

File Number:  
HR10-D-H

RECEIVED MAR 01 2013

U.S. DEPARTMENT OF LABOR

FEB 26 2013

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 12/10/2012. 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 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,



Debra Harvey  
Hearing Representative

PAUL H FELSER  
ATTORNEY AT LAW  
7 EAST CONGRESS ST SUITE 400  
SAVANNAH, GA 31401

***If you have a disability (a substantially limiting physical or mental impairment), please contact our office/claims examiner for information about the kinds of help available, such as communication assistance (alternate formats or sign language interpretation), accommodations and modifications.***

U.S. DEPARTMENT OF LABOR  
Office of Workers' Compensation Programs

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DECISION OF THE HEARING REPRESENTATIVE

*In the matter of the claim for compensation under Title 5, U.S. Code 8101 et seq. of Suzanne D. Faust, Claimant; Employed by the \_\_\_\_\_*  
Case No: \_\_\_\_\_ Telephonic hearing was held on  
December 10, 2012.

The issue is whether the claimant had permanent impairment greater than 21% of the right hand and 16% of the left hand for which schedule award benefits have been previously paid.

The claimant is employed by the \_\_\_\_\_, in \_\_\_\_\_, as a \_\_\_\_\_. She filed the Form CA-2, Notice of Occupational Disease, on \_\_\_\_\_ for bilateral thumb problems that she related to the performance of duty.<sup>1</sup> Her claim was accepted for aggravations of bilateral thumb osteoarthritis on June 15, 2009.

She underwent a fusion of the left thumb CMC joint and an injection of the right thumb CMC joint on April 16, 2009. She was noted to have a non-union of the fusion on January 7, 2010. She had hardware removal with a re-fusion of the left thumb on February 4, 2010, and a right CMC fusion on August 24, 2010.

She has received compensation benefits for wage loss and on July 14, 2012, she filed a Form CA-7, Claim for Compensation, for schedule award benefits for permanent impairment. An impairment rating was received from Dr. \_\_\_\_\_ on April 26, 2012, who based that impairment rating on a functional capacity evaluation (FCE) that he co-signed.

The FCE stated:

“An impairment calculation The Guides of the Evaluation of Permanent Impairment, 6<sup>th</sup> edition and from the American Medical Association was requested. Client’s impairment calculated was used for range of motion measurements as she did not qualify for a diagnostic impairment rating. The diagnostic impairment rating for CMC arthrodesis assumes that the client has full range of motion. Because she lacks range of motion these deficits were used for impairment calculation. Upper extremity range of motion measurements resulted in the following hand impairments: the thumb range of motion on the right results in a 10% hand impairment while thumb range of motion impairment on the left

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<sup>1</sup> The claimant has additional claims for right elbow epicondylitis under 062052260 and 062052442

upper extremity resulted in a 6% hand impairment. Index finger hand impairment on the right was 1% and 1% on the left. Middle finger range of motion impairment resulted in 1% impairment both right and left. Ring finger range of motion impairment resulted in a 2% hand impairment on the right and 1% hand impairment on the left. Little finger hand impairment resulted in 1% bilaterally for total conversion of all hand impairments of her right upper extremity totaled 15% and her left upper extremity totaled 10%. The total upper extremity impairment for the hand on the right was 14%, 9% on the left. Client's total upper extremity impairment for her wrist on the right with 4% and on the left was 11%; combined hand and wrist upper extremity measurements equaled 18% on the right and 20% on left. Converting upper extremity to whole person client's right upper extremity impairments convert to 11% while her left upper extremity impairments convert to 12%. Using combined values chart in the 6<sup>th</sup> edition of *The Guides to the Evaluation of Permanent Impairment* her whole person impairment for bilateral CMC arthrodesis is 22%."

The Office's District Medical Advisor (DMA) reviewed the report on August 2, 2012, and noted the claimant had arthritis and loss of motion of the thumbs that required fusions and a re-fusion on the left. He stated that the FCE and Dr. had based the impairment calculations on arthritis of the whole hand and wrist with a motion deficit, whereas, only arthritis of the thumbs was the accepted condition. He stated the schedule award of 18% of the right and 20% of the left could not be accepted. He stated that using the "DBI method of impairment combined with ankylosis under thumb ROM table 15-30, page 468, the impairment R hand equals 21% and L hand equals 16.1%." His final impairment for the accepted arthritis to the thumbs with CMS fusion equated to impairments of 21% of the right hand and 16% of the left hand from the diagnosis-based method of the *AMA Guides to the Evaluation of Permanent Impairment*, sixth edition.

On August 8, 2012, the Office issued a formal decision awarding schedule award benefits for 21% of the right hand and 16% of the left hand. The claimant disagreed with this decision and requested a hearing before an OWCP Hearing Representative.

The telephonic hearing was held on December 10, 2012. The claimant was not present at the hearing but was represented by Attorney Paul Felser.

Mr. Felser stated there was a third surgery performed on the claimant's left thumb around August 18, 2011. He stated this surgery was not noted in the DMA's report. He stated this surgery was retroactively approved and was unsure to what extent this omission affected the ratings. He argued that it could affect the ratings significantly. He also stated there were several medical conditions that had been identified in the medical reports but not accepted by the Office. He stated that these conditions should have been at least developed by the Office to include arthropathy of the hand, trigger finger, trigger thumb, non-union of fracture, right carpal tunnel syndrome, among other conditions that had not been accepted. He stated the range of motion method would be the appropriate method to calculate schedule award benefits. He argued that due to

multiple parts of the arm and hand being impaired, a rating to the upper extremity would be appropriate.

Mr. Felser was advised that a copy of the surgical report of August 18, 2011, was not in the case file.

The record was left open for 30 days to allow for receipt of additional evidence for consideration.

A copy of the hearing transcript was sent to the Employing Agency for review and comment on December 18, 2012. There was no response.

A copy of the August 18, 2011, operative report was received showing the claimant underwent a left trigger thumb release of A1 pulley on that date.

A supplemental report of October 23, 2012, from Dr. \_\_\_\_\_ was received stating the claimant was doing better but was still having stiffness in her thumbs. He stated she will have persistent disability in her thumbs for the rest of her life due to the fusion that was performed.

I have carefully reviewed all the evidence of file and find there is no basis to expand the claim to accept additional conditions. There is no medical evidence provided that would establish any other finger, hand, or wrist condition is related to the employment factors. If the claimant wishes to expand the instant claim, she should write to the Office and request such, or file a new claim for these conditions.

Section 8107 of the Federal Employees' Compensation Act (FECA) provides that if there is a permanent disability involving the loss or loss of use of a member of function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function. Section 8107 also sets for the number of weeks of compensation to be paid for permanent loss of use of the members of the body that are listed in the schedule. Neither the Act nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. The Board has held, however, 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 American Medical Association's *Guide to the Evaluation of Permanent Impairment* as the standard for determining the extent of permanent impairment and the Board has concurred such adoption of these *Guides*.<sup>2</sup> The sixth edition of the *Guides* became effective for calculating schedule awards on May 1, 2009.<sup>3</sup>

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<sup>2</sup> A *George Lampo*, 45 ECAB 441 (1994).

<sup>3</sup> FECA *Procedure Manual*, 3-0700, Exhibit 1

The Office's Federal (FECA) Procedure Manual provides that in obtaining medical evidence required for a schedule award the evaluation made by the attending physician must include a detailed description of the impairment including, where applicable, the loss in degrees of active and passive motion of the affected member or functions, the amount of any atrophy or deformity, decreases in strength or disturbance of sensation, or other pertinent description of the impairment. This description must be of sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations.<sup>4</sup>

When a medical report is received from the attending physician, the examining physician is not responsible for calculation of the percentage of impairment.<sup>5</sup> The District Medical Advisor (DMA) is responsible for taking the calculations provided by the examining physician and arriving at an overall impairment percentage rating.<sup>6</sup>

At the time that the DMA reviewed the file, he was not aware the claimant underwent an additional surgery on the left thumb on August 18, 2011. This procedure was a left trigger thumb release of the A1 pulley. The file should be returned to the DMA for review of the operative report. The DMA should opine as to whether this surgery was indicated for residuals of the accepted thumb condition and/or the prior surgeries. If so, he should determine if there is any additional impairment to the left thumb. Further, I find that the DMA should be asked to comment on the calculation of the impairment rating as provided in the FCE which states that the diagnosis based method cannot be used to calculate impairments for arthrodesis because the claimant lacked range of motion.

The *Procedure Manual* states that in calculating impairments, a diagnosis-based approach to evaluating impairments replaces the prior range of motion assessments used. The DBA method's basis should include the history of the functional impairment, the physical examination, and clinical studies performed. Impact on the claimant's life and work activities is also considered. The range of motion measurements are primarily used as factors in the adjustment grid rather than stand alone ratings. However, the sixth edition states that the range of motion may be used if the guides so state or when no other diagnosis-based sections are applicable.<sup>7</sup> Therefore, the DMA should provide reasoning as to why the DBA method is used for calculating the impairment in this case rather than the range of motion method.

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<sup>4</sup> *John H Smith*, 41 ECAB \_\_\_\_ (Docket No. 89-1756, issued January 31, 1990)

<sup>5</sup> FECA Bulletin Number 96-17.

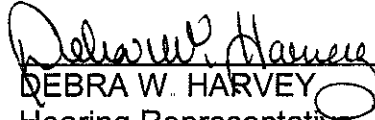
<sup>6</sup> FECA Bulletin Number 96-17.

<sup>7</sup> FECA *Procedure Manual*, supra note 3.

Therefore, for the reasons set forth above, the decision of the District Office dated August 8, 2012, is hereby SET ASIDE and the file REMANDED for additional review by the Office's District Medical Advisor.

DATED: FEB 26 2013

WASHINGTON, D.C.

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