

File Number:
Merit Review3-D-NO

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U.S. DEPARTMENT OF LABOR

OFFICE OF WORKERS' COMP PROGRAMS
PO BOX 8300 DISTRICT 11 KCM
LONDON, KY 40742-8300
Phone: (816) 268-3040

August 30, 2011

Date of Injury: 10/15/2003
Employee:

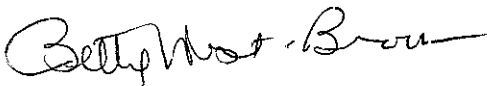
Dear Mr. _____ :

This concerns your compensation case and your request for reconsideration received 06/17/2011.

We have evaluated the evidence submitted in support of your request for review. Your case has been reviewed on its merits under Title 5, United States Code, Section 8128, in relation to your application including evidence submitted in support thereof. Please review the enclosed Notice of Decision

It is therefore ORDERED that the decision dated 05/10/2011 is vacated and you are entitled to a schedule award for 1% permanent partial impairment of the left upper extremity.

Sincerely,



Betty West-Brock
Senior Claims Examiner

PAUL FESLER
ATTY
PO BOX 10267
SAVANNAH, GA 72211

NOTICE OF DECISION

Case Number:
Claimant Name:

ISSUE:

The issue for determination is whether you have provided sufficient new and relevant medical evidence to warrant modification of the schedule award decision dated 05/10/2011.

REQUIREMENTS OF ENTITLEMENT:

To require the Office to review a case for reconsideration under Section 8128 (a) of the Act, a claimant must submit relevant evidence not previously of record or advance legal contentions not previously considered. Where such evidence or contentions are not present, it is a matter of discretion on the part of the Office whether to reopen a case for further merit review.

BACKGROUND:

Incorporated by reference into this decision is the prior decision of file dated 05/10/2011. This decision contains the background of the claim.

Your claim was accepted for CONCUSSION NOS, 850.9; SPRAIN OF NECK, 847.0; OTHER SYNDROMES AFFECTING CERVICAL REGION, 723.8; CERVICALGIA, 723.1; POSTCONCUSSION SYNDROME, 310.2; OTHER ARTERIAL DISSECTION, 443.2; CERVICAL SPONDYLOSIS WITHOUT MYELOPATHY, 721.0. The 05/10/2011 decision denied your claim for schedule award because the evidence was not sufficient to establish that you sustained permanent impairment to a schedule member due to your accepted work injury and the accepted conditions.

On 06/28/2011 your claim was updated to include acceptance of left shoulder sprain (resolved as of 03/18/2011)

You disagreed with the 05/10/2011 decision and submitted a request for reconsideration dated 06/14/2011 received on 06/17/2011

DISCUSSION OF EVIDENCE:

You have submitted a timely request for reconsideration received on 12/28/2009. In addition to your reconsideration request we have received the following evidence:

- Duplicate medical report from M.D. dated 10/11/2010
- Duplicate reports of MRI's of the Brain, Left Shoulder and Cervical Spine dated 02/28/2011
- Duplicate Referee examination reports from MD dated 02/02/2011, 03/17/2011 and 03/18/2011.
- Duplicate FCE report dated 04/18/2011
- EMG/NCS report dated 02/28/2011.
- Medication monitoring report dated 05/28/2011
- Follow up treatment note from APN/M MD PA dated 05/26/2011 and 07/05/2011
- A form CA2 Occupational Disease and Injury Claim dated 06/14/2011 which was submitted to request expansion of your claim to include a left shoulder condition. This was addressed in the decision dated 06/28/2011 which expanded your claim to include the left shoulder sprain.

The new medical notes listed above are considered new evidence not previously of record. Therefore, a merit review of the case under 5 U.S.C. 8128 has been undertaken. Duplicate medical reports submitted are of no probative value in that they were previously considered in the prior decision.

It is noted that the decision dated 05/10/2011 discussed the District Medical Advisor (DMA) review of the impairment ratings offered by Dr. [redacted] dated 10/11/2010. He noted that all of the sensory symptoms, in connection with the upper extremities, were rated by Dr. [redacted] as being a consequence of peripheral nerve conditions, none of which have been accepted by this Office. As an aside, the DMA indicated that even if these ratings were correctly processed there is doubt as to whether you were at MMI, in connection with many of these non-accepted peripheral nerve conditions, since Dr. [redacted] recommended additional diagnostic testing and even surgery in relation with a number of these conditions. The DMA stated that the input provided by Dr. [redacted] in his report dated 10/11/2010 contained no radicular signs or symptoms of the upper extremities to support that there is a radicular aspect to the neck diagnoses accepted by this Office. Based upon the above, the DMA indicated the schedule awards would be 0% for the right upper extremity and 0% for the left upper extremity.

On 06/28/2011 your claim was expanded to include acceptance of left shoulder sprain resolved as of 3/18/2011. The expansion was based on the opinion of referee examiner Dr. [redacted] report dated 03/18/2011.

You did not provide new medical evidence which offered an impairment rating for your left upper extremity or discussed the decision issued on 05/10/2011.

In accordance with standard procedure your case file was forwarded to the DMA for review. In a report dated 08/08/2011 the DMA noted that on 06/28/2011 the office accepted the left shoulder strain (resolved as of 03/18/2011). He reported "Using the 6th edition AMA Guides to the Evaluation of Permanent Impairment the rating from class 1 for a "sprain/strain no residual instability or loss of motion but persisting pain at MMI" from Class 1 with a "history of painful injury, residual symptoms without objective findings (this impairment can only be given once in an individual's lifetime" can range from 0 to 2% with the default value being 1%."

He reported that in your case the reason for using Class 1 was that the MRI of the left shoulder obtained on 02/28/2011 showed absolutely no abnormalities which is very surprising noting your age of 64 ½ years old at the time the study was performed and the study would have been expected to show some degenerative changes.

Utilizing the 6th edition of the Guides he calculated an impairment rating of 1% of your left shoulder condition.

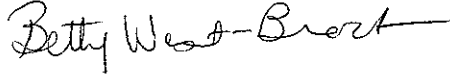
BASIS FOR DECISION:

New medical evidence was not received which offered an opinion concerning an impairment rating for your left upper extremity. However, the DMA reviewed the evidence of file and acknowledged that your claim was expanded to include the left shoulder sprain condition. He provided an opinion dated 08/08/2011 which offered an impairment rating of 1% of the left upper extremity resulting from left shoulder sprain condition. The impairment rating offered was based on the 6th edition (2nd printing: April 2009) AMA Guides to the Evaluation of Permanent Impairment. He noted a maximum medical improvement (MMI) date based on the completion date of the Functional Capacity Evaluation on 04/18/2011.

Based on this review of the new medical evidence submitted, I have determined that you are entitled to a schedule award for 1% permanent partial impairment of the left upper extremity.

CONCLUSION:

This case has been reviewed under 5 USC 8128. It is determined that the evidence submitted is sufficient to vacate the Office's previous decision. You are entitled to a schedule award for 1% permanent partial impairment of the left upper extremity.



Betty West-Brock
Senior Claims Examiner