

U.S. DEPARTMENT OF LABOR

RECEIVED APR 28 2014

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

April 24, 2014

Date of Injury:
Employee:

Dear Ms.

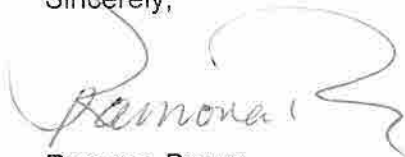
This concerns your compensation case and your request for reconsideration received on 04/03/2014.

We have evaluated the evidence submitted and have reviewed the merits of your case under 5 U.S.C. 8128. You have provided sufficient evidence to warrant modification of the decision dated 04/03/2014. Based on the information received, the decision is now vacated.

The reasons for this decision are outlined in the enclosed Notice of Decision.

Please see the enclosed schedule award letter for a discussion of your rights and responsibilities.

Sincerely,



Ramona Brown
Senior Claims Examiner

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

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.

NOTICE OF DECISION

Claimant Name:

Case Number:

ISSUE: The issue for determination is whether the evidence presented is of sufficient probative value to vacate the decision dated 04/04/2013.

REQUIREMENTS FOR ENTITLEMENT: In accordance with the regulations set forth in 20 CFR § 10.609, if an application for reconsideration is accompanied by new and relevant evidence or by an arguable case for error, OWCP will conduct a merit review of the case to determine whether the prior decision should be modified. If sufficient evidence exists to overturn the prior decision, it should be vacated.

BACKGROUND: On _____ you sustained an injury in the performance of your federal duties and filed a claim for Traumatic Injury. Your claim was accepted for COMPLETE ROTATOR CUFF RUPTURE, BILATERAL, 72761; SPRAIN OF SHOULDER AND UPPER ARM, ROTATOR CUFF, BILATERAL, 8404; PAIN IN JOINT, SHOULDER REGION, RIGHT, 71941; OTHER LYMPHEDEMA, BILATERAL, 4571; ADHESIVE CAPSULITIS OF SHOULDER, LEFT, 7260; ENTHESOPATHY OF ELBOW REGION, RIGHT, 7263; REFLEX SYMPATHETIC DYSTROPHY OF THE UPPER LIMB, BILATERAL, 33721.

You filed a claim for compensation (schedule award) on _____ for an additional impairment. After proper development a formal decision was issued on _____ finding you had a partial permanent impairment of the right upper extremity of 31% and the left upper extremity of 17%. The documentation upon which the decision was based included the second opinion examination with Dr. _____ and the District Medical Adviser.

You disagreed with the 04/04/2013 decision and requested reconsideration by letter from your attorney received on 04/03/2014.

DISCUSSION OF EVIDENCE: The evidence reviewed in support of your reconsideration request includes:

- Daily notes, form _____ Services dated _____

The daily notes as shown above document you continued treatment for lymphedema, however do not provide any impairment rating.

Your attorney argues in his letter requesting reconsideration that the Office did not allow impairment for your lymphedema condition and that the rating provided was in error. Your attorney presented a reasonable legal argument that not all your accepted conditions were considered in the impairment decision of _____. Therefore, a merit review was done.

To determine if there was impairment for the lymphedema condition, your entire file was sent to the district medical advisor for explanation on the rating previously given. It was determined that additional review was needed and your file was sent to another District Medical Advisor, Dr. [redacted] Dr. [redacted] reviewed all the evidence and correctly applied the AMA Guides 6th Edition, finding, several scenarios to which the lymphedema condition should be awarded benefit.

Dr. [redacted] states if the right upper extremity lymphedema is considered a skin impairment the final skin organ rating would be 38% with a final upper extremity impairment of 32% (converts used table 15-11, page 420). If this condition is treated as a right upper extremity then the final right upper extremity rating equals the combination of impairment for the right shoulder arthroplasty (34% and right upper extremity lymphedema 32% for a final rating of 55% for the right upper extremity, per AMA Guides 6th Edition. If lymphedema is considered a skin disorder the final skin organ impairment is 38% and the final right upper extremity is 34%. In his report Dr. [redacted] compares his findings to the other findings of record and explains in great detail per the AMA Guides 6th Edition the reasons for the rating.

Dr. [redacted] further opines that Dr. [redacted] did not find objective evidence of Complex Regional Pain Syndrome (previously referred to as reflex sympathetic dystrophy) during his exam and therefore this condition has no basis for a ratable impairment at MMI. Dr. [redacted] explains, the reasons for this rating, CORRECT RATING METHOD, "For the left upper extremity Dr. [redacted] indicated that the ROM impairment method is more appropriate than the diagnosis based impairment method. This is incorrect. The DBI is the most preferred rating method and the greatest impairment (in this case for post traumatic DJD) encompasses the lesser diagnosis. See reference regarding choosing one diagnosis below. Dr. [redacted] used the ROM method with invalid ROM measurements (per the AMA Guides 6th Edition, please see the reference and rating calculations below).

FUNCTIONAL HISTORY RULE; "Dr. [redacted] also indicated that Grade Modifiers (GM) do not apply in the left UE because there is a greater Right UE impairment. This is incorrect. There is only one rule for a grade modifier (the Functional History Grade Modifier, this does not apply to the Physical exam or Clinical studies grade modifiers) where it can be used for only one diagnosis is a multiple regional rating (the FHGM it is used only for the diagnosis that produces the largest impairment in a particular extremity). This rule separately for each UE (in other words, a right UE impairment has no effect on whether the functional history grade modifier may be used for a left UE rating as each UE impairment is independent of the other extremity). This is discussed in section 15.3a, page 406 of the AMA Guides 6th Edition. The functional history is reliable with the underlying shoulder pathology. The final Right UEI is 34%."

Dr. [redacted] explains, per the AMA Guides 6th Edition;

Section 15.2, page 387 indicates, "Range of motion is used primarily as a physical examination adjustment factor and only to determine actual impairment values in the rare case when it is not possible to otherwise define impairment; this is a significant change from prior editions.

Section 15.2 e, page 390, "In the shoulder, it is not uncommon for rotator cuff tears; a superior labrum from anterior to posterior (SLAP) lesion or other labral lesions, and

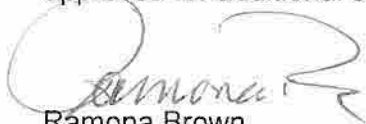
biceps tendon pathology to all be present simultaneously. The evaluator is expected to choose the most significant diagnosis and to rate only that diagnosis using the DBI method that has been described."

Section 15.3f, page 419 Combining and Converting Impairments, "If there are multiple diagnoses at MMI, the examiner should determine if each should be considered or if the impairments are duplicative. If there are multiple diagnoses within a specific region, the most impairing diagnosis is rated because it is probably this will incorporate the functional losses of the less impairing diagnoses."

Per Office procedures the most advantageous rating was chosen. Finding the total impairment rating for the right upper extremity with consideration of the lymphedema condition is 55%. Lymphedema could also be awarded as a skin condition, and a rating would apply for disfigurement, which would be less advantageous to you. A copy of this report is included for your review as well.

BASIS FOR DECISION: The evidence is sufficient to vacate the decision dated 04/03/2014, as the evidence of file now supports that you have a higher rating for the right upper extremity, including the lymphedema condition. Dr. _____ has provide a very well rationalized report, after a review of all the evidence and determined a right upper extremity rating of 55% and a correct left upper extremity rating of 9%. You were previously awarded 17% of the left upper extremity for consideration of RSD (reflex sympathetic dystrophy) however; the medical evidence does not support findings of such on examination.

CONCLUSION: Therefore, the decision dated 04/03/2014 is vacated. Your case is now approved for additional schedule award impairment of 24% for the right upper extremity.



Ramona Brown
Senior Claims Examiner