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U.S. DEPARTMENT OF LABOR

OFFICE OF WORKERS' COMP PROGRAMS
PO BOX 8300 DISTRICT 6 JAC
LONDON, KY 40742-8300
Phone: (904) 366-0100

July 14, 2011

Date of Injury:
Employee:

Dear Ms _____ :

This concerns your compensation case and your attorney's request for reconsideration, which was received on April 22, 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 supporting evidence. It is determined that the medical evidence of record supports that you are now entitled to a schedule award for a 5% permanent partial impairment rating of your left lower extremity (leg). The reasons for this decision are outlined in the enclosure.

Given the above, the decision dated April 16, 2010 is vacated and a new decision awarding you a 5% permanent partial impairment rating to the left leg will be processed under separate cover.

Sincerely,



Lori Stagner
Senior Claims Examiner

PAUL FELSER, ESQ
FELSER ATTORNEY AT LAW
PO BOX 10267
SAVANNAH, GA 31412

NOTICE OF DECISION

File Number:
Employee:

Issue:

The issue in this case is whether you have submitted sufficient evidence with your request for reconsideration to warrant modification of the prior formal decision, dated April 16, 2010.

Requirements for Entitlement:

Under 20 CFR § 10.606 all reconsiderations must:

- (1) Be submitted in writing;
- (2) Set forth arguments and contain evidence that either:
 - (i) Shows that OWCP erroneously applied or interpreted a specific point of law;
 - (ii) Advances a relevant legal argument not previously considered by OWCP; or
 - (iii) Constitutes relevant and pertinent new evidence not previously considered by OWCP.

Compensation is provided for specified periods for the permanent loss or loss of use of certain members, organs and functions of the body. Such loss or loss of use is known as permanent impairment. Compensation for proportionate periods of time is payable for partial loss or loss of use of each member, organ or function. OWCP evaluates the degree of impairment to schedule members, organs and functions as defined in 5 U.S.C. 8107 according to the standards set forth in the specified (by OWCP) edition of the American Medical Association's Guides to the Evaluation of Permanent Impairment.

Background:

In _____, you filed timely notice of a traumatic injury to your left leg. Your claim was originally accepted for the condition of left knee sprain. Your claim was later expanded to accept the conditions of chondromalacia left patella and dislocation of left patella. Appropriate benefits have been paid for wage loss and medical treatment, including surgery to your left knee in 2008 and 2009.

In April 2010, you submitted form CA-7, claiming schedule award for your accepted left knee condition. However, by decision dated April 16, 2010, the office denied your request for the reason that the evidence of record was not sufficient to demonstrate a permanent, measurable scheduled impairment. This decision was based on a functional capacity evaluation, signed by both a physical therapist and a treating physician, which indicated a 0% impairment rating for the left leg.

By letter, dated April 15, 2011, your authorized attorney of record requested reconsideration of the prior decision in your claim. New medical evidence was also submitted in support of your claim, thus a merit review of the evidence was warranted. This merit review has now been performed, and your claim is now in posture for a decision on the reconsideration request.

Discussion of Evidence:

Since the issuance of the April 16, 2010 decision, the following evidence has been received and has been made a part of your case record:

- Letters from your attorney, dated 04/15/11 and 04/25/11.
- Multiple physical therapy treatment notes and requests for authorizations.

- Multiple duplicate medical records for treatment received in 2008, 2009 and 2010.
- Several new medical records documenting treatment received from 2010 to 03/29/11.

The letters from your attorney request reconsideration of the office's denial to provide you with a scheduled award for the accepted conditions in this claim. His letter notes that your physician has provided you with permanent medical restrictions which require continued care and treatment, and that this evidence supports the existence of your permanent impairment to the left lower extremity.

Your attorney also submitted argument that your claim requires expansion and indicates your left hip condition is related to or consequential to this injury claim. However, since the April 2010 decision merely addressed your entitlement to a schedule award for the accepted work related conditions, this request is considered to be outside the purview of this particular decision. In addition, although your attorney has cited numerous prior decisions and procedures in support of his opinion, it must be noted that your case record contains a completed form CA-2a, dated in February 2010, which describes a very specific non work related injury to your left hip.

Despite the above, the new medical evidence of record was considered, as a part of the merit review of this claim. Such evidence was subsequently referred to an office medical advisor for further review and opinion. On May 12, 2011, your file and the medical evidence of record were reviewed by an office medical advisor, Dr. . Dr. opined that the AMA Guides were not used correctly in the prior functional capacity evaluation report to give 0% impairment on March 4, 2010. He goes on to include a history of treatment you have received and states that you would be entitled to a 5% impairment of the left leg as a result of your accepted left knee condition. This impairment rating was based on the AMA Guides, 6th Edition, and listed the specific tables and measurements utilized in the calculation of this determination.

Basis for Decision:

New evidence, not previously reviewed as relevant to the issues in your case, was submitted after the prior decision was issued, and therefore a merit review of your case was performed. The office medical advisor, , MD, reviewed the medical evidence in your case record and opined that in accordance with the AMA Guides to the Evaluation of Permanent Impairment, 6th Edition, you are now entitled to a 5% permanent impairment to the left lower extremity (leg). The office medical advisor's opinion is well reasoned and the exact tables/ figures are listed from the 6th Edition of the AMA Guides to support this opinion.

Conclusion:

The new evidence submitted for reconsideration is sufficient to vacate the prior decision and process payment for a schedule award of 5% permanent impairment to the left lower extremity (leg).



Lori Stagner
Senior Claims Examiner
July 14, 2011