

U.S. DEPARTMENT OF LABOR
OFFICE OF WORKERS' COMP PROGRAMS
PO BOX 8300 DISTRICT 16 DAL
LONDON, KY 40742-8300
Phone: (972) 850-2300

November 20, 2009

Date of Injury:
Employee:

Dear Ms. :

Under the schedule award provisions of the Federal Employees' Compensation Act (FECA) at 5 U.S.C. 8107, the Office of Workers' Compensation Programs makes the following:

AWARD OF COMPENSATION

1. Degree and Nature of Permanent Impairment: 5% left upper extremity
2. Date of Maximum Medical Improvement: 05/06/2008
3. Period of Award: 08/30/2008 to 12/17/2009
4. Number of Weeks of Compensation: 7.89
5. Weekly Pay: \$954.69 X Compensation Rate: 75 % = \$716.02
6. Effective Date of Pay Rate: 11/29/2004
7. Your Payment and the Period Covered: \$6275.66 (08/30/2009- 10/24/2009)
8. Your Continuing Payment each Four Weeks: \$3168.00

Payment of your award ends when you have been paid for the last day shown in item 3 above.

Section 8107 of the FECA and its implementing regulations set forth the number of weeks of compensation to be paid for the permanent loss or loss of use of specified members, functions and organs of the body known as permanent impairment. 20 C.F.R. 10.404; see also 20 C.F.R. Part 10. The commencement period of the schedule award is usually the date of maximum medical improvement, the date that the physical condition of the injured member has stabilized and is not expected to improve further.

The FECA, however, does not in most instances specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The implementing regulations have adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, as the appropriate standard for evaluating schedule losses. Currently, schedule awards are calculated using the Sixth Edition of the *AMA Guides*.

The percentage of permanent impairment noted above was based on the medical findings and report of Dr. Fletcher dated 05/06/2008 and the report of the District Medical Advisor (DMA) dated 11/06/2009. Copies of these reports are provided for your reference.

The percentage of permanent impairment shown above was calculated by a District Medical Adviser, who applied the *Guides* to the medical findings provided by your treating physician. The calculation is

proper in accordance with the Guides. The date of maximum medical improvement was determined by the District Medical Adviser based on the medical evidence of record.

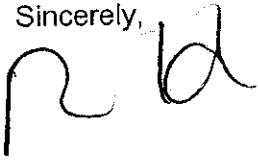
IMPORTANT INFORMATION

Please read the following information carefully. Keep this award letter so you can refer to it when necessary. If you have questions concerning this award, write to the address shown in the letterhead.

- 1. HOW COMPENSATION IS PAID** - Direct deposit is the fastest and most secure way to receive your award payments. **We strongly encourage you to submit a Standard Form 1199A, which will enable us to direct deposit your payment(s) into your bank.** Your first payment will be issued within 30 days. If further payments are due, they will be made every four weeks until the expiration of the award.
- 2. LUMP SUM PAYMENTS** - If you are currently working, or if you are receiving retirement benefits from the Office of Personnel Management, you may be entitled to a "lump-sum" payment of your schedule award. Please contact the District Office at the address listed on the first page of this letter and specifically request information concerning this option.
- 3. CHANGE OF ADDRESS** - Notify this office immediately of any change of address either for correspondence or for direct deposit. Notification must be in writing, signed by you, to the address shown on the first page of this letter. Include your file number, your old address, and your new address.
- 4. CHANGE IN STATUS OF DEPENDENTS** - If your award is paid at the augmented rate of 3/4 because you have one or more dependents, you are required to provide written notification immediately of any change in status of your dependents, to the address on the first page of this letter. The notice must be signed by you and include your file number, the name of the dependent whose status changed, the effective date of the change, and the nature of the change in status. If you originally claimed only one dependent, and there is a change in the status of your sole dependent, do not cash any checks you receive after the change in status of that dependent. Return the checks promptly for adjustment by this Office.
- 5. RETURN TO WORK** - You may work or receive retirement benefits from the Office of Personnel Management (OPM) during the period of this award without any effect on your schedule award payments.
- 6. SOCIAL SECURITY DISABILITY BENEFITS** - Please contact your local Social Security Office regarding this award if you are receiving or have filed for Social Security Disability Benefits.
- 7. VA BENEFITS** - You are required to notify this office if you have received, or are receiving any VA benefits for the same part of the body.
- 8. EXPIRATION OF AWARD** - After the ending date of this award noted in item 3, your entitlement to compensation will be based solely on disability for work resulting from the accepted injury. You may claim continuing compensation by submitting evidence showing that the accepted injury prevents you from performing the kind of work you were doing when injured and from earning comparable wages. Please note that compensation for disability cannot be paid for any period during which you receive retirement benefits from OPM.

If you disagree with this decision, you should carefully review the attached appeal rights, and pursue whichever avenue is appropriate to your situation.


Sincerely,



REMETA HUBBARD
Claims Examiner

Enclosures: Appeal Rights

UNITED STATES POSTAL SERVICE
LOUISIANA PERFORMANCE CLUSTER-BATON ROUGE OFFICE
HEALTH & RESOURCE MANAGEMENT
PO BOX 57569
NEW ORLEANS, LA 70157



PAUL FELSER, ESQ
FELSER LAW FIRM, P.C.
PO BOX 10267
SAVANNAH, GA 31401

FEDERAL EMPLOYEES' COMPENSATION ACT APPEAL RIGHTS

If you disagree with the attached decision, you have the right to request an appeal. If you wish to request an appeal, you should review these appeal rights carefully and decide which appeal to request. There are 3 different types of appeal: HEARING (this includes either an Oral Hearing, or a Review of the Written Record), RECONSIDERATION, and ECAB REVIEW. YOU MAY ONLY REQUEST ONE TYPE OF APPEAL AT THIS TIME.

Place an "X" on the attached form indicating which appeal you are requesting. Complete the information requested at the bottom of the form. Place the form on top of any material you are submitting. Then mail the form with attachments to the address listed for the type of appeal that you select. Always write the type of appeal you are requesting on the outside of the envelope ("HEARING REQUEST", "RECONSIDERATION REQUEST", or "ECAB REVIEW"). Your appeal rights are as follows:

1. **HEARING:** If your injury occurred on or after July 4, 1966, and you have not requested reconsideration, as described below, you may request a **Hearing**. To protect your right to a hearing, any request for a hearing must be made before any request for reconsideration by the District Office (5 U.S.C. 8124(b)(1)). **Any hearing request must also be made in writing, within 30 calendar days after the date of this decision, as determined by the postmark of your letter.** (20 C.F.R. 10.616). There are two forms of hearing. You may request either one or the other, but not both.
 - a. One form of Hearing is an **Oral Hearing**. An informal oral hearing is conducted by a hearing representative at a location near your home or by teleconference/videoconference. You may present oral testimony and written evidence in support of your claim. Any person authorized by you in writing may represent you at an oral hearing. At the discretion of the hearing representative, an oral hearing may be conducted by teleconference or videoconference.
 - b. The other form of a Hearing is a **Review of the Written Record**. This is also conducted by a hearing representative. You may submit additional written evidence, which must be sent with your request for review. You will not be asked to attend or give oral testimony.
2. **RECONSIDERATION:** If you have additional evidence or legal argument that you believe will establish your claim, you may request, in writing, that OWCP reconsider this decision. **The request must be made within one calendar year of the date of the decision**, clearly state the grounds upon which reconsideration is being requested, and be accompanied by relevant evidence not previously submitted. This evidence might include medical reports, sworn statements, or a legal argument not previously made, which apply directly to the issue addressed by this decision. In order to ensure that you receive an independent evaluation of the new evidence, persons other than those who made this determination will reconsider your case. (20 C.F.R. 10.605-610)
3. **REVIEW BY THE EMPLOYEES' COMPENSATION APPEALS BOARD (ECAB):** If you believe that all available evidence that would establish your claim has already been submitted, you have the right to request review by the ECAB (20 C.F.R. 10.625). The ECAB will review only the evidence received prior to the date of this decision (20 C.F.R. Part 501). Effective November 19, 2008, ECAB has changed its Rules of Procedure on the time limit to appeal and has eliminated its practice of allowing one year to file an appeal. **Request for review by the ECAB must be made within 180 days from the date of this decision.** More information on the new Rules is available at www.dol.gov/ecab.

If you request reconsideration or a hearing (either oral or review of the written record), OWCP will issue a decision that includes your right to further administrative review of that decision.

Case Number:
Employee:
Date: November 20, 2009

APPEAL REQUEST FORM

If you decide to appeal this decision, read these instructions carefully. You must specify which procedure you request by checking one of the options listed below. Place this form on top of any materials you submit. **Be sure to mail this form, along with any additional materials, to the appropriate address. YOU MAY ONLY REQUEST ONE TYPE OF APPEAL AT THIS TIME.**

 ORAL HEARING

Depending on your geographical location, the issue involved in your case, the number of hearing requests in your area, and at the discretion of the hearing representative, we may expedite your appeal by providing you a telephone hearing or videoconference. **Please check here if you would prefer a telephone hearing.**

 REVIEW OF THE WRITTEN RECORD

For each of these options, you must submit this form within 30 calendar days of the date of the decision. You may also submit additional written evidence with your request. **You must mail your request to:**

**Branch of Hearings and Review
Office of Workers' Compensation Programs
P. O. Box 37117
Washington, DC 20013-7117**

 RECONSIDERATION:

Submit your request within 1 calendar year of the date of the decision. You must state the grounds upon which reconsideration is being requested. Your request must also include relevant new evidence or legal argument not previously made. **Mail your request to:**

**DOL DFEC Central Mailroom
P. O. Box 8300
London, KY 40742**

 ECAB APPEAL:

Submit this form within 180 calendar days of the date of the decision. No additional evidence after the date of OWCP's decision will be reviewed. To expedite the processing of your ECAB appeal, you may include a completed copy of the AB 1 form used by ECAB to docket appeals available on the Department of Labor Web Site at www.dol.gov/ecab. **You must mail your request to:**

**Employees' Compensation Appeals Board
200 Constitution Avenue NW, Room S-5220
Washington, DC 20210**

SIGNATURE _____ TODAY'S DATE _____
PRINTED NAME _____ DECISION DATE _____
ADDRESS _____ PHONE _____
CITY _____ STATE _____ ZIP _____

November 3, 2009

Claimant
 Claim Number:
 Date of Birth:

I have reviewed the record of the above named claimant for the purpose of providing my medical opinion regarding the proposed questions for determination. The opinions are based on the record and current medical knowledge.

The above named claimant has as accepted conditions right rotator cuff syndrome, bilateral carpal tunnel syndrome, cervical sprain, lumbar IV disc disorder with myelopathy, other affections of right shoulder, adhesive capsulitis of the right shoulder, other tenosynovitis of bilateral wrists and hands, and lesion of right ulnar nerve (726.1, 354.0, 847.0, 722.73, 726.2, 726.0, 727.05, and 354.2). The claimant had the onset of neck and low back pain following an accepted work related incident dated 5/2/01. She has also had other work related injuries to her back and neck (case numbers).

Case # : The claimant had the onset of low back and leg pain and neck and arm pain following an accepted work related incident dated 11/5/01. She was treated conservatively. It is noted that Dr. Eberly has noted the presence of cervical spondylosis. The main problem was the lumbar region which resulted in disc excision apparently at L5-S1 (3/7/03, Dr. Clifford). MRI (7/7/03, Dr. Ryals) shows cervical spondylosis at C5-6 and to a greater degree at C6-7 with disc bulging and osteophyte formation. There is a note dated 10/11/04 (Dr. Clifford) stating neck and upper extremity problems are getting worse. MRI (11/1/04, Dr. Ryals) is unchanged. She has continued to have neck problems until now. Surgery for the cervical spine has been recommended.

Case # : The claimant fell from a chair and had the onset of neck and back pain dated 3/1/05. This has also been treated conservatively. MRI (3/3/06, Dr. Partington) shows cervical spondylosis and facet arthropathy at C5-6 and C6-7 without disc herniation, spinal stenosis or nerve root compromise. In a note dated 3/27/06, Dr. Cenac opines the claimant has had an aggravation of pre-existing degenerative condition in her neck. Dr. Nutick also references aggravation of pre-existing degenerative changes in the neck (6/27/06). She has continued to have neck pain until the present recommendation for surgery.

Case # : The claimant had the onset of neck and low back pain following an accepted work related incident dated 5/2/01. The remainder of the history for this case # is found in my report dated 10/8/09.

Question for determination:

1. It is my opinion the ongoing symptoms of cervical and upper extremity pain should be considered the result of an aggravation of pre-existing degenerative changes in the cervical spine. This aggravation has been contributed to by the various work related injuries and situation as described in the history and SOAF's. The accepted conditions should be upgraded to include aggravation of degeneration of cervical IV disc (722.4).

Ronald Blum, M.D.
District Medical Advisor

ADDENDUM DATED 11/6/09: It has been brought to my attention that the information that is needed from my review is whether the condition of cervical radiculopathy can be considered the result of an aggravation of pre-existing cervical radiculopathy. It is my opinion the claimant does have cervical radiculopathy that is consequentially related to the aggravation of degeneration of cervical IV disc disease.

Ronald Blum 11-6-09

Ronald Blum, M.D.
District Medical Advisor

Claimant:
Claim Number:
Date of Birth:

I have reviewed the medical evidence and the Statement of Accepted Facts.

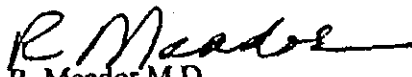
The calculation of impairment is based on the 5th ed. of the AMA Guidelines, FECA Procedure Manual Chapter 3-700, and the pertinent FECA Bulletins. In specific instances, OWCP procedure has been established as precedent over the AMA Guidelines.

The issue is why I did not include impairment of the LUE due to C6 and C7 radiculopathy in my report of 5.31.08.

DISCUSSION

The accepted condition is SPRAIN OF NECK. The 5th ed. of the AMA Guidelines does not describe any impairment award due to strains or sprains. OWCP does not recognize those conditions as being permanent in nature; therefore, strains or sprains cannot be the basis of impairment awards.

If it is determined that the C6 and C7 radiculopathy is related to Ms. Kirkes Federal job, and is accepted by OWCP, then the 5% sensory impairment of the LUE would be probative.



R. Meador M.D.

DMA

9.12.08

RECEIVED NOV 03 2009

U.S. DEPARTMENT OF LABOR

EMPLOYMENT STANDARDS ADMINISTRATION
OFFICE OF WORKERS' COMP PROGRAMS
PO BOX 8300 DISTRICT 50
LONDON, KY 40742-8300
Phone: (202) 693-0045

Date of Injury:
Employee:

Dear Ms. _____ :

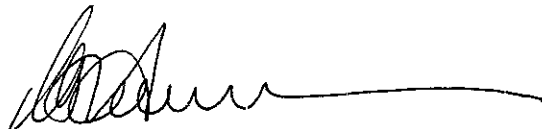
This is in reference to your workers' compensation claim. Pursuant to your request for a hearing, the case file was transferred to the Branch of Hearings and Review.

A hearing was held on 08/25/2009. As a result of such hearing, it has been determined that the decision issued by the district office should be vacated and the case remanded to the district office for further action as explained in the enclosed copy of the Hearing Representative's Decision.

Your case file has been returned to the Dallas District Office. You may contact that office by writing to our Central Mail Room at the following address:

US DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
OFFICE OF WORKERS' COMP PROGRAMS
PO BOX 8300 DISTRICT 16 DAL
LONDON, KY 40742-8300

Sincerely,



Karen S. Hunt
Hearing Representative

UNITED STATES POSTAL SERVICE
LOUISIANA PERFORMANCE CLUSTER-BATON ROUGE OFFICE
HEALTH & RESOURCE MANAGEMENT
PO BOX 57569
NEW ORLEANS, LA 70157

PAUL FELSER, ESQ
PO BOX 10267
SAVANNAH, GA 31401

File Number:
HR10-D-H

RECEIVED NOV 02 2009

U.S. DEPARTMENT OF LABOR

EMPLOYMENT STANDARDS ADMINISTRATION
OFFICE OF WORKERS' COMP PROGRAMS
PO BOX 8300 DISTRICT 50
LONDON, KY 40742-8300
Phone: (202) 693-0045

OCT 20 2009

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Employee:

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US DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
OFFICE OF WORKERS' COMP PROGRAMS
PO BOX 8300 DISTRICT 16 DAL
LONDON, KY 40742-8300

Sincerely,



Karen S. Hunt
Hearing Representative

UNITED STATES POSTAL SERVICE
LOUISIANA PERFORMANCE CLUSTER-BATON ROUGE OFFICE
HEALTH & RESOURCE MANAGEMENT
PO BOX 57569
NEW ORLEANS, LA 70157

PAUL FELSER, ESQ
PO BOX 10267
SAVANNAH, GA 31401

uncovertebral hypertrophy asymmetric to the left of midline with left C7 root impingement. June 28, 2001, electrodiagnostic studies showed some evidence of cervical radiculopathy. A July 16, 2001, cervical MRI showed hard and soft disc abnormalities at C5-6 and C6-7, worse to the left.

On August 2, 2001, Charles Eberly, M.D., a treating neurologist, stated: "I do not think that I can attribute any disease in her neck to work however I would say that lifting objects greater than 20#, prolonged over-the-shoulder work could exacerbate her cervical spine disease." Dr. Eberly's opinion was speculative and did not provide medical rationale attributing a current aggravation of the claimant's cervical disc disease to factors of her employment.

Subsequent documentation of medical treatment and examination of the claimant noted a history of cervical spondylosis and cervical spine degenerative disc disease but did not provide a physician's reasoned opinion that the accepted employment exposure caused or contributed to that condition or an aggravation thereof.

On December 5, 2007, and January 28, 2008, the claimant completed Forms CA-7 for schedule award compensation.

A statement of accepted facts dated December 17, 2007, related only to claim number 16-2020185. The statement of accepted facts did not mention the prior or subsequent employment injuries.

On December 28, 2007, an Office District Medical Adviser (DMA) indicated that the information provided by the treating physician did not meet the Office's requirements and recommended referral of the claimant for a second opinion regarding the upper extremities.

The Office referred the claimant for a second opinion to obtain an impairment rating for the bilateral upper extremities for schedule award purposes. The second opinion physician was provided with the December 17, 2007, statement of accepted facts. The referral memorandum instructed that the physician be provided with a letter concerning impairment to the bilateral upper extremities.

The claimant was examined by Raymond Fletcher, M.D., a Board-certified orthopaedic surgeon, on May 6, 2008. Dr. Fletcher's report noted only the conditions accepted in the instant claim and not the injuries or conditions accepted in the two doubled claims. Dr. Fletcher provided a history of the conditions in the instant claim and physical examination findings related to the upper extremities. Dr. Fletcher listed injury-related diagnoses including permanent aggravation of cervical spondylosis and left cervical radiculopathy C6-7, although he did not provide medical reasoning in support of a causal relationship between those conditions and any employment related injury. Dr. Fletcher provided reasoned medical opinion that the claimant had right upper extremity impairment of 13% due to shoulder range of motion deficits, 2% due to cubital tunnel syndrome, and 4% due to carpal tunnel syndrome. Dr. Fletcher found left upper

extremity impairments of 4% for carpal tunnel syndrome and 5% for C6-7 radiculopathy based on the A.M.A., *Guides* (5th ed.).

The Office referred Dr. Fletcher's report to a DMA for opinion regarding impairment of the bilateral upper extremities for schedule award purposes. The Office attachment requested such opinion be based on "the medical evidence in file" and the A.M.A., *Guides*.

By memorandum of May 31, 2008, the DMA, R. Meador, M.D., indicated he had reviewed the medical evidence and the statement of accepted facts. Dr. Meador provided opinion that the claimant had 4% impairment of the left upper extremity and 18% impairment of the right upper extremity. Dr. Meador cited to the A.M.A., *Guides* (5th ed.) and indicated maximum medical improvement was reached on May 6, 2008. Dr. Meador did not make specific mention of any medical documentation.

On August 21, 2008, the Office requested that Dr. Meador provide clarification explaining why he did not include the 5% for cervical radiculopathy included by Dr. Fletcher.

By memorandum dated September 12, 2008, Dr. Meador noted the accepted condition was sprain of the neck, and the A.M.A., *Guides* did not describe any impairment due to strains or sprains. Dr. Meador stated: "If it is determined that the C6 and C7 radiculopathy is related to Ms. Federal job, and it is accepted by OWCP, then the 5% sensory impairment of the LUE would be probative."

By decision dated September 26, 2008, the Office awarded compensation for 4% permanent impairment of the left upper extremity and 18% permanent impairment of the right upper extremity.

The claimant disagreed with the Office decision and by letter postmarked October 7, 2008, her attorney, Paul Felser, requested an oral hearing.

By letter dated November 20, 2008, the Office indicated it would undertake further medical development to determine whether or not the claimant's emotional conditions were causally related to her employment injuries.

Additional medical documentation was received following the Office decision. Documentation relating to lumbar spine conditions and psychiatric conditions is not relevant with respect to the issue under consideration. The documentation relating to cervical spine or upper extremity conditions does not address the percentage impairment of the upper extremities.

On August 3, 2009, Dr. Mitchell requested authorization of anterior cervical discectomy and fusion surgery. The Office prepared a new statement of accepted facts dated October 7, 2009, which includes relevant information regarding the November 5, 2001, employment injury but which failed to include relevant information regarding the March

1, 2005, employment injury which was also indicated to have been doubled into the instant claim. The Office referred the case to a DMA for opinion as to whether the requested surgery was medically indicated and causally related to an accepted employment injury.

The hearing was held on August 25, 2009, in Atlanta, Georgia. The claimant's attorney was present and the hearing transcript is of record.

Mr. Felser provided a September 24, 2009, statement detailing the reasons the claimant disagreed with the Office decision and additional copies of medical evidence already of record.

I have reviewed the evidence and testimony of record and find that the decision of the district office dated September 26, 2008, must be set aside as the medical evidence requires further development.

The schedule award provisions of the FECA set forth the number of weeks of compensation to be paid for permanent loss of the use of the members of the body listed in the schedule. The Act, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a matter which rests in the sound discretion of the Office. However, as a matter of administrative practice the Board has stated that 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 Office has adopted the A.M.A., *Guides* as the standard for evaluating permanent impairment for schedule award purposes, and the Board has concurred with the Office's adoption of this standard.¹ The Office adopted the fifth edition of the *Guides* effective February 1, 2001.² The Office adopted the sixth edition of the *Guides* effective May 1, 2009.³

When the Office develops the medical evidence by referring the case of an Office referral physician, the Office has the obligation to seek clarification from its physician upon receiving a report that does not adequately address the issues that the Office sought to develop.⁴

It is well-established that in determining the amount of a schedule award for a member of the body that sustained an employment-related permanent impairment, preexisting impairments of the body are to be included.⁵

The Office has recently undertaken development of the medical evidence with regard to whether or not the claimant has an employment related cervical spine condition other

¹ *James A. England*, 47 ECAB ____ (Docket No. 94-808, issued October 2, 1995)

² FECA Bulletin 01-05, issued January 29, 2001.

³ FECA Bulletin 09-03, issued March 15, 2009.

⁴ *William N. Saathoff*, 8 ECAB 769 (1956).

⁵ *Walter R. Malena*, 46 ECAB ____ (Docket No. 94-472, issued August 18, 1995).

than cervical strain and, if so whether that condition warrants the requested spinal fusion surgery, although it appears the Office neglected to include relevant information regarding claim which it indicated was also doubled into the instant claim. The Office should make a determination as to whether the claim should be expanded to include any additional cervical spine conditions when development of the medical evidence is complete.

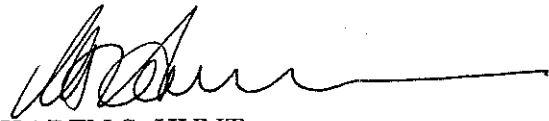
It is apparent that Dr. Fletcher did not combine right upper extremity impairments for carpal tunnel syndrome, cubital tunnel syndrome, and shoulder range of motion deficits. The DMA did combine those impairment allowances and determined that right upper extremity impairment totaled 18%. Dr. Fletcher indicated the claimant had left upper extremity impairment of 4% due to carpal tunnel syndrome and 5% due to C6-7 radiculopathy. Dr. Meador's supplemental opinion of September 12, 2008, did not comment as to whether impairment due to the C6 and C7 radiculopathy was considered as a pre-existing condition. As noted above, a November 16, 2000, documented left C7 nerve root impingement and C6-7 disc bulging, posterior bony ridging, and uncovertebral hypertrophy.

On remand, the Office should refer the case medical records in all three claims to Dr. Meador and request that he provide supplemental and fully rationalized opinion as to whether or not the evidence establishes that the claimant had a pre-existing or employment-related cervical spine condition resulting in the radiculopathy described in Dr. Fletcher's report. If Dr. Meador determines that the claimant's cervical radiculopathy pre-existed or was causally related to the employment injuries, the Office should pay an additional schedule award for impairment considering the 5% left upper extremity impairment. Following any additional development deemed necessary, the Office should issue an appropriate decision regarding the claimant's entitlement to an additional schedule award. An additional award for left upper extremity impairment due to cervical radiculopathy should be calculated under the Fifth Edition of the A.M.A., *Guides* as it should be based on the prior calculation which was previously and questionably excluded.

Accordingly, the decision of the Office dated September 26, 2008, is hereby set aside and the case record is returned to the district office for actions as noted above.

DATED: OCT 20 2009

WASHINGTON, D.C.



KAREN S. HUNT
Hearing Representative
For
Director, Office of Workers'
Compensation Programs

File Number:
CA-181-D-S

U.S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
OFFICE OF WORKERS' COMP PROGRAMS
PO BOX 8300 DISTRICT 16 DAL
LONDON, KY 40742-8300
Phone: (972) 850-2300

September 26, 2008

Date of Injury:
Employee:

RECEIVED OCT 3 2008

Dear Ms. :

Under the schedule award provisions of the Federal Employees' Compensation Act (FECA) at 5 U.S.C. 8107, the Office of Workers' Compensation Programs makes the following:

AWARD OF COMPENSATION

1. Degree and Nature of Permanent Disability: 4% left upper extremity and 18% right upper extremity
2. Date of Maximum Medical Improvement: 05/06/2008
3. Period of Award: 05/06/2008 to 08/29/2009
4. Number of Weeks of Compensation: 68.64
5. Weekly Pay: \$954.69 X Compensation Rate: 75 % = \$716.01
6. Effective Date of Pay Rate: 11/29/2004
7. Your Payment and the Period Covered: \$10,010.08 (05/06/2008-08/02/2008)
8. Your Continuing Payment each Four Weeks: \$3168.00

Payment of your award ends when you have been paid for the last day shown in item 3 above.

The 05/31/2008 District Medical Advisor (DMA) report did not include the additional 5% that the 05/06/2008 treating physician's report awarded for sensory impairment due to cervical radiculopathy because the case is not accepted for cervical radiculopathy. It is accepted for a sprain in regards to the cervical area. Also, you are receiving compensation for temporary total disability (TTD) under case file number 162091156 which is accepted for cervical and lumbar conditions. You cannot receive TTD for the cervical condition and schedule award compensation for the cervical condition at the same time.

The DMA report matched the treating physicians report in regards to the right upper extremity.

Schedule awards under the FECA are calculated according to the Fifth Edition of the AMA's Guides to the Evaluation of Permanent Impairment. The percentage of permanent impairment shown above was calculated by a District Medical Adviser, who applied the Guides to the medical findings provided by the examining physician. The calculation is proper in accordance with the Guides. A photocopy of the District Medical Adviser's calculation is attached.

IMPORTANT INFORMATION

Please read the following information carefully. Keep this award letter so you can refer to it when necessary. If you have questions concerning this award, write to the address shown in the letterhead.

- 1. HOW COMPENSATION IS PAID** - Direct deposit is the fastest and most secure way to receive your award payments. **We strongly encourage you to submit a Standard Form 1199A, which will enable us to direct deposit your payment(s) into your bank.** Your first payment will be issued within 30 days. If further payments are due, they will be made every four weeks until the expiration of the award.
- 2. LUMP SUM PAYMENTS** - If you are currently working, or if you are receiving retirement benefits from the Office of Personnel Management, you may be entitled to a "lump-sum" payment of your schedule award. Please contact the District Office at the address listed on the first page of this letter and specifically request information concerning this option.
- 3. CHANGE OF ADDRESS** - Notify this office immediately of any change of address either for correspondence or for direct deposit. Notification must be in writing, signed by you, to the address shown on the first page of this letter. Include your file number, your old address, and your new address.
- 4. CHANGE IN STATUS OF DEPENDENTS** - If your award is paid at the augmented rate of 3/4 because you have one or more dependents, you are required to provide written notification immediately of any change in status of your dependents, to the address on the first page of this letter. The notice must be signed by you and include your file number, the name of the dependent whose status changed, the effective date of the change, and the nature of the change in status. If you originally claimed only one dependent, and there is a change in the status of your sole dependent, do not cash any checks you receive after the change in status of that dependent. Return the checks promptly for adjustment by this Office.
- 5. RETURN TO WORK** - You may work or receive retirement benefits from the Office of Personnel Management (OPM) during the period of this award without any effect on your schedule award payments.
- 6. SOCIAL SECURITY DISABILITY BENEFITS** - Please contact your local Social Security Office regarding this award if you are receiving or have filed for Social Security Disability Benefits.
- 7. VA BENEFITS** - You are required to notify this office if you have received, or are receiving any VA benefits for the same part of the body.
- 8. EXPIRATION OF AWARD** - After the ending date of this award noted in item 3, your entitlement to compensation will be based solely on disability for work resulting from the accepted injury. You may claim continuing compensation by submitting evidence showing that the accepted injury prevents you from performing the kind of work you were doing when injured and from earning comparable wages. Please note that compensation for disability cannot be paid for any period during which you receive retirement benefits from OPM.

If you disagree with this decision, you should carefully review the attached appeal rights, and pursue whichever avenue is appropriate to your situation.


Sincerely,



REMETA HUBBARD
Claims Examiner

Enclosures: Appeal Rights

UNITED STATES POSTAL SERVICE
LOUISIANA PERFORMANCE CLUSTER-BATON ROUGE OFFICE
HEALTH & RESOURCE MANAGEMENT
PO BOX 57569
NEW ORLEANS, LA 70157



PAUL FELSER, ESQ
FELSER LAW FIRM, P.C.
PO BOX 10267
SAVANNAH, GA 31401

Case Number:
Employee:
Date: September 26, 2008

FEDERAL EMPLOYEES' COMPENSATION ACT APPEAL RIGHTS

If you disagree with the attached decision, you have the right to request an appeal. If you wish to request an appeal, you should review these appeal rights carefully and decide which appeal to request. There are 3 different types of appeal: HEARING (this includes either an Oral Hearing, or a Review of the Written Record), RECONSIDERATION, and ECAB REVIEW. YOU MAY ONLY REQUEST ONE TYPE OF APPEAL AT THIS TIME. Place an "X" on the attached form indicating which appeal you are requesting. Complete the information requested at the bottom of the form. Place the form on top of any material you are submitting. Then mail the form with attachments to the address listed for the type of appeal that you select. Always write the type of appeal you are requesting on the outside of the envelope ("HEARING REQUEST", "RECONSIDERATION REQUEST", or "ECAB REVIEW"). Your appeal rights are as follows:

1. **HEARING:** If your injury occurred on or after July 4, 1966, and you have not requested reconsideration, as described below, you may request a **Hearing**. To protect your right to a hearing, any request for a hearing must be made before any request for reconsideration by the District Office (5 U.S.C. 8124(b)(1)). Any hearing request must also be made in writing, within 30 calendar days after the date of this decision, as determined by the postmark of your letter. (20 C.F.R. 10.616). There are two forms of hearing. You may request either one or the other, but not both.
 - a. One form of Hearing is an **Oral Hearing**. An informal oral hearing is conducted by a hearing representative at a location near your home or by telephone/teleconference. You may present oral testimony and written evidence in support of your claim. Any person authorized by you in writing may represent you at an oral hearing. At the discretion of the hearing representative, an oral hearing may be conducted by telephone or teleconference.
 - b. The other form of a Hearing is a **Review of the Written Record**. This is also conducted by a hearing representative. You may submit additional written evidence, which must be sent with your request for review. You will not be asked to attend or give oral testimony.
2. **RECONSIDERATION:** If you have additional evidence or legal argument that you believe will establish your claim, you may request, in writing, that OWCP reconsider this decision. The request must be made within one calendar year of the date of the decision, clearly state the grounds upon which reconsideration is being requested, and be accompanied by relevant evidence not previously submitted. This evidence might include medical reports, sworn statements, or a legal argument not previously made, which apply directly to the issue addressed by this decision. In order to ensure that you receive an independent evaluation of the new evidence, persons other than those who made this determination will reconsider your case. (20 C.F.R. 10.605-610)
3. **REVIEW BY THE EMPLOYEES' COMPENSATION APPEALS BOARD (ECAB):** If you believe that all available evidence that would establish your claim has already been submitted, you have the right to request review by the ECAB (20 C.F.R. 10.625). The ECAB will review only the evidence received prior to the date of this decision (20 C.F.R. Part 501). Any request for review by the ECAB should be made within 90 days from the date of this decision. The ECAB may waive failure to file within 90 days if you request review within one year of the date of this decision and show a good reason for the delay.

If you request reconsideration or a hearing (either oral or review of the written record), OWCP will issue a decision that includes your right to further administrative review of that decision.

Case Number:
Employee:
Date: September 26, 2008

APPEAL REQUEST FORM

If you decide to appeal this decision, read these instructions carefully. You must specify which procedure you request by checking one of the options listed below. Place this form on top of any materials you submit. Be sure to mail this form, along with any additional materials, to the appropriate address. YOU MAY ONLY REQUEST ONE TYPE OF APPEAL AT THIS TIME

ORAL HEARING

Depending on your geographical location, the issue involved in your case, the number of hearing requests in your area, and at the discretion of the hearing representative, we may expedite your appeal by providing you a telephone hearing. Please check here if you would prefer a telephone hearing

REVIEW OF THE WRITTEN RECORD

For each of these options, you must submit this form within 30 calendar days of the date of the decision. You may also submit additional written evidence with your request. You must mail your request to:

**Branch of Hearings and Review
Office of Workers' Compensation Programs
P. O. Box 37117
Washington, DC 20013-7117**

RECONSIDERATION:

Submit your request within 1 calendar year of the date of the decision. You must state the grounds upon which reconsideration is being requested. Your request must also include relevant new evidence or legal argument not previously made. Mail your request to:

**DOL DFEC Central Mailroom
P. O. Box 8300
London, KY 40742**

ECAB APPEAL:

Submit this form within 90 calendar days of the date of the decision. No additional evidence after the date of the decision will be reviewed. To expedite the processing of your ECAB appeal, you may include a completed copy of the AB 1 form used by ECAB to docket appeals available on the Department of Labor Web Site at www.dol.gov/ecab. Mail your request to:

**Employees' Compensation Appeals Board
200 Constitution Avenue NW, Room S-5220
Washington, DC 20210**

SIGNATURE _____ TODAY'S DATE _____
PRINTED NAME _____ DECISION DATE _____
ADDRESS _____ PHONE _____
CITY _____ STATE _____ ZIP _____

I have reviewed the medical evidence and the Statement of Accepted Facts.

The calculation of impairment is based on the 5th ed. of the AMA Guidelines, FECA Procedure Manual Chapter 3-700, and the pertinent FECA Bulletins. In specific instances, OWCP procedure has been established as precedent over the AMA Guidelines.

LEFT UPPER EXTREMITY

SENSORY DEFICIT (T. 16-15, p. 492: 16-10, p. 482: T 15-17, p. 424)

Median nerve max. = 39%

10% of 39% = 4% PPI of the LUE

RIGHT UPPER EXTREMITY

SENSORY DEFICIT (T. 16-15, p. 492: 16-10, p. 482: T 15-17, p. 424)

Median nerve max. = 39%

10% of 39% = 4%

Ulnar nerve max. = 7%

10% of 7% = 1%

Combining 4, 1 = 5% due to sensory deficit

MOTOR DEFICIT (T. 16-15, p. 492: 16-11, p. 484, T. 15-17, p. 424)

Ulnar nerve max. = 46%

2% of 46% = 1% due to motor deficit

RANGE OF MOTION, SHOULDER Pages 476-479, Ts 16-40, 43, 46

Flexion 130 3%

Extension 10 2%

Abduction 110 3%

Adduction 10 1%

Internal rot. 40 3%

External rot 50 1%

Total 13% due to range of motion

COMBINING 13, 5, 1 = 18% PPI of the RUE



R. Meador M.D.

DMA

5.31.08

I have reviewed the medical evidence and the Statement of Accepted Facts.

The calculation of impairment is based on the 5th ed. of the AMA Guidelines, FECA Procedure Manual Chapter 3-700, and the pertinent FECA Bulletins. In specific instances, OWCP procedure has been established as precedent over the AMA Guidelines.

The issue is why I did not include impairment of the LUE due to C6 and C7 radiculopathy in my report of 5.31.08.

DISCUSSION

The accepted condition is SPRAIN OF NECK. The 5th ed. of the AMA Guidelines does not describe any impairment award due to strains or sprains. OWCP does not recognize those conditions as being permanent in nature; therefore, strains or sprains cannot be the basis of impairment awards.

If it is determined that the C6 and C7 radiculopathy is related to Ms. Kirkes Federal job, and is accepted by OWCP, then the 5% sensory impairment of the LUE would be probative.



R. Meador M.D.

DMA

9.12.08