

File Number
HR11-D-H

U.S. DEPARTMENT OF LABOR

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

RECEIVED JAN 18 2011

JAN 11 2011

Date of Injury:
Employee:

Dear

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 preliminary review has been completed, and it has been determined that the case is not in posture for a hearing at this time. The decision of the District Office has been vacated and returned to the district office for further action as explained in the attached Remand Order.

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

US DEPARTMENT OF LABOR
OFFICE OF WORKERS' COMP PROGRAMS
PO BOX 8300 DISTRICT 6 JAC
LONDON, KY 40742-8300

Sincerely,



Carol E. Adams
Hearing Decision

PAUL H FELSER
FELSER LAW FIRM, P.C.
POST OFFICE BOX 10267
SAVANNAH, GA 31412

U.S. DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

DECISION OF THE HEARING REPRESENTATIVE

In the matter of the claim for compensation under Title 5, U.S. Code 8101 et. Seq. of,
Claimant; Employed by the _____, Case number _____

Merit consideration of the case file was completed in Washington, D.C. Based on this review, the decision of the District Office dated October 5, 2010 is set aside and remanded for the reasons set forth below.

The issue for determination is whether the claimant has a permanent impairment of six (6) percent of her right upper extremity.

_____ is employed as a _____ with the _____. She filed a claim for traumatic injury for date of injury of _____. The claim was accepted for bilateral shoulder impingement. On April 20, 2005 the claimant had right arthroscopic shoulder subacromial decompression for impingement. On September 10, 2008 the claimant had left shoulder arthroscopic decompression and AC joint resection and debridement.

On June 23, 2009 the claimant filed a claim for compensation for permanent impairment.

On December 8, 2009, after development of the claim, the Office denied the claim for schedule award for permanent impairment on the basis that the claimant had not provided evidence to support she sustained a permanent impairment that resulted from her work injury. The claimant disagreed with the decision and requested, through her attorney, a hearing before an OWCP representative.

A hearing was held on April 19, 2010. By hearing decision dated July 13, 2010, the case record was remanded for further development. The details of the decision are incorporated by reference.

On remand the Office referred the case record to a District Medical Advisor (DMA) for review and calculations of permanent impairment based on the AMA Guides, 6th edition. By report dated July 14, 2010, the DMA provided two ratings. The DMA determined, using a diagnosed based impairment (DBI) rating, that the claimant had a two (2) percent impairment rating. The DMA also provided a rating, using the range of motion method, and determined the claimant had a six (6) percent permanent impairment. The DMA noted that it was in the claimant's best interest to use the range of motion method.

By decision dated July 21, 2010, the Office awarded the claimant compensation for schedule award for six (6) percent permanent impairment of the right upper extremity.

The claimant's attorney disagreed with the Office decision and requested a hearing before an OWCP representative. A preliminary review of the case was completed and it was determined that the case was not in posture for a hearing. By decision dated September 28, 2010, the decision was set aside and the case remanded for further development. On remand the Office

was to refer the case back to the DMA to provide clarification as to whether there was any medical reason that the DBI method could not be used to determine the rating.

On remand the Office referred the case record back to the DMA for clarification. The DMA in a memo dated September October 1, 2010 provided additional clarification.

The Office issued a new decision on October 5, 2010, determining the claimant was entitled to compensation for six (6) percent permanent impairment of the right upper extremity.

The Office on May 1, 2009 changed from using the 5th edition, AMA Guides to using the 6th edition of the Guides to determine the degree of permanent impairment. The 5th edition used range of motion and strength to determine a rating.¹ The 6th edition rating is a DBI rating method. For consistency in ratings, the DBI method should be used unless there are medical reasons to support that the DBI cannot be used to provide a rating based on the diagnosis.²

I again find the DMA did not provide sufficient information to determine if it was appropriate for the Office to use the stand alone tables rating rather than the DBI method rating to award compensation for permanent impairment. The DMA noted that he believed the ROM method was more reflective of the functional results and more favorable. He does not provide any reasoning to support his opinion as to why the tables were more “reflective” other than they were more favorable. The DMA stated that in practice either method could be used, depending on the situation, and stated that it was consistent with the AMA Guides 6th edition. He does not explain what situation exists in this case that would warrant the use of the tables over the DBI. He does not provide any citing of the AMA Guides to support his statement that either the tables or the DBI method can be used or should be used in this situation. The DMA only refers to pages 390 and 461 where he states that the Guides outline the range of motion method. The DMA does not provide enough information to determine as to whether the AMA Guides supports the use of the standalone tables to determine permanent impairment in this case. Also, I find there is nothing in the procedures or policy that the Office is to obtain calculations for permanent impairment by the DBI method and the table method and use the greater of the two methods, merely because one awards a higher impairment rating over the other.

The FECA Procedure Manual states, “The evaluation methodology used in the Sixth Edition substantially revises the methods used in previous editions. The Guides characterize the objective of the new methodology to be consistent, enhance relevancy, promote precision, and standardize the rating process. The foundation of the new methodology is the diagnosis-based grid used for each organ system and chapter. Evaluators will rate impairment according to the diagnosis representing the source of the most impairment in the given bodily region. If there is more than one ratable diagnosis in an affected extremity, the rater should combine all regional impairments for a final impairment at the extremity level.”³

¹ See FECA Bulletin 09-03.

² See FECA Procedure Manual, Part 3-700 3b and 3-700, Exhibit 1.

³ FECA Procedure Manual 3-700; Exhibit 1, paragraph 2.

Therefore, the Office on remand should asked the DMA to provide additional clarification, as noted above, as to what situation exists in this case that supports the use of the stand alone tables. The DMA should quote the AMA Guides where it references that the stand alone tables should be used in this situation to provide an accurate rating.

After completion of the aforementioned development and any other development deemed necessary, the Office should issue a new decision.

In accordance with the findings above, the decision of the Office dated October 5, 2010 is set aside and the case **remanded**.

Date: JAN 11 2011

Washington, D.C.



Carol E. Adams
Hearing Representative
For
Director, Office of Workers'
Compensation Programs