

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

P.L., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Baton Rouge, LA, Employer**

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**Docket No. 13-208
Issued: September 17, 2013**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 5, 2012 appellant filed a timely appeal from an Office of Workers' Compensation Programs' (OWCP) decision dated September 26, 2012. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant sustained a gynecological condition in the performance of duty, causally related to her accepted psychological conditions; and (2) whether appellant has sustained any permanent impairment to a scheduled member of her body, thereby, entitling her to a schedule award under 5 U.S.C. § 8107.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This the second appeal before the Board. This case entails a lengthy factual history; on November 18, 1994 appellant, then a 31-year-old maintenance control clerk, filed a Form CA-2 claim for benefits, alleging that she developed an emotional condition causally related to employment factors. She further alleged that she developed a menorrhagia condition, which required emergency surgery on October 28, 1994. Appellant stated that she experienced anemia, headache, weakness, shortness of breath, depression and stomach ulcers had to undergo two dilation and curettage procedures due to sexual harassment by Larry Hamilton, an injury compensation specialist. She asserted that she became depressed and experienced stress when Mr. Hamilton returned to the employing establishment on October 11, 1994 after serving a disciplinary suspension due to his sexual harassment of appellant. Appellant stated that she experienced identical symptoms beginning in February 1988 due to sexual harassment at work on the part of Mr. Hamilton.

In a July 15, 1988 report, Dr. Francis H. Henderson, Board-certified in obstetrics and gynecology and appellant's treating physician, stated that appellant had a six-month history of intermittent inenorrhagia, undergoing an emergency dilation and curetage on April 14, 1988. She advised that stress could be a factor in causing appellant's abnormal bleeding, stating that emotional stress can greatly influence menstrual regulation.

In an April 18, 1994 decision, the Equal Employment Opportunity Commission (EEOC) found that appellant had established a *prima facie* case of sexual harassment by Mr. Hamilton sufficient to cause a hostile work environment. The employing establishment transferred him to a different employing establishment from July 25 to October 10, 1994. On September 14, 1994 the employing establishment modified Mr. Hamilton's proposed reduction in grade from September 24 to October 7, 1994 to a suspension. Mr. Hamilton returned to duty on October 10, 1994 at his regular position.

In an October 18, 1994 letter, appellant noted that Mr. Hamilton had returned to the employing establishment and with him she demanded his removal. She asserted that working in the same employing establishment caused a recurrence of her mental and physical symptoms.

In a December 1, 1994 report, Dr. Henderson noted an onset of abnormal uterine bleeding on September 21, 1994, requiring dilation and curetage and transfusions for anemia in October 1994.

By decision dated March 6, 1995, OWCP denied appellant's claim. Appellant requested an oral hearing, which was held on February 14, 1996.

In a November 9, 1995 report, Dr. F.A. Silva, an attending psychiatrist, indicated that appellant was unable to perform all of her job duties as of September 13, 1995 and continuing due to generalized anxiety disorder and possible post-traumatic stress syndrome (PTSD) related to work stress; this was aggravated by having to work at the same location as Mr. Hamilton. He advised that her onset of symptoms occurred in August 1995. Dr. Silva opined that appellant could return to full-time work if she did not have to work at the same facility as Mr. Hamilton and was able to obtain work within her orthopedic restrictions.

By decision dated May 17, 1996, OWCP set aside the March 6, 1995 decision. It remanded for further development of the medical evidence and directed the district Office to refer appellant to a Board-certified psychiatrist for a second opinion examination.

In an August 13, 1996 statement of accepted facts, it was indicated that OWCP accepted EEOC's finding that Mr. Hamilton sexually harassed appellant from 1985 to 1988. OWCP accepted as factual, but not compensable, her frustration over what she felt was insufficient disciplinary action against him. The statement of accepted facts indicated that appellant returned to work on October 24, 1988 and missed little or no time from work due to the harassment until November 8, 1994, when she filed her occupational disease claim.

In order to determine whether appellant had a gynecological condition caused by employment factors, appellant was referred to Dr. Louis Cenac, a Board-certified psychiatrist, who stated in an August 27, 1996 report that she was experiencing insomnia, crying spells, hostile thoughts toward Mr. Hamilton, difficulty concentrating and loss of interest in activities. Dr. Cenac diagnosed factitious disorder with combined psychological and physical signs and symptoms and histrionic personality; he found that her current condition was not work related since she was able to return to work after the harassment ceased in 1988.

In a September 11, 1996 report, Dr. Cenac stated that, based on appellant's complaints, she should have been symptom-free from the stressor caused by Mr. Hamilton by 1990. He advised that she had a long history of histrionic personality disorder and was considered uncomfortable in situations where she was not the center of attention. Dr. Cenac indicated that her symptoms recurred when Mr. Hamilton was promoted; this caused more attention to be focused on him than on appellant, which triggered her recurrence.

By decision dated September 19, 1996, based on Dr. Cenac's reports, OWCP accepted that appellant sustained a condition; *i.e.*, a psychological factor affecting medical condition secondary to sexual harassment. It found, however, that the effects of this condition had ceased as of December 31, 1989.

In a September 24, 1996 report, Dr. Silva stated that he began treating appellant on September 13, 1995, when she was referred for emergency treatment due to stress symptoms related to her return to work at the employing establishment. He stated that her symptoms and efforts to avoid activities that arouse recollections of the trauma were characteristic of PTSD. Dr. Silva advised that appellant had an extreme physiological reaction, which intensified when she had to work in the same building as Mr. Hamilton and had to come in contact with him. He diagnosed PTSD disorder and major depression, single episode, which required hospitalization on September 21, 1996. Dr. Silva opined that appellant's current condition arose from incidents of sexual harassment which occurred between 1985 and 1988.

On September 30, 1996 appellant requested reconsideration of the September 19, 1996 decision. She alleged that her depression, PTSD and menorrhagia persisted after December 31, 1989.

By decision dated October 22, 1996, OWCP denied modification of the September 19, 1996 decision. In an October 23, 1998 decision,² the Board set aside OWCP's September 19 and October 22, 1996 decisions. The Board found that there was a conflict in the medical evidence between Dr. Cenac and Dr. Silva regarding whether appellant's physical and psychological symptoms as of December 31, 1989 and continuing were causally related to sexual harassment by Mr. Hamilton from 1985 to 1988, the accepted psychiatric condition or other factors of her employment.³ The Board remanded and directed OWCP to refer appellant to an impartial medical examiner to resolve the medical conflict in the medical evidence. The facts of this case prior to October 23, 1998 are set forth in the Board's decision of that date and are herein incorporated by reference.

A hysterectomy and bilateral salpingo-oophorectomy were performed on December 9, 1996. In an impartial medical report dated August 31, 1999, Dr. James H. Blackburn, a Board-certified psychiatrist, stated that appellant's current condition was directly related to factors of her employment and precluded her from any form of employment with the employing establishment. He stated that this included, but was not limited to, the years she was exposed to sexual harassment and the equally traumatic aftermath in which she attempted to have that situation resolved. Dr. Blackburn explained that he did not agree that appellant stopped work only after she became dissatisfied with the disciplinary action rendered to Mr. Hamilton; he stated that she appeared to have stopped work due to a number of factors reflected in her medical history. He opined that there was sufficient information in the record to document a continuum of emotional upset and disorder from 1989 through the present, noting that the employing establishment's records indicated that appellant barely worked for extensive periods during 1989 through 1991, through 1995. Dr. Blackburn stated that, concomitantly, her physical condition, which continued to be aggravated, did not permit her to return to work on a physical basis. He concluded that appellant had an emotional disorder directly related to her working conditions.

On July 1, 2000 appellant filed a Form CA-7 claim for a schedule award.

In a memorandum dated January 23, 2001, an OWCP claims examiner stated that he had advised appellant that, if she wanted to claim a schedule award for her hysterectomy, she needed to submit a report from her treating physician, which included a reasoned medical opinion indicating how/whether the hysterectomy was related to any accepted conditions.

In an April 26, 2001 report, Dr. Henderson stated that appellant had a severe case of menorrhagia, which was causally related to her diagnoses of severe depression, anxiety disorders and PTSD caused by sexual harassment on the job.

By letter dated July 13, 2001, OWCP asked Dr. Henderson for an evaluation of whether appellant had any permanent impairment stemming from an accepted condition.

² Docket No. 97-566 (issued October 23, 1998).

³ The Board noted that Dr. Cenac, in his September 11 and 18, 1996 reports, opined that appellant's recrudescence of symptoms was a histrionic response due to Mr. Hamilton's "promotion," which deflected attention from appellant. The Board found that this opinion was erroneous and based on an inaccurate history, as there was no indication in the record that Mr. Hamilton was promoted; appellant was reacting to Mr. Hamilton's reinstatement after his two-week disciplinary suspension, not a promotion.

By letter dated August 24, 2001, OWCP informed appellant that her claim for a schedule award could not be processed. It advised her that her only accepted conditions were depression and PTSD and that there was no provision under FECA for schedule awards for nonphysical impairments.

In a March 15, 2002 report, Dr. Henderson reiterated that appellant sustained a severe case of menorrhagia which was causally related to her severe depression, anxiety disorders and PTSD caused by sexual harassment on the job. She stated that appellant's history made it necessary to perform a total abdominal hysterectomy and bilateral salpingo-oophorectomy. Dr. Henderson found that as a result of the surgical procedures appellant had a 35 percent permanent impairment under the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*), due to the fact that she was of childbearing age and was no longer to bear children and had to remain on hormonal therapy for the rest of her life. She stated that Table 3 in Chapter 7 was used partly to help provide this percentage of permanent impairment, which was not a whole body rating.

By letter dated July 22, 2004, OWCP asked its medical adviser to evaluate Dr. Henderson's March 15, 2002 report, assess the date of maximum medical improvement and determine whether appellant had an impairment rating under A.M.A., *Guides*.

In a July 29, 2004 report, an OWCP medical adviser reviewed Dr. Henderson's March 15, 2002 report and the medical history. He opined that there was inadequate evidence in the record to support a causal relation between her accepted PTSD and major depressive disorder conditions and her menorrhagia and subsequent hysterectomy. OWCP's medical adviser advised that menorrhagia was a common disorder of females that was thought to be due to hormonal imbalances. He opined that the hysterectomy was not related to appellant's job or to the accepted conditions related to her sexual harassment from 1985 to 1988.

By letter dated August 12, 2004, OWCP advised appellant that in order to be entitled to a schedule award she needed to establish that she had permanent impairment due to a physical condition. It stated that there was a conflict in the medical evidence regarding whether her alleged physical condition was causally related to her employment and that it was referring her for a referee medical examination with an urologist to resolve the conflict in medical opinion.

In a letter to OWCP dated August 17, 2004, appellant requested that a female physician be appointed to examine her. She indicated that due to her psychological condition she was unable to allow herself to be examined by a male physician.

By letter dated April 12, 2005, OWCP informed appellant that it was unable to locate a female gynecologist to conduct the impartial examination and indicated that she would be referred to a male Board-certified gynecologist for her impartial medical examination. Appellant refused such examination and requested that her medical records be reviewed by a Board-certified physician.

In a report dated May 9, 2005, Dr. James D. Boyd, Board-certified in obstetrics and gynecology, provided handwritten answers to an OWCP questionnaire regarding the work relatedness of appellant's claimed gynecological condition to her accepted psychiatric

conditions. He indicated that menorrhagia was usually hormonal and opined that the hysterectomy was not causally related to January 1, 1998 employment incident.

By decision dated May 16, 2005, OWCP denied appellant's claim for a schedule award, finding based on Dr. Boyd's opinion that she did not have any permanent impairment causally related to an accepted employment condition.

On May 20, 2005 appellant requested a hearing, which was held on December 20, 2006.

By decision dated February 20, 2007, an OWCP hearing representative set aside the May 16, 2005 decision. She found that OWCP failed to resolve the conflict in the medical evidence by referring her to a female gynecologist and found that Dr. Boyd's opinion did not merit the weight of a referee medical examiner as it was generalized, contained no rationale and was not based on a proper factual and medical background. The hearing representative remanded for OWCP to reinitiate efforts to obtain evaluation by a female gynecologist and directed the district Office to reflect the fact that appellant was off work for intermittent periods from 1991 through 1995. She stated that, if OWCP was not able to locate a female gynecologist, it should refer the statement of accepted facts and the medical records to a Board-certified gynecologist for an opinion as to whether the claimed menorrhagia condition and hysterectomy was causally related to factors of employment due to the sexual harassment experienced by appellant. If the physician did find a causal relationship, he or she physician should then be asked to determine whether appellant had any permanent impairment stemming from her hysterectomy under the fifth edition of the A.M.A., *Guides*.

OWCP scheduled appellant for an impartial medical evaluation with Dr. Xercerla A. Littles, Board-certified in obstetrics and gynecology.⁴ In an August 25, 2008 report, Dr. Littles found that appellant's gynecological conditions and hysterectomy were not causally related to her accepted psychiatric conditions and that she had no permanent impairment under the A.M.A., *Guides*. She advised that, as no records were available from the appellant's gynecologist during the time of her treatment for menorrhagia, it was unclear what her thought process was at the time which necessitated her hysterectomy procedure. Dr. Littles stated that, although multiple articles detailed a contribution between acute and chronic life stresses and a worsening of dysfunctional uterine bleeding due to likely hormone changes resulting from the stressful event, objective data was relatively scarce regarding this connection. She asserted that it was impossible to determine what part of appellant's life stresses at the time may have contributed to her symptoms. Dr. Littles stated that, although stress may contribute to dysfunctional uterine bleeding, she was unable to determine whether or not a hysterectomy was necessary or the most the appropriate option for appellant, noting that her work injury occurred eight years prior to the time of surgery. She opined that appellant's gynecologic issues had resolved and were not currently contributing to her inability to resume work.

By decision dated February 5, 2009, OWCP denied appellant's claim for a schedule award, finding based on Dr. Littles' opinion that there was no causal relationship between appellant's accepted psychiatric conditions and her gynecological condition and that therefore

⁴ Dr. Littles did not conduct a physical examination of appellant.

she did not have any permanent impairment causally related to an accepted employment condition.

On February 11, 2009 appellant requested an oral hearing, which was held on April 29, 2009.

By decision dated June 16, 2009, an OWCP hearing representative set aside the February 5, 2009 decision, finding that Dr. Littles' report was of diminished probative value and did not merit the weight of an impartial medical examiner. She remanded the case and directed the district Office to obtain a supplemental report from Dr. Littles for her to clarify whether appellant's menorrhagia and hysterectomy were causally related to work stress she experienced due to sexual harassment at the workplace from 1985 to 1988, whether treatment for the work-related menorrhagia eventually necessitated the 1996 hysterectomy and if so, whether appellant had any permanent impairment due to the removal of female reproductive organs under the sixth edition of the A.M.A., *Guides*.

In an October 5, 2009 report, Dr. Littles reviewed the medical literature pertaining to appellant's issues and essentially reiterated her previous findings and conclusions. She stated that there was not sufficient evidence to suggest that the reason for appellant's irregular bleeding, which was refractory to hormone therapy and two prior dilation and curettage procedures were due to sexual harassment and/or stress at work which began three years prior to the patient's first dilation and curettage and concluded eight years prior to her hysterectomy. Dr. Littles noted that appellant had multiple risk factors for the pathologic causes which were separate from and not related to any work stress or PTSD. She stated that no component of appellant's current disability had a gynecologic origin and her treating physician never stated that the hysterectomy was performed due to "stress" but due to refractory menorrhagia and failed medical and conservative surgical therapy. Dr. Littles further noted that stress, PTSD and sexual harassment were not listed as discharge diagnoses after the 1996 hysterectomy. She concluded that, from her interpretation of these findings and records, appellant's work injuries did not cause her bleeding issues, though her symptoms may have been exacerbated due to lifestyle issues, as well as other medications or treatments given. Dr. Littles opined that the amount of exacerbation would be impossible to quantify and any event would likely not have changed appellant's ultimate need for hysterectomy, given prior precancerous changes noted on biopsy prior to hysterectomy.

By decision dated October 29, 2009, OWCP denied modification of the February 5, 2009 decision, based on Dr. Littles' supplemental report.

On November 3, 2009 appellant requested an oral hearing, which was held on March 10, 2009.

By decision dated April 21, 2010, an OWCP hearing representative set aside the October 29, 2009 decision and remanded to obtain further clarification from Dr. Littles regarding whether appellant's emotional condition contributed in any part to her menorrhagia and subsequent hysterectomy. He also directed that the statement of accepted facts be corrected to include appellant's assertion that she did not work from November 1991 until she was required to return to work in August or October 1995; provide further details regarding the nature of

Mr. Hamilton's sexual harassment; stipulate that Mr. Hamilton was subsequently charged with sexual assault; and delete facts pertaining to appeals and administrative actions taken in this case. Dr. Little did not provide an additional report.

In order to resolve the conflict in the medical evidence regarding whether appellant's accepted psychiatric conditions were the primary cause of her claimed gynecological condition and whether the accepted condition was causally related to her menorrhagia and hysterectomy, OWCP referred her medical records and the statement of accepted facts to Dr. Patrick Allen, Board-certified in obstetrics and gynecology, for a referee medical evaluation. In an impartial medical report dated January 4, 2011, Dr. Allen concluded that "in all medical probability" appellant's original work injury was not the primary cause of her gynecologic condition.

By decision dated January 27, 2011, OWCP denied modification of its previous decisions, finding that Dr. Allen's impartial medical opinion represented the weight of the medical evidence.

On January 29, 2011 appellant requested a hearing, which was held on May 25, 2011.

By decision dated August 24, 2011, an OWCP hearing representative set aside the January 27, 2011 decision and remanded the case for further development. She found that Dr. Allen did not present a clear, nonspeculative opinion regarding the relationship of the claimant's menorrhagia and her employment. The hearing representative noted that Dr. Allen opined that the original work injury was not the primary cause of her gynecological condition but did not indicate whether the employment exposure contributed in any way to the condition by aggravation, precipitation or acceleration. She therefore remanded to obtain further clarification from Dr. Allen regarding whether appellant's emotional condition contributed in any part to her menorrhagia and subsequent hysterectomy.

In a supplemental report dated March 28, 2012, Dr. Allen was asked whether the accepted work injury was or was not the primary cause of appellant's gynecological condition and whether the accepted work injury contributed by direct causation, aggravation, precipitation or acceleration to appellant's menorrhagia and subsequent hysterectomy. He responded:

"It is my opinion that the January 1, 1998 work injury was not the cause of [appellant's] menorrhagia and subsequent hysterectomy. The accepted work injury did not contribute by first causation or acceleration or precipitation. The first claim is [appellant] can no longer bear children: this is true since she had a hysterectomy, but essentially she was unable to bear children since 1983 when she underwent a tubal ligation doing (sic) her second Caesarian section. The second claim is that her hysterectomy was secondary to stress causing her bleeding issues. There is nothing in [appellant's] records about why she might have been anovulatory. Since her original incident was in 1985 [to] 1988 and the claimant did not experience her hysterectomy until 1996, it is unlikely she experienced stress for this prolonged amount of time to cause her anovulation. Stress can affect the release of Corticotropin-releasing hormone (CRH), which can limit Gonadotropin-releasing hormone (GnRH) secretion, but this would lead to amenorrhea and not menorrhagia. [Appellant] did experience anovulatory

bleeding, but this was more likely caused from the hormonal therapy [she] underwent.”

By decision dated March 28, 2012, OWCP denied appellant’s claim for a schedule award. It found based on Dr. Allen’s opinion that there was no causal relationship between her accepted psychiatric conditions and her subsequent uterine bleeding, menorrhagia or her need for a hysterectomy and that therefore she did not have any permanent impairment causally related to an accepted employment condition.

In a letter dated April 2, 2012, appellant requested a hearing, which was held on July 16, 2012.

By decision dated September 26, 2012, an OWCP hearing representative affirmed the March 28, 2012 decision.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA⁵ has the burden of establishing that the essential elements of his or her claim including the fact that the individual is an “employee of the United States” within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.⁶ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁷

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between her claimed gynecologic conditions and her federal employment. This burden includes providing medical evidence from a physician who concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.⁸

Section 8123(a) provides that, if there is a 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.⁹ It is well established that, when a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the

⁵ 5 U.S.C. §§ 8101-8193.

⁶ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁷ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁸ *See Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

⁹ *Regina T. Pellicchia*, 53 ECAB 155 (2001).

opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.¹⁰

ANALYSIS -- ISSUE 1

The Board finds that appellant failed to submit sufficient medical evidence to establish that her claimed menorrhagia condition and subsequent hysterectomy were causally related due to her accepted psychiatric conditions. For this reason, she has not discharged her burden of proof.

In order to resolve the conflict in the medical evidence, appellant's medical records were referred to Dr. Allen, the impartial medical examiner, for review. After reviewing her factual and medical history, the statement of accepted facts and the numerous medical reports in the record, he concluded that her sexual harassment and accepted psychiatric conditions did not cause or contribute to her menorrhagia and subsequent hysterectomy. Dr. Allen stated that the reason appellant was unable to bear children was attributable to her hysterectomy; he noted, however, that she essentially had been unable to bear children since 1983 when she underwent a tubal ligation during her second Caesarian section. He further opined that the record did not establish that her hysterectomy was secondary to stress causing her bleeding issues, finding that there was nothing in her records regarding why she might have been anovulatory. Dr. Allen explained that, since her original incident was from 1985 to 1988 and she did not undergo her hysterectomy until 1996, it was unlikely that she experienced stress for this prolonged amount of time to result in her anovulation. He advised that, while stress can affect the release of CRH which can limit GnRH secretion, this would lead to amenorrhea and not menorrhagia. Dr. Allen opined that appellant's anovulatory bleeding was more likely caused from her hormonal therapy.

The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.¹¹ The Board finds that Dr. Allen's impartial opinion negates a causal relationship between appellant's accepted psychiatric conditions and her claimed menorrhagia condition and subsequent hysterectomy. Dr. Allen's opinion is sufficiently probative, rationalized and based upon a proper factual background. Therefore, OWCP properly accorded his opinion the special weight of an impartial medical examiner.¹² The Board therefore finds that Dr. Allen's opinion constituted the weight of medical opinion and supports OWCP's March 28, 2012 decision finding that her claimed gynecological conditions were not causally related to her accepted psychiatric conditions.

Appellant subsequently requested an oral hearing but did not submit any additional medical evidence. Thus the Board will affirm the hearing representative's September 26, 2012 decision.

¹⁰ *Jacqueline Brasch (Ronald Brasch)*, 52 ECAB 252 (2001).

¹¹ *See Anna C. Leanza*, 48 ECAB 115 (1996).

¹² It is well established that the opinion of an impartial medical specialist is to be given special weight. *See Anna M. Delaney*, 53 ECAB 384 (2002).

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that her condition was caused, precipitated or aggravated by her employment is sufficient to establish causal relationship.¹³ Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

Dr. Allen's well-rationalized impartial medical opinion resolved the conflict in medical evidence regarding whether appellant's claimed menorrhagia condition and subsequent hysterectomy were causally related to her accepted psychiatric conditions. Accordingly, OWCP properly found in its March 28 and September 26, 2012 decisions that appellant did not sustain these conditions in the performance of duty.

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 provision of FECA¹⁴ and its implementing regulations¹⁵ 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. The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.¹⁶ The claimant has the burden of proving that the condition for which a schedule award is sought is causally related to his or her employment.¹⁷

ANALYSIS -- ISSUE 2

In the instant case, appellant claimed a schedule award based on her claimed menorrhagia condition and subsequent hysterectomy. As noted above, however, a claimant has the burden of proving that the condition for which a schedule award is sought is causally related to his or her employment.¹⁸ In light of the Board's decision above, which found based on Dr. Allen's impartial medical opinion that her claimed gynecological conditions were not causally related to her accepted psychiatric conditions, OWCP's finding that there is no basis for a schedule award

¹³ *Id.*

¹⁴ 5 U.S.C. § 8107.

¹⁵ 20 C.F.R. § 10.404. Effective May 1, 2009, OWCP began using the A.M.A., *Guides* (6th ed. 2009).

¹⁶ *Id.*

¹⁷ *Veronica Williams*, 56 ECAB 367, 370 (2005).

¹⁸ *Id.*

in this case is affirmed. The Board finds that there is no probative medical evidence establishing that appellant sustained any permanent impairment from an accepted condition.

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

CONCLUSION

The Board finds that appellant did not sustain a gynecological condition in the performance of duty, causally related to her accepted psychological conditions. The Board finds that appellant has not sustained any permanent impairment to a scheduled member of her body, thereby entitling her to a schedule award under 5 U.S.C. § 8107.

ORDER

IT IS HEREBY ORDERED THAT the September 26, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 17, 2013
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board