United States Department of Labor
Employees' Compensation Appeals Board

R.R., Appellant	)	
and	)	**Docket No. 21-0212**
	)	**Issued: November 3, 2021**
U.S. POSTAL SERVICE, HOUSTON PROCESSING & DISTRIBUTION CENTER, Houston, TX, Employer	)	

Appearances:
Wandra E. Evans, for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On December 7, 2020 appellant, through his representative, filed a timely appeal from a September 15, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (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 right upper extremity and right lower extremity, warranting a schedule award.

FACTUAL HISTORY

On December 16, 2011 appellant, then a 48-year-old tractor trailer operator, filed a traumatic injury claim (Form CA-1) alleging that on that day he injured the left side of his skull/head when he was involved in a motor vehicle accident while in the performance of duty. He stopped work on the date of injury. OWCP initially accepted the claim for back and neck sprain, and contusion of the face, scalp, and neck except the eye, and later expanded the acceptance of the claim to include right shoulder and upper arm sprain, and right hip enthesopathy. It paid appellant wage-loss compensation on the supplemental rolls and the periodic rolls. By decision dated May 13, 2013, OWCP terminated his wage-loss compensation and medical benefits effective June 2, 2013 as he no longer had residuals or disability causally related to his accepted December 16, 2011 employment injury. In decisions issued on September 6, 2013 and April 21, 2014, it denied modification of its termination decision. By decision dated May 21, 2014, OWCP denied appellant's request for an oral hearing, noting that he had previously requested reconsideration and that it had issued a decision on April 24, 2014. After exercising discretion, it further denied the request, finding that the issue could be equally well addressed through the submission of a reconsideration request with evidence supporting his claim for continuing residuals and disability due to his December 16, 2011 employment injury. Appellant, through then-counsel, requested reconsideration and in a December 17, 2015 decision, OWCP denied modification of its April 21, 2014 termination decision.

Subsequently, appellant, through then-counsel, submitted a June 19, 2017 medical report from Dr. Peter E. Metropoulos, a Board-certified occupational medicine physician, who determined that appellant had reached maximum medical improvement (MMI) as of the date of his examination. Dr. Metropoulos opined that appellant had 8 percent permanent impairment of the right upper extremity and 18 percent permanent impairment of his right lower extremity under the diagnosis-based impairment (DBI) rating method of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).[3]

On July 31, 2017 appellant filed a claim for compensation (Form CA-7) for a schedule award.

OWCP, in an August 9, 2017 letter, requested that appellant submit an addendum report from Dr. Metropoulos providing an impairment rating under both the DBI method and range of motion (ROM) method, and a determination as to which method produced the higher rating.

In an addendum report dated August 18, 2017, Dr. Metropoulos utilized the ROM method and determined that appellant had 11 percent permanent impairment of the right upper extremity.

[3] A.M.A., *Guides* (6th ed. 2009).

On September 26, 2017 OWCP referred appellant, together with a statement of accepted facts (SOAF), the medical record, and a list of questions, to Dr. Emmanuel Obianwu, a Board-certified orthopedic surgeon, for a second opinion evaluation of his permanent impairment for schedule award purposes. In an October 17, 2017 report, Dr. Obianwu, diagnosed chronic rotator cuff tears and disease of the right shoulder, resolved soft tissue injuries of the cervical and lumbar spine, and aggravation of right hip degenerative arthritis. He noted that appellant did not have any cervical or lumbar radiculopathy. Using the ROM method of the sixth edition of the A.M.A., *Guides*, Dr. Obianwu found 17 percent permanent impairment of the right upper extremity. Using the DBI method, he determined that he had nine percent permanent impairment of the right lower extremity.

On November 15, 2017 Dr. Michael M. Katz, a Board-certified orthopedic surgeon serving as an OWCP district medical adviser (DMA), reviewed the medical record and noted the deficiencies in Dr. Obianwu's October 17, 2017 report and provided his own impairment calculations to find 19 percent permanent impairment of the right upper extremity under the ROM method and 9 percent permanent impairment of the right lower extremity under the DBI method of the sixth edition of the A.M.A., *Guides*. He indicated that the 19 percent ROM impairment rating was higher than the 5 percent DBI impairment rating he had calculated for the right upper extremity. The DMA noted that appellant reached MMI on October 17, 2017 the date of Dr. Obianwu's impairment evaluation.

OWCP, by letter dated November 16, 2017, requested that Dr. Metropoulos review and comment on the DMA, Dr. Katz', November 15, 2017 findings.

In an addendum report dated November 21, 2017, Dr. Metropoulos disagreed with the DMA's impairment ratings. He determined that appellant had 12 percent right lower extremity permanent impairment under the DBI method.

On December 15, 2017 OWCP requested that the DMA, Dr. Katz, review and comment on Dr. Metropoulos' November 21, 2017 addendum report.

In a December 20, 2017 response, the DMA noted deficiencies in Dr. Katz' November 21, 2017 addendum report regarding the extent of appellant's right lower extremity permanent impairment and recommended a referee impairment evaluation.

On January 18, 2018 OWCP declared a conflict in medical opinion between appellant's physician, Dr. Metropoulos, and the DMA, Dr. Katz, with regard to the extent of appellant's permanent impairment due to the December 16, 2011 employment injury. On January 29, 2018 it referred appellant, a SOAF, the medical record, and a list of questions, to Dr. Stanley S. Lee, a Board-certified orthopedic surgeon, selected as the impartial medical examiner (IME) to resolve the conflict in the medical opinion evidence.

In a February 21, 2018 report, Dr. Lee reviewed the SOAF and the medical record, and discussed his examination findings regarding appellant's bilateral shoulders and hips. He found no evidence that appellant sustained any objective injury to his right hip, right shoulder, or spine that would exceed a minor sprain/enthesopathy. Dr. Lee advised that a minor sprain/enthesopathy would not be associated with any long-term impairment. Therefore, he concluded that any loss of

function found on his examination would not be considered related to the December 11, 2016 employment injury. Dr. Lee noted that appellant was now over six years out from appellant's alleged work injury. He further noted that any impairment on examination he performed would be related to a cause other than the alleged injury. In response to questions posed by OWCP, Dr. Lee indicated that there were no objective diagnostic or physical examination findings of the accepted cervical and lumbar sprains. He utilized the DBI method of the sixth edition of the A.M.A., *Guides* and determined that appellant had zero percent permanent impairment of the cervical and lumbar spines. Dr. Lee also found zero percent permanent impairment of his right lower extremity. He noted that appellant sustained a slipped capital femoral epiphysis at age 14 that was treated operatively with percutaneous screw fixation. Dr. Lee indicated that the condition was invariably associated with a loss of ROM that would be attributed to appellant's slipped capital femoral epiphysis. He believed, therefore, that the accepted condition of right hip enthesopathy could not be rated using the ROM method and must be rated by the DBI method. Using Table 16-4, the Hip Regional Grid, on page 512, Dr. Lee noted that the key diagnostic factor would fall under a tendon strain without objective abnormal findings of the muscle, and therefore, rated the accepted hip condition as a class 0, which represented zero percent impairment of the right lower extremity. He indicated that class 0 conditions were not subject to grade modifiers. Regarding permanent impairment to the right upper extremity, Dr. Lee identified a diagnosis of shoulder and upper arm sprain which represented a class 1 diagnosis (CDX) with a default value of grade C or one percent impairment under Table 15-5, the Shoulder Regional Grid, on page 401. He explained that appellant had a history of a painful injury and residual symptoms without consistent objective findings. Dr. Lee referenced Table 15-7 assigned a grade modifier for functional history (GMFH) of 1 due to pain/symptoms with strenuous/vigorous activity and ability to perform self-care activities independently. He reported a grade modifier for physical examination (GMPE) of 2 under Table 15-8 due to moderate decrease in ROM. Dr. Lee found a grade modifier for clinical studies (GMCS) of 0 under Table 15-9 as there was no imaging evidence of objective pathology *i.e.*, acute rotator cuff tear or superior labral tear from anterior to posterior lesion. He noted that, a July 6, 2012 right shoulder magnetic resonance imaging (MRI) scan documented a chronic, nontraumatic partial thickness rotator cuff tear that would be consistent with degenerative changes. Based on his review of medical records, Dr. Lee maintained that there were no acute findings consistent with acute pathology. He applied the net adjustment formula (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX) = (1 - 0) + (2 - 0) + (0 - 0) = 3, which shifted two spaces to the right of the default value of grade C to a default value of grade E or two percent right upper extremity permanent impairment. Dr. Lee noted that page 461 of the A.M.A., *Guides*, indicated that the DBI method was the preferred method. He further noted that the ROM method should be used as a stand-alone rating for upper extremity impairment evaluations only when there were no diagnosis-based sections were applicable for impairment rating of the condition. Dr. Lee contended that the ROM method was not applicable.

On April 11, 2018 OWCP requested clarification by Dr. Lee. It requested that Dr. Lee calculate appellant's cervical and lumbar spine permanent impairment using *The Guides Newsletter*, Rating Spinal Nerve Extremity Impairment Using the Sixth Edition (July/ August 2009) (*The Guides Newsletter*), and use the sixth edition of the A.M.A., *Guides* to calculate appellant's upper and lower extremity impairments. Dr. Lee was also asked to address the date of appellant's MMI.

In a supplemental report dated May 14, 2018, Dr. Lee utilized *The Guides Newsletter, Rating Spinal Nerve Extremity Impairment* (*The Guides Newsletter*) (July/August 2009) and determined that appellant had zero percent permanent impairment of the cervical and lumbar spines as appellant had no motor or sensory deficits on examination. He further determined that appellant had nine percent permanent impairment of the right lower extremity due to hip arthritis under the DBI method. Dr. Lee noted that the ROM method was not applicable.

On June 20, 2018 OWCP requested that Dr. Lee calculate appellant's right upper extremity and right lower extremity impairment ratings under both the DBI method and ROM method and determine which method produced the higher rating, and to provide the date of MMI.

In a September 18, 2018 supplemental report, Dr. Lee reexamined appellant and provided ROM measurements for appellant's right shoulder. Using the ROM method, he found that appellant had seven percent right upper extremity permanent impairment. Dr. Lee reiterated his prior two percent DBI right upper extremity impairment rating. He concluded that, as the ROM method resulted in the greater percentage, appellant had seven percent permanent impairment of the right upper extremity.

OWCP, by decision dated October 19, 2018, denied appellant's schedule award claim. It found that the opinion of Dr. Lee as the IME represented the special weight of the medical evidence and established that appellant had no permanent impairment to a scheduled member as a result of his accepted December 16, 2011 employment injury.

On October 25, 2018 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review, which was held on March 19, 2019.

In a May 29, 2019 decision, an OWCP hearing representative affirmed in part and set aside in part the October 19, 2018 decision. She found that Dr. Lee's opinion was entitled to the special weight of the medical evidence to establish that appellant had zero percent permanent impairment of the cervical and lumbar spines. The hearing representative found, however, that her opinion was unclear as to whether appellant sustained permanent impairment due to his accepted right shoulder and right hip conditions. She remanded the case to OWCP to obtain a report from Dr. Lee clarifying whether appellant had any permanent impairment due to his accepted right shoulder and right hip conditions.

On June 4, 2019 OWCP again referred appellant to Dr. Lee for an impartial impairment evaluation to provide a right shoulder and right hip impairment determination.

In a report dated July 18, 2019, Dr. Lee advised that appellant's right upper extremity permanent impairment under both the DBI and ROM impairment rating methods were due to preexisting and nonrelated conditions. His accepted condition of right shoulder sprain/strain did not cause or significantly affect his preexisting, nonrelated condition. Dr. Lee noted that a sprain/strain injury that was without objective, structural damages, was a self-limited condition that carried no potential for permanent impairment. Additionally, he maintained that appellant's right lower extremity permanent impairment was based on his hip arthritis which was due solely to his preexisting, nonrelated slipped capital femoral epiphysis. Dr. Lee maintained that his

accepted diagnosis of right hip enthesopathy was a self-limited condition that carried no potential for permanent impairment or a significant effect on his preexisting hip arthritis.

OWCP, by decision dated July 30, 2019, again denied appellant's claim for a schedule award. It found that the July 18, 2019 opinion of Dr. Lee as the IME represented the special weight of the medical evidence and established that appellant's right upper extremity and right lower extremity permanent impairment were solely due to nonwork-related factors and not due to his accepted employment injury.

On August 7, 2019 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review, which was held on November 5, 2019.

On January 6, 2020 a second OWCP hearing representative issued a decision setting aside the July 30, 2019 decision and remanding the case for further medical development. He found that Dr. Lee's opinion did not constitute the special weight of the medical evidence as the IME. The hearing representative found a new conflict in medical opinion between Dr. Lee, Dr. Metropoulos, and Dr. Obianwu as to whether appellant's permanent impairment due to appellant's right rotator cuff tear and prior slipped femoral epiphysis was caused or aggravated by his December 16, 2011 employment injury. He instructed OWCP to refer appellant for a new impartial medical examination to resolve the conflict. The hearing representative noted that if the IME determined that the conditions were work related then the IME should provide the degree of appellant's permanent impairment in accordance with the sixth edition of the A.M.A., *Guides*.

On remand OWCP referred appellant to Dr. Jiab Suleiman, a Board-certified orthopedic surgeon, for an impartial medical examination. In a February 11, 2020 report, Dr. Suleiman noted a history of appellant's December 16, 2011 employment injury and reviewed the medical record. On physical examination, he provided essentially normal findings with the exception that appellant had a hard time walking without a cane, an antalgic gait, crepitation in the right shoulder, and atrophy of the quadriceps on the right side compared to the left side. Additionally, appellant's right hip had limited ROM, no external rotation past 10 degrees without eliciting significant discomfort, no forward flexion past 70 degrees without discomfort, extension that was probably 5 degrees at most, and abduction that was limited probably to 10 degrees. In response to questions posed by OWCP, Dr. Suleiman noted that appellant's work-related face, neck, and scalp contusions and lumbar and cervical and right shoulder sprains/strains and aggravation of appellant's preexisting right hip slipped femoral capital epiphysis and arthritis had resolved without residuals. He advised that appellant's limited ROM was caused by degenerative changes that were an aggravation of a post-traumatic injury of December 18, 2011. Dr. Suleiman further advised that he did not sustain a right rotator cuff tear causally related to the December 16, 2011 employment injury. He noted that MRI scans performed in 2012 showed tendinitis of the rotator cuff. The etiology for this condition was a possible grade 1 to 2 chronic partial thickness tearing of the rotator cuff. Dr. Suleiman related that appellant had significant arthritic changes in the acromioclavicular and glenohumeral joints and capsulitis, which were more likely than not preexisting conditions that were not caused by the employment injury. He maintained that his right slipped capital femoral epiphysis was not causally related to the accepted work injury. Dr. Suleiman related that this was a preexisting condition that was only aggravated by the injury. He opined that appellant had permanent impairment of appellant's right hip due to limited ROM and right shoulder due to post-traumatic arthritis. Dr. Suleiman concluded that appellant reached

MMI on the date of his impairment evaluation. He agreed with Dr. Lee's ROM rating of seven percent permanent impairment of the right upper extremity. Using the ROM method to rate permanent impairment of the right shoulder, Dr. Suleiman reported ROM measurements that included 145 degrees of forward flexion, 90 to 95 degrees of abduction, 40 degrees of internal rotation, and 30 degrees of internal rotation. He found that appellant had 3 percent impairment due to loss of abduction, 1 percent impairment due to loss of adduction, 3 percent impairment due to loss of flexion, 1 percent impairment due to loss of extension, 2 percent impairment due to loss external rotation, and 2 percent impairment due to loss of internal rotation, totaling 12 percent permanent impairment. Dr. Suleiman multiplied the 12 percent ROM rating by 60 percent which yielded 7 percent right upper extremity impairment. He agreed with Dr. Lee's DBI rating of two percent permanent impairment of the right upper extremity. Dr. Suleiman related that, as the ROM method resulted in the greater impairment percentage, appellant had seven percent right upper extremity permanent impairment. Additionally, he concurred with Dr. Lee's rating of zero percent permanent impairment of the neck and back as no deficits were found on examination. Dr. Suleiman further concurred with Dr. Lee's nine percent DBI permanent impairment of the right lower extremity. Regarding impairment to the right hip, he referenced Table 16-4 on page 514 of the sixth edition of the A.M.A., *Guides* and classified appellant's loss of joint space and three millimeter (mm) cartilage as a CDX Class 1 impairment with a default value of grade E. Dr. Suleiman assigned a grade modifier for GMFH of 2 under Table 16-6 on page 516 due to a Trendelenburg gait. He assigned a grade modifier for GMPE of 3 under Table 16-7 on page 517 due to 3.9 centimeters of right leg muscle atrophy. Dr. Suleiman referenced Table 16-8 on page 519 and found a grade modifier for GMCS of 2 due to 35 to 50 percent cartilage loss on his hip x-rays. He applied the net adjustment formula, (GMFH - CDX) + (GMPE - CDX) = (2 - 1) + (3 - 1) = 3, resulting in a class 1 or nine percent permanent impairment of the right lower extremity.

On March 6, 2020 OWCP requested that Dr. Suleiman clarify his opinion regarding whether appellant's preexisting right hip arthritis and slipped capital femoral epiphysis were aggravated by the December 16, 2011 employment injury. It also requested that he clarify whether his right lower extremity and right upper extremity impairment ratings were due solely to appellant's nonwork-related diagnoses, and if not, note the work-related right hip and right shoulder diagnosis or diagnoses responsible for the impairment ratings. Dr. Suleiman was also asked to provide an unequivocal opinion as to whether appellant sustained a right rotator cuff tear due to the accepted work injury and a rationalized opinion regarding whether appellant's right shoulder arthritis was caused, aggravated, accelerated and/or precipitated by the work injury.

In an addendum report dated April 22, 2020, Dr. Suleiman noted that appellant had no work-related residuals of appellant's aggravated right-sided slipped capital femoral epiphysis and arthritis. He advised that appellant's right lower extremity and right upper extremity impairment ratings were due solely to appellant's nonwork-related diagnoses. Dr. Suleiman further advised that appellant did not sustain a right rotator cuff tear due to the December 16, 2011 employment injury. Additionally, he indicated that appellant's right shoulder arthritis was not related to the work injury.

OWCP, by decision dated April 28, 2020, continued to deny appellant's schedule award claim. It found that Dr. Suleiman's opinion as the IME was entitled to special weight and established that appellant had no permanent impairment to a scheduled member due to the December 16, 2011 employment injury.

On May 4, 2020 counsel again requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review, which was held on July 29, 2020.

A third OWCP hearing representative, by decision dated September 15, 2020, affirmed the April 28, 2020 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.[4]

The schedule award provisions of FECA[5] and its implementing regulations[6] 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. OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants. As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.[7]

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.[8] However, a schedule award is permissible where the employment-related spinal condition affects the upper and/ or lower extremities.[9] The sixth edition of the A.M.A., *Guides* (2009) 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 the Federal (FECA) Procedure Manual.[10]

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

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[4] *See 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).

[5] 5 U.S.C. § 8107.

[6] 20 C.F.R. § 10.404.

[7] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5.a. (March 2017); *id*. at Chapter 3.700.2 and Exhibit 1 (January 2010).

[8] 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); *Jay K. Tomokiyo*, 51 ECAB 361, 367 (2000).

[9] *Supra* note 7 at Chapter 2.808.5.c(3) (March 2017).

[10] *Supra* note 7 at Chapter 3.700, Exhibit 4 (January 2010); *see L.H.*, Docket No. 20-1550 (issued April 13, 2021); *N.G.*, Docket No. 20-0557 (issued January 5, 2021).

shall appoint a third physician who shall make an examination.[11] 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.[12] 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.[13]

ANALYSIS

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

Initially, OWCP properly found a conflict in the medical opinion evidence between Dr. Metropoulos, appellant's attending physician, who found that appellant had 8 percent permanent impairment of the right upper extremity and 18 percent permanent impairment of the right lower extremity, and Dr. Katz, OWCP's DMA, who found that appellant had 19 percent permanent impairment of the right upper extremity and 9 percent permanent impairment of the right lower extremity. It properly referred him to Dr. Lee, pursuant to 5 U.S.C. § 8123(a), for an impartial medical examination in order to resolve the conflict in medical opinion.

In a February 21, 2018 report, Dr. Lee, the IME, found that appellant had zero percent permanent impairment of the cervical and lumbar spines, zero percent impairment of the right lower extremity, and two percent permanent impairment of the right upper extremity. Upon OWCP's requests, Dr. Lee provided a supplemental report dated May 14, 2018 in which he determined that appellant had nine percent permanent impairment of the right lower extremity, and in a supplemental report dated September 18, 2018, he found that appellant had seven percent permanent impairment of the right upper extremity.

In an October 19, 2018 decision, OWCP denied appellant's schedule award claim, finding that Dr. Lee's impartial medical opinion represented the special weight of the medical evidence and established that appellant had no permanent impairment to a scheduled member as a result of his accepted December 16, 2011 employment injury. However, by decision dated May 29, 2019, an OWCP hearing representative affirmed in part the October 19, 2018 decision, regarding Dr. Lee's opinion that appellant had zero percent permanent impairment of the cervical and lumbar spines, but set aside in part the decision and remanded the case to OWCP to obtain a supplemental report from Dr. Lee clarifying his opinion on appellant's right upper extremity and right lower extremity impairment. On remand OWCP, by decision dated July 30, 2019, continued to deny appellant's claim for a schedule award based on Dr. Lee's supplemental report dated July 18, 2019 in which he explained that appellant's right upper extremity and right lower extremity permanent impairment was due to his nonwork-related conditions. However, in a January 6, 2020 decision, a second OWCP hearing representative set aside the July 30, 2019 decision and remanded the case

[11] 5 U.S.C. § 8123(a). *See R.C.*, Docket No. 18-0463 (issued February 7, 2020); *see also G.B.*, Docket No. 16-0996 (issued September 14, 2016).

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

[13] *V.H.*, Docket No. 20-0012 (issued November 5, 2020).

for further medical development, finding a new conflict in medical opinion between Dr. Lee, Dr. Metropoulos, and Dr. Obianwu, an OWCP second physician, as to whether appellant's permanent impairment due to his right rotator cuff tear and prior slipped femoral epiphysis was caused or aggravated by the December 16, 2011 employment injury. On remand OWCP referred appellant to Dr. Suleiman for an impartial impairment evaluation.

In a February 11, 2020 report, Dr. Suleiman discussed appellant's history of injury and reviewed appellant's medical records. He provided essentially normal physical examination findings with the exception that appellant had a hard time walking without a cane, an antalgic gait, crepitation in the right shoulder, and atrophy of the quadriceps on the right side compared to the left side, and that the right hip had limited ROM, no external rotation past 10 degrees without eliciting significant discomfort, no forward flexion past 70 degrees without discomfort, extension that was probably 5 degrees at most, and abduction that was limited probably to 10 degrees. Dr. Suleiman advised that the accepted conditions of face, neck, and scalp contusions and lumbar and cervical and right shoulder sprains/strains, and aggravation of preexisting right hip slipped femoral capital epiphysis and arthritis had resolved without residuals. He determined that appellant had seven percent permanent impairment of the right upper extremity based on the ROM method and nine percent permanent impairment of the right lower extremity based on the DBI method.

Upon OWCP's request, Dr. Suleiman provided an addendum report dated April 22, 2020, clarifying that appellant's right upper extremity and lower extremity permanent impairments were due to appellant's preexisting nonwork-related diagnosed conditions and that he had no permanent impairment due to the December 16, 2011 employment injury. He opined that the work-related aggravation of appellant's preexisting right-sided slipped femoral capital epiphysis with arthritis had resolved and that appellant did not sustain a right rotator cuff tear due to the accepted work injury.

As noted above, when a case is referred to an IME for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.[14] The Board finds that Dr. Suleiman's reports are entitled to special weight and established that appellant had no right upper extremity or right lower extremity permanent impairment.[15] Dr. Suleiman's opinion was based on a proper factual and medical history, which he reviewed, and his essentially normal examination findings. He attributed appellant's permanent impairment to appellant's preexisting nonwork-related conditions. As these reports indicated that his impairment was not due to the accepted back and neck sprain, right shoulder and upper arm sprain, and right hip enthesopathy, they are insufficient

[14] *Id*.

[15] *See V.G.*, Docket No. 19-1728 (issued September 2, 2020); *H.K.*, Docket No. 18-0528 (issued November 1, 2019); *Gary R. Sieber*, 46 ECAB 215, 225 (1994).

to establish that he was entitled to a schedule award.[16] Accordingly, OWCP properly accorded special weight to Dr. Suleiman's reports.[17]

The record contains no other probative, rationalized medical opinion which supports that appellant had right upper extremity and right lower extremity impairments based upon the A.M.A., *Guides*. As such, the Board finds that he 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 impairment.

CONCLUSION

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

[16] *See A.M.*, Docket No. 16-0499 (issued June 28, 2016); *see also Veronica Williams*, 56 ECAB 367 (2005) (a schedule award can be paid only for a condition related to an employment injury; 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] *See V.G.*, *supra* note 15; *D.S.*, Docket No. 18-0336 (issued May 29, 2019); *T.C.*, Docket No. 17-1741 (issued October 9, 2018).

ORDER

IT IS HEREBY ORDERED THAT the September 15, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 3, 2021
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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