had submitted new legal argument and new medical evidence with his March 13, 2024 request for reconsideration. It remanded the case for OWCP to conduct a merit review regarding appellant's recurrence claim.

By decision dated April 12, 2024, OWCP denied modification of the March 4, 2024 recurrence decision. It continued to find that the medical evidence of record was insufficient to establish disability from work during the claimed periods causally related to a material worsening of appellant's accepted condition.

On April 15, 2024, appellant requested reconsideration.

By decision dated April 23, 2024, OWCP's hearing representative affirmed the November 1, 2023 schedule award decision.

By decision dated July 12, 2024, OWCP denied modification of the April 12, 2024 recurrence decision.

On July 16, 2024, appellant again requested reconsideration. He contended that an accompanying September 13, 2021 report from Dr. D'Auria was sufficient to establish that his

claimed disability commencing in March 2022 was causally related to his accepted employment injury and not by an intervening cause.

OWCP received a July 9, 2024 left shoulder MRI scan report.

By decision dated July 26, 2024, OWCP denied appellant's July 16, 2024 request for reconsideration of the merits of his recurrence claim, pursuant to 5 U.S.C. § 8128(a).

On July 26, 2024, appellant continued to request reconsideration. In support thereof, he submitted a July 26, 2024 report, wherein Dr. D'Auria defined the accepted condition of lateral epicondylitis as an overuse injury. Appellant noted that the condition could last for years, especially if appropriate treatment measures were not employed. It was not unusual for symptoms to become exacerbated from time to time, even by routine daily activities, since the elbows must be constantly used. Dr. D'Auria opined that it was less likely than not that appellant's truck driving training from July 2021 through September 2021 caused an exacerbation, since no repetitive or heavy lifting was required during the training process.

By decision dated July 30, 2024, OWCP denied modification of the July 12, 2024 recurrence decision.

On July 31, 2024, appellant continued to request reconsideration. In a July 31, 2024 report, Dr. D'Auria opined that appellant's recurrence occurred with no known intervening cause or exposure to work activities, since he was unemployed at that time. He, therefore, reiterated his prior opinion that the recurrence occurred due to appellant's use of his right arm during the performance of his daily life activities. Dr. D'Auria reiterated that his truck driver training from July 2021 through September 2021 had no effect on his recurrence of disability since he was not required to perform any repetitive gripping, heavy lifting, or repetitive use of his forearm or elbow.

By decision dated August 8, 2024, OWCP denied modification of the July 30, 2024 recurrence decision.

On August 8, 2024, appellant requested reconsideration of the recurrence decision and submitted additional medical evidence. In an August 8, 2024 report, Dr. D'Auria reiterated his prior opinion that the aggravation of appellant's right elbow symptoms began in March 2022, which was prior to his new employment as a truck driver from April 11 through 16, 2022. He also again attributed the aggravation of appellant's symptoms to an exacerbation of his previous accepted condition, and not a new injury. Dr. D'Auria restated that appellant had no symptoms prior to March 2022, and noted that he underwent an impairment evaluation on September 13, 2022, had reached MMI, and was not symptomatic from September 13, 2021 through March 2022.

OWCP, by decision dated August 13, 2024, denied modification of the recurrence decision.

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

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which resulted from a previous compensable injury or illness and without an intervening injury or new exposure in the work

environment.<sup>8</sup> This term also means an inability to work because a light-duty assignment made specifically to accommodate an employee's physical limitations, and which is necessary because of a work-related injury or illness, is withdrawn or altered so that the assignment exceeds the employee's physical limitations. A recurrence does not occur when such withdrawal occurs for reasons of misconduct, nonperformance of job duties, or a reduction-in-force.<sup>9</sup>

OWCP's procedures provide that a recurrence of disability includes a work stoppage caused by a spontaneous material change in the medical condition demonstrated by objective findings. That change must result from a previous injury or occupational illness rather than an intervening injury or new exposure to factors causing the original illness. It does not include a condition that results from a new injury, even if it involves the same part of the body previously injured.<sup>10</sup>

An employee who claims a recurrence of disability due to an accepted employment-related injury has the burden of proof to establish by the weight of the substantial, reliable, and probative evidence that the disability for which he or she claims compensation is causally related to the accepted injury. This burden of proof requires that a claimant furnish medical evidence from a physician who, based on a complete and accurate factual and medical history, concludes that, for each period of disability claimed, the disabling condition is causally related to the employment injury, and supports that conclusion with medical reasoning.<sup>11</sup> Where no such rationale is present, the medical evidence is of diminished probative value.<sup>12</sup>

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

The Board finds that appellant has not met his burden of proof to establish a recurrence of total disability for the period March 11 through April 1, 2022, and commencing April 15, 2022, causally related to his accepted May 3, 2016 employment injury.

In an April 10, 2023 report, Dr. Meredith, OWCP's second opinion physician, noted his review of the SOAF and the medical record discussed, and performed a physical examination. He opined that appellant did not sustain a recurrence of disability due to a material worsening of his accepted right elbow lateral epicondylitis. Dr. Meredith explained that the relevant medical findings during the claimed periods of disability included an unremarkable right elbow MRI scan and a nondiagnostic electrodiagnostic study both performed in 2022. He further opined that there was no evidence that appellant became disabled from performing the required duties of his private sector job as a truck driver due to an increase in disability causally related to the accepted employment injury. Dr. Meredith explained that there was simply no evidence that the accepted

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<sup>8</sup> 20 C.F.R. § 10.5(x); *J.D.*, Docket No. 18-1533 (issued February 27, 2019).

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

<sup>10</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.2b (June 2013); *L.B.*, Docket No. 18-0533 (issued August 27, 2018).

<sup>11</sup> *J.D.*, Docket No. 18-0616 (issued January 11, 2019); *see C.C.*, Docket No. 18-0719 (issued November 9, 2018).

<sup>12</sup> *M.T.*, Docket No. 25-0180 (issued January 25, 2025); *H.T.*, Docket No. 17-0209 (issued February 8, 2018).

condition worsened during that period. He noted that there was only appellant's account that he experienced increased discomfort with heavy and repetitive steering wheel manipulation in the operation of the truck. Dr. Meredith concluded that although appellant could not return to his original work, he could work with restrictions related to his accepted right elbow condition and OWCP-authorized right elbow surgeries. In an accompanying Form OWCP-5c dated April 10, 2023, he reiterated his opinion regarding appellant's work capacity and set forth his work-related restrictions. As Dr. Meredith reviewed the medical record and supported his conclusion with medical rationale, the Board finds that his report represents the weight of the medical evidence and establishes that appellant did not sustain a recurrence of disability from March 11 through April 1, 2022, and commencing April 15, 2022, causally related to the accepted employment injury.<sup>13</sup>

In his February 7, 2024 report, Dr. D'Auria related that appellant's right elbow pain was exacerbated by manipulating a large steering wheel while operating a truck in March 2022. He opined that appellant was disabled from work beginning in March 2022 or April 2022 when his condition was initially aggravated by history. The Board, however, has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition/disability was related to employment factors.<sup>14</sup> Thus, this evidence is insufficient to establish appellant's recurrence claim.

In reports dated November 23, 2022, and February 23, March 13, July 26 and 31, and August 8, 2024, Dr. D'Auria opined that appellant sustained a recurrence of disability due to an aggravation of his accepted condition of right elbow lateral epicondylitis without an intervening cause. He attributed the aggravation to the normal everyday use of his right arm and not a new injury. Dr. D'Auria maintained that the aggravation occurred in March 2022, prior to appellant's employment as a truck driver for a private employer from April 11 through 16, 2022. However, he did not explain with rationale how or why appellant's total disability from work for the period March 11 through April 1, 2022, and commencing April 15, 2022, was due to a worsening of his accepted right elbow condition. However, Dr. D'Auria did not explain with rationale how or why appellant's condition had worsened such that he was disabled from work during the claimed periods.<sup>15</sup> As his opinion is conclusory in nature, it is insufficient to establish appellant's recurrence claim.<sup>16</sup>

In a May 10, 2022 work status report, Dr. D'Auria advised that appellant was unable to work through June 14, 2022. He did not, however, provide an opinion regarding the cause of appellant's disability. The Board has held that medical evidence that does not provide an opinion

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<sup>13</sup> *A.D.*, Docket No. 24-0770 (issued October 22, 2024); *M.H.*, Docket No. 22-1178 (issued April 25, 2023); *D.H.*, Docket No. 21-0102 (issued July 28, 2021).

<sup>14</sup> *See Y.D.*, Docket No. 16-1896 (issued February 10, 2017) (finding that a report is of limited probative value regarding causal relationship if it does not contain medical rationale describing the relation between work factors and a diagnosed condition/disability).

<sup>15</sup> *Id.*

<sup>16</sup> *See M.S.*, Docket No. 19-0189 (issued May 14, 2019); *L.T.*, Docket No. 18-1603 (issued February 21, 2019); *B.H.*, Docket No. 18-1219 (issued January 25, 2019); *Birger Areskog*, 30 ECAB 571 (1979).

on causal relationship is of no probative value.<sup>17</sup> Therefore, this evidence is insufficient to establish appellant's recurrence claim.

Similarly, in reports dated May 10 and November 23 and December 5, 2022, and April 6, 2023, Dr. D'Auria did not offer an opinion addressing why appellant was disabled from work. As noted above, medical evidence that does not provide an opinion on causal relationship is of no probative value.<sup>18</sup> Therefore, this evidence is insufficient to establish appellant's recurrence claim.

Appellant also submitted an excuse form dated April 5, 2022 by Dr. Williams and Dr. Smith who opined that appellant was to remain off work for two weeks until his next follow-up appointment. In an April 28, 2022 report, Dr. Williams found that appellant may return to work next week. As noted above, medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.<sup>19</sup> Therefore, this evidence is insufficient to establish appellant's claim.

Additionally, appellant submitted several diagnostic studies. However, diagnostic studies, standing alone, lack probative value on the issue of causal relationship.<sup>20</sup>

The remaining medical evidence of record regarding appellant's claimed recurrence of disability includes a report from Mr. Mason, a family nurse practitioner. However, the Board has held that certain healthcare providers such as nurse practitioners are not considered physicians as defined under FECA and, therefore, are not competent to provide a medical opinion. Therefore, this evidence is insufficient to establish appellant's recurrence claim.<sup>21</sup>

As the medical evidence of record is insufficient to establish causal relationship between the claimed recurrence of disability and the accepted employment injury, the Board finds that appellant has not met his burden of proof.

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<sup>17</sup> See *J.I.*, Docket No. 23-0659 (issued April 17, 2024); *W.S.*, Docket No. 21-0257 (issued February 22, 2022); *B.M.*, Docket No. 20-0826 (issued May 10, 2021); *Y.D.*, Docket No. 20-0097 (issued August 25, 2020); *M.A.*, Docket No. 19-1119 (issued November 25, 2019); *S.I.*, Docket No. 18-1582 (issued June 20, 2019).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*; see also *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>20</sup> *A.D.*, Docket No. 24-0770 (issued October 22, 2024); *T.L.*, Docket No. 22-0881 (issued July 17, 2024); *C.S.*, Docket No. 19-1279 (issued December 30, 2019).

<sup>21</sup> Section 8101(2) of FECA provides that a physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law. 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as nurses, physician assistants, and physical therapists are not competent to render a medical opinion under FECA); see also *C.M.*, Docket No. 24-0801 (issued October 15, 2024) (nurse practitioners are not considered physicians under FECA).

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.

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

The schedule award provisions of FECA<sup>22</sup> and its implementing regulations<sup>23</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 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.<sup>24</sup> As of May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (2009).<sup>25</sup> 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.<sup>26</sup>

In addressing upper extremity impairment, the sixth edition requires identification of the CDX, which is then adjusted by grade modifiers or GMFH, GMPE, and GMCS.<sup>27</sup> The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).<sup>28</sup> Under Chapter 2.3, evaluators are directed to provide reasons for their impairment rating choices, including choices of diagnoses from regional grids and calculations of modifier scores.<sup>29</sup>

The A.M.A., *Guides* also provide that the ROM impairment method is to be used as a stand-alone rating for upper extremity impairments when other grids direct its use or when no other diagnosis-based sections are applicable.<sup>30</sup> If ROM is used as a stand-alone approach, the total of motion impairment for all units of function must be calculated. All values for the joint are measured and added.<sup>31</sup> Adjustments for functional history may be made if the evaluator

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<sup>22</sup> 5 U.S.C. § 8107.

<sup>23</sup> 20 C.F.R. § 10.404.

<sup>24</sup> *Id.*; see also Ronald R. Kraynak, 53 ECAB 130 (2001).

<sup>25</sup> See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); *id.*, *supra* note 21 at *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (March 2017).

<sup>26</sup> *P.R.*, Docket No. 19-0022 (issued April 9, 2018); *Isidoro Rivera*, 12 ECAB 348 (1961).

<sup>27</sup> A.M.A., *Guides* 383-492.

<sup>28</sup> *Id.* at 411.

<sup>29</sup> *Id.* at 23-28.

<sup>30</sup> *Id.* at 461.

<sup>31</sup> *Id.* at 473.

determines that the resulting impairment does not adequately reflect functional loss and functional reports are determined to be reliable.<sup>32</sup>

Regarding the application of ROM or DBI methodologies in rating permanent impairment of the upper extremities, FECA Bulletin No. 17-06 provides:

“As the [A.M.A.,] *Guides* caution that if it is clear to the evaluator evaluating loss of ROM that a restricted ROM has an organic basis, three independent measurements should be obtained and the greatest ROM should be used for the determination of impairment, the CE [claims examiner] should provide this information (*via* the updated instructions noted above) to the rating physician(s).

“Upon initial review of a referral for upper extremity impairment evaluation, the DMA should identify: (1) the methodology used by the rating physician (*i.e.*, DBI or ROM) and (2) whether the applicable tables in Chapter 15 of the [A.M.A.,] *Guides* identify a diagnosis that can alternatively be rated by ROM. *If the [A.M.A.,] Guides allow for the use of both the DBI and ROM methods to calculate an impairment rating for the diagnosis in question, the method producing the higher rating should be used.*”<sup>33</sup> (Emphasis in the original.)

OWCP’s procedures provide that, after obtaining all necessary medical evidence, the file should be routed to a DMA for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the DMA providing rationale for the percentage of impairment specified.<sup>34</sup>

Section 8123(a) of FECA provides in pertinent part: “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.”<sup>35</sup>

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

The Board finds that this case is not in posture for decision.

In support of his claim for an additional schedule award, appellant submitted a May 11, 2023 report from Dr. D’Auria. Dr. D’Auria explained that appellant’s lateral epicondylitis diagnosis resulted in a Class 1 impairment (status postsurgical release of extensor origins with residual symptoms) with a default value of five percent. He assigned a GMFH of 2, a GMPE of 2 and indicated that GMCS was not applicable. Dr. D’Auria utilized the net adjustment formula,

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<sup>32</sup> *Id.* at 474.

<sup>33</sup> FECA Bulletin No. 17-06 (issued May 8, 2017); *V.L.*, Docket No. 18-0760 (issued November 13, 2018).

<sup>34</sup> *See supra* note 25 at Chapter 2.808.6f (March 2017). *See also P.W.*, Docket No. 19-1493 (issued August 12, 2020); *Frantz Ghassan*, 57 ECAB 349 (2006).

<sup>35</sup> 5 U.S.C. § 8123(a).

excluding GMCS for the calculation,<sup>36</sup> which raised the default to a severity grade of E and resulted in a final impairment rating of seven percent of the right upper extremity based upon the DBI rating methodology.

OWCP referred appellant to Dr. Meredith for a second opinion evaluation to rate his right upper extremity permanent impairment. On August 14, 2023, Dr. Meredith utilized the DBI rating method and found that, under Table 15-4, appellant had four percent permanent impairment of the right upper extremity for right elbow lateral epicondylitis status postsurgical release. He related that appellant had a Class 1 impairment, and he then assigned a modifier of 1 each for GMFH and GMPE, and 0 for GMCS, which resulted in a grade B impairment or four percent permanent impairment of the right upper extremity. The Board finds that a conflict exists in the medical opinion evidence between Dr. D'Auria and Dr. Meredith regarding the grade modifiers to be assigned for appellant's accepted right elbow condition.

On remand, OWCP shall refer appellant, along with a SOAF, the case record, the SOAF, and a series of questions to a specialist in the appropriate field of medicine, to serve as an impartial medical examiner, for a reasoned opinion regarding the extent of appellant's permanent impairment of his lower extremities. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

### **CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish a recurrence of disability for the periods March 11 through April 1, 2022 and commencing April 15, 2022, causally related to his accepted employment injury. The Board further finds that the case is not in posture for decision as to whether appellant has greater than six percent permanent impairment of his right upper extremity, for which he has previously received schedule award compensation.

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<sup>36</sup> A.M.A., *Guides* 412.



**ORDER**

**IT IS HEREBY ORDERED THAT** The August 13, 2024 decision of the Office of Workers' Compensation Programs is affirmed. The April 23, 2024 decision is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: March 6, 2025  
Washington, DC

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

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

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