

File Number:
HR10-D-H

RECEIVED OCT 24 2013

U S DEPARTMENT OF LABOR

OCT 17 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 08/02/2013. 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,


D. Polonsky
Hearing Representative

PAUL FELSER
ATTORNEY AT LAW
PO 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.

DECISION OF THE HEARING REPRESENTATIVE

On the claimant filed a CA7 Claim for Compensation requesting schedule award compensation benefits. By letter dated the Office requested that the claimant have her treating physician submit a medical report regarding her work-related condition in accordance with the Sixth Edition of the AMA Guides which discussed if her condition reached maximum medical improvement, and if so, on and what date. The claimant was also asked to have her physician provide measurement findings and describe the claimant's complaints and provide a recommended percentage of impairment of the

affected member or members using the applicable tables in the Guides. The requested medical evidence was not received.

By decision dated March 12, 2013 the Office determined that the claimant did not submit medical evidence which established that she sustained a permanent partial impairment. The claimant disagreed with the March 12, 2013 decision and requested an Oral Hearing. A Telephone Hearing was held on August 2, 2013. The claimant did not attend the Hearing but was represented by Paul Felser at the proceedings.

As required by Office procedures, a copy of the Hearing Transcript was forwarded to the employing agency to afford them the opportunity to comment on the claimant's testimony. No comments have been received and the time allotted to all parties for the submission of additional evidence has now passed.

At the Hearing Mr. Felser was asked if they would be able to submit a report that calculated the claimant's impairment under the Sixth Edition of the AMA Guides and stated that he was not sure that he would be able to provide the requested medical evidence. Mr. Felser was advised that the claim would be held open for 30 days to allow time to submit additional medical evidence to support the claimant's schedule award claim.

Section 8107 of the Federal Employees' Compensation Act¹ authorizes the payment of schedule awards for the loss or loss of use of specified members, organs or functions of the body. Such loss or loss of use is known as permanent impairment. The Office evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the A.M.A., Guides².

The A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses³. The medical evidence required for evaluation of a schedule should include competent medical evidence which "(1) Shows that the impairment has reached a permanent and fixed state and indicates the date on which this occurred ('date of maximum medical improvement' or MMI); (2) Describes the impairment in sufficient detail for the CE to visualize the character and degree of disability; and (3) Gives a percentage of impairment based on a specific diagnosis, not the body as a whole (except for impairment to the lungs). In members with dual functions, the physician should address both functions according to the AMA Guides."⁴

Office procedures provide that after obtaining all necessary medical evidence, the file should be routed to the DMA for opinion concerning the nature and

¹ 5 USC § 8107

² 20 CFR § 10.404 (2002)

³ 20 C.F.R. § 10.404

⁴ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2 808 5(b) (February 2013)

percentage of impairment. (1) The percentage should be computed in accordance with the AMA Guides, Sixth Edition. As a matter of course, the DMA should provide rationale for the percentage of impairment specified. When more than one evaluation of the impairment is present, it will be especially important for the DMA to provide such medical reasoning.⁵

In order to determine entitlement to a schedule award, appellant's physician must provide a sufficiently detailed description of her condition so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations.⁶

The evidence of record has been completely reviewed and considered. A report from [redacted] who is a physical therapist stated in relevant part,

"According to Table 16-7 (Physical Examination Adjustment) on page 517, she qualifies for Grade Modifier 3. She has 3.2 centimeters atrophy in her calf. She also has significantly decreased right ankle range of motion and right ankle plantarflexor strength. Please refer to the enclosed forms. For test results.

The Clinical Studies Adjustment (Table 16-8 page 519) is not applicable.

The net adjustment is + 1. Please refer to the Net Adjustments Formula on page 521. This is a net adjustment of 1 to the right of the midrange default. Therefore, her lower extremity impairment rating is 24%."

I find that Ms. [redacted] opinion that the claimant sustained a 24% permanent partial impairment of her right leg is insufficient to establish that the claimant sustained a permanent partial impairment. Ms. [redacted] impairment determination is of no probative value because physical therapists are not considered physicians under the Act and as a result, they are not competent to provide a medical opinion.⁷

I find that the Office appropriately denied the claimant's schedule award claim because she did not provide medical evidence from a physician to support her claim. If the claimant does not provide an impairment evaluation from his/her

⁵ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2 808 6(f).1 (February 2013).

⁶ A.A., 59 ECAB ____ (Docket No. 08-951, issued September 22, 2008); *Renee M. Straubinger*, 51 ECAB 667 (2000) (where the Board found that before the AMA Guides can be utilized, a description of the claimant's impairment must be obtained from his or her physician with the description in 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).

⁷ See *David P. Sawchuk*, 57 ECAB 316 (2006). See also 5 U.S.C. § 8101(2).

physician when requested, and there is no indication of permanent impairment in the medical evidence of file, the CE may proceed with a formal denial of the award. If in doubt, the CE should obtain an opinion from the DMA prior to such a denial.⁸

I find that the claimant did not provide medical evidence from her physician as requested to support her claim that she sustained a permanent partial impairment. However medical evidence has now been received which clearly indicates that the claimant sustained a permanent partial impairment and is entitled to schedule award compensation benefits. I find that Ms. [redacted] report is sufficient to require further medical evidentiary development which requires a **remand** for resolution.

If the claimant does not provide an impairment evaluation from his/her physician when requested, and there is an indication of permanent impairment in the medical evidence of file, the CE should refer the claimant for a second opinion evaluation. The CE may also refer the case to the DMA prior to scheduling a second opinion examination to determine if the evidence in the file is sufficient for the DMA to provide an impairment rating.⁹

For the reasons set forth above the Office's March 12, 2013 decision is hereby set aside. On **remand**, the Office should further develop the medical evidence by referring a complete statement of accepted facts to the District Medical Advisor (DMA) to determine if the evidence of record is sufficient for the DMA to provide an impairment rating or if the claimant should be referred for a second opinion evaluation to provide an impairment determination.

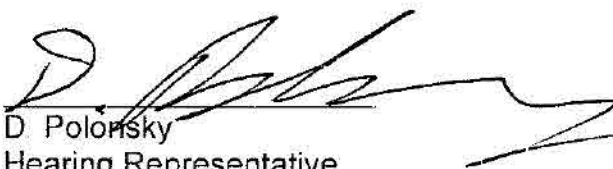
Following the referral to the DMA and any other development that the Office deems necessary for proper adjudication of the case, the Office shall issue a *de novo* decision on if the claimant sustained a permanent partial impairment of a scheduled member as a result of her [redacted] injury.

For the reasons set forth above, the District Office decision dated March 12, 2013 is hereby set aside and the case file is **remanded** to the District Office for actions consistent with this decision.

⁸ See Federal (FECA) Procedure Manual, Part 2 – Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2 808.6 c (February 2013)

⁹ See Federal (FECA) Procedure Manual, Part 2 – Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2 808.6 d (February 2013)

OCT 17 2013
Dated:
Washington, D.C



D. Polonsky
Hearing Representative
for
Director, Office of Workers'
Compensation Programs