

File Number:
HR10-D-H

RECEIVED NOV 29 2010

U.S. DEPARTMENT OF LABOR

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

NOV 17 2010

Date of Injury:
Employee:

Dear Ms. :

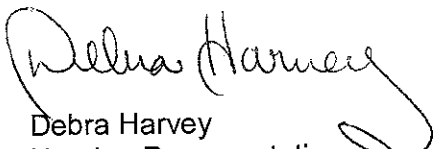
This is in reference to your workers' compensation claim. Pursuant to your request for a hearing, the case file was transferred to the Branch of Hearings and Review.

A hearing was held on 08/23/2010. 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 New York City 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 2 NYC
LONDON, KY 40742-8300

Sincerely,


Debra Harvey
Hearing Representative

PAUL H FELSER
ATTORNEY AT LAW
FELSER LAW FIRM
PO 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 No. Oral hearing was held on August 23, 2010, in
Jacksonville, Florida*

The issue is whether the claimant has an upper extremity impairment that would entitle her to schedule award benefits

The claimant, date of birth, , was employed by the in
, as a . She filed the Form CA-2, Notice
of Occupational Disease, on , for bilateral carpal tunnel syndrome and
bilateral lateral epicondylitis as a result of repetitive duties in the work place. After
several denials the claim was accepted on reconsideration for an aggravation of right
lateral epicondylitis and right elbow strain. The claimant also has an accepted right
elbow strain in an additional claim () that has been combined into the instant
claim.

On February 4, 2010, she filed the Form CA-7, claim for compensation, for schedule award benefits for permanent partial impairment. On February 17, 2010, the District Office wrote the claimant and advised her additional medical information was needed to establish she had reached maximum medical improvement and to establish a permanent impairment. She was asked to have her doctor provide a medical report under the Sixth Edition of the *AMA Guides to the Evaluation of Permanent Impairment*. No medical evidence was received and the Office denied the claim for schedule award benefits on April 25, 2010. The claimant disagreed with this decision and, through her Attorney, Paul Felser, requested an oral hearing before an OWCP Hearing Representative.

The hearing was held on August 23, 2010, in Jacksonville, Florida. The claimant did not appear for the hearing but was represented by her attorney, Mr. Felser.

Mr. Felser argued that the claim should be expanded to include conditions of right shoulder impingement syndrome, right lateral and medial epicondylitis, left medial and lateral epicondylitis, bilateral carpal tunnel syndrome, and possible ulnar neuropathy. He stated a medical report from Dr . dated July 28, 2010, appeared to rate the claimant under the Sixth Edition of the *AMA Guides* but provided an impairment rating of only one percent for the lateral epicondylitis. He argued that the acceptance of other conditions would provide for an additional rating. He argued that the claim be remanded for further development and/or acceptance of additional conditions.

The record was left open for thirty days to allow for receipt of additional evidence for consideration. A copy of the hearing transcript was sent to the Employing Agency on August 31, 2010, for review and comment. There was no response from the agency. A post-hearing brief from Mr. Felser was also received restating his arguments.

I have carefully reviewed all the evidence of record and find that the evidence does not support expansion of the claim to include the following conditions: right shoulder impingement syndrome and "possible" ulnar neuropathy as there is no evidence to establish these conditions were causally related to employment factors. The electrodiagnostic testing was normal for left carpal tunnel syndrome but showed changes "suggestive" of right carpal tunnel syndrome. This condition has not been firmly established. It is the claimant's burden of proof to establish her claim. Should she wish to pursue expansion of the claim for these conditions, she should provide a reasoned medical report containing diagnostic testing, objective findings on examination, and a reasoned opinion from the physician establishing a causal relationship between the claimed conditions and employment factors.

I do find, however, that the evidence of record supports expanding the claim to include the left lateral epicondylitis condition. In the initial claim, the claimant alleged bilateral elbow conditions. Dr. report of October 31, 2008, stated the claimant had ongoing tenderness with decreased strength of bilateral extensor group of muscles of the elbow or a lateral epicondylitis of chronic nature. He stated there was no evidence of carpal tunnel syndrome or ulnar nerve neuropathy at the elbow. "However, there is no specific neurological test that will prove the diagnosis of lateral epicondylitis, which is a repetitive occupational injury, classic for her kind of employment as a postal employee sorting out mails, weighing anyway from a few ounces to few pounds up to 70 pounds at time, all day long eight hours." He stated the bilateral epicondylitis was due to "occupational injury of repetitions nature."

In a report of November 12, 2009, Dr. stated he was treating her for lateral epicondylitis and a right elbow strain after an injury at work while sorting mail. He stated the cause of her condition is "multifaceted. She works as postal employee who constantly deals with mail packs that wharey [sic] from few grams in wight [sic] to as much as 35lbs on a constant basis every day using her upper extremities up to eight hours a day for the last several years." He continued:

"Such activities are known to cause the above mentioned medical condition a well established medical fact about occupational injuries of repetitive nature. An injury on 04/01/2004 has brought attention to the subsequent ongoing symptoms of pain on use of upper extremities during the course of doing her work at , is due the aggravation of the inflammatory process that is ongoing from the lateral epicondylitis from repeated use of her upper extremities all day long several thousand times a day for several years. Specifically, the patient has previously noted several injuries relate to the current symptoms, but was able to function reasonably well up till the most recent aggravation."

The assessment was right and left lateral epicondylitis since 08/21/2004, and a right elbow sprain at work place on 4/1/2004.”

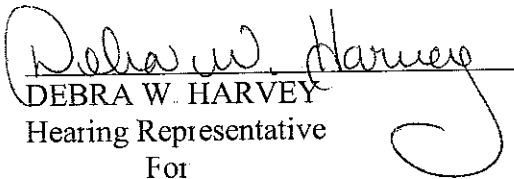
The District Office relied on the October 2008 and November 2009 reports when it accepted the right lateral epicondylitis and sprain. These same reports contained a diagnosis of left lateral epicondylitis with the same rationale used in the acceptance of the right elbow conditions. Thus, I find that the medical supports expansion of the claim to include left lateral epicondylitis

After the hearing had concluded, additional and detailed impairment rating reports were received. I find the Office’s decision concerning payment of schedule award was correct on the date of issuance; however, the receipt of additional evidence warrants review by the DMA.

Therefore, the Office’s decision dated April 26, 2010, is hereby SET ASIDE and the file REMANDED for formal acceptance of left lateral epicondylitis. The file is also returned for DMA review of the impairment ratings dated July 28, 2010. Once this review has occurred and after completion of any additional evidence the Office deems necessary, a new decision on impairments of both upper extremities should be issued.

DATED: NOV 17 2010

WASHINGTON, D.C.


DEBRA W. HARVEY
Hearing Representative
For
Director, Office of Workers'
Compensation Programs