File Number
HR20-D-H

RECEIVED MAY 19 2015

U.S. DEPARTMENT OF LABOR

OFFICE OF WORKERS' COMP PROGRAMS
PO BOX 8300 DISTRICT 50
LONDON, KY 40742-8300
Phone: (202) 693-0045

MAY 12 2015

Date of Injury:
Employee:

Dear Ms.

This is in reference to your workers' compensation claim. Pursuant to your request for a Review of the Written Record, the case file was transferred to the Branch of Hearings and Review.

The review was completed in Washington, D.C. As a result of such review, 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,

Sherri L. Doiron
Hearing Representative

PAUL H. FELSER, ESQUIRE
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

DECISION OF THE HEARING REPRESENTATIVE

In the matter of the claim for compensation under Title 5, U.S. Code 8101 et. seq. of Claimant; employed by the
Case No.

Examination of the written record was performed in Washington D.C. Based on this review, the decision of the District Office dated September 26, 2014 has been affirmed for the reasons set forth below.

The issue for determination is whether the claimant established she sustained greater than 5% permanent partial impairment of her left upper extremity.

The claimant, born is employed as an for the The claimant timely filed a form CA-1, Notice of Traumatic Injury, claiming on a rubber handle attached to a long-handled cane came off when she tried to open a big metal door in the warehouse, which caused her to fall backwards on the concrete floor. She claimed this injured her left elbow, arm, and palm. The District Office accepted the claim for a closed fracture of the radial head of the left elbow.

The claimant returned to work with restrictions on On the claimant's physician, M.D., determined the claimant had permanent work restrictions. Dr. opined the claimant sustained 6% permanent impairment due to wrist pain and dorsal flexion range of motion deficits. Dr. did not explain how he calculated this impairment.

On the claimant asserted a form CA-7, to claim compensation for a schedule award for permanent impairment.

By letter dated the District Office advised Dr. and the claimant of the medical evidence needed to establish the schedule award claim. In response, the claimant submitted Dr. response to the attachment from the development letter. He stated the 6% impairment was based on the diagnosis of radial head fracture. He stated the pertinent objective findings were tenderness of the elbow and wrist. Dr. failed to complete section 5 of the attachment, which asks for the calculation of

the impairment using the Sixth Edition of the American Medical Association's *Guides to the Evaluation of Permanent Impairment*, (AMA *Guides*) including citation of the applicable charts, tables, and pages.

Pursuant to Office policy, the District Office referred Dr. impairment rating and the claimant's other medical records to the District Medical Adviser, H.P. M.D.. for and assessment of the claimant's impairment. By report dated Dr. stated the claimant sustained a non-displaced fracture of the left radial head, which was treated non-surgically. He noted the claimant achieved full range of motion in physical therapy. Dr. opined that according to the Sixth Edition of the AMA *Guides*, Table 15-4, page 399 for the fracture diagnosis, the claimant's impairment was Class 1C for 3% impairment of the left upper extremity. He noted that while Dr. recommended 6%, Dr. did not explain how he calculated that impairment, or provide any references. No further medical evidence from the claimant's medical providers has been received after this report.

The District Office referred the permanent impairment issue back to the District Medical Advisor to determine the claimant's date of maximum medical improvement from her work injury. By report dated the District Medical Advisor, M.D., also noted the claimant's diagnosis of a non-displaced fracture of the left radial head, which was treated non-surgically, healed with some tenderness of the elbow and wrist. He opined that based on the Sixth Edition of the AMA *Guides*, Table 15-4, page 399 for the radial head fracture diagnosis, the claimant's impairment was Class 1C with residual pain and tenderness and some functional loss would result in 5% impairment of the left upper extremity. He opined the claimant achieved maximum medical improvement on July 18, 2014. Dr. noted Dr. gave 6% impairment, but the maximum schedule award that can be given for a radial head fracture using the diagnosis-based method is 5% rather than 6%. Dr. indicated Dr. 6% rating was likely a clerical error.

By decision dated September 26, 2014, the District Office compensated the claimant with a schedule award for 5% permanent partial impairment based upon the Dr. opinion.

The claimant disagreed with the September 26, 2014 decision, and requested an oral hearing before an OWCP representative. The claimant's attorney subsequently requested the hearing be changed to a review of the written record.

The employing agency was notified of the request for a review of the written record, and given the opportunity to provide comments. The agency did not provide comments, and no additional evidence was received.

Based on review of the written evidence of record, I find that the decision of the District Office dated September 26, 2014 should be set aside and remanded for further development.

It is a claimant's burden of proof to establish that she sustained permanent impairment to a scheduled member as a result of her employment injury through the submission of probative medical evidence.[1]

The Board has held 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 Board has concluded with the Office's decision to adopt the American Medical Association's *Guides To The Evaluation Of Permanent Impairment* for determining the extent of permanent impairments.[2]

The Sixth Edition of the AMA *Guides* provides a diagnosis-based method of evaluation utilizing the World Health Organization's International Classification of Functioning, Disability and Health (ICF).[3] Under the Sixth Edition, the evaluator identifies the impairment class for the Class of Diagnosis (CDX), which is then adjusted by grade modifiers based on GMFH, GMPE and GMCS.[4] The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX). Evaluators are directed to provide reasons for their impairment rating choices, including the choices of diagnoses from regional grids and calculations of modifier scores.[5] OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed to an OWCP medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the AMA *Guides*, with the medical adviser providing rationale for the percentage of impairment specified.[6]

It is well established that it is the responsibility of the evaluating physician to explain in writing why a particular method was used to assign an impairment rating.[7] It is also well established that ratings that do not address how the extent of impairment was determined under the applicable edition of the AMA *Guides*, are of reduced probative value.[8]

A District Medical Advisor's opinion can constitute the weight of the medical evidence in schedule award cases where an opinion on the percentage of

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[1] *Tammy L. Meehan*, 53 ECAB 229 (2001).
[2] *James E. Archie*, 43 ECAB 180 (1991).
[3] AMA *Guides* (6th ed. 2009), page 3, section 1.3, International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement.
[4] AMA *Guides* (6th ed. 2009), pages 494-531.
[5] *See R.V.*, Docket No. 10-1827 (issued April 1, 2011).
[6] *See* Federal (FECA) *Procedure Manual*, Chapter 2.808.6(f).
[7] *See Peter C. Belkind*, 56 ECAB 580, 584-85 (2005). *See also Robert B. Rozelle*, 44 ECAB 616, 618 (1993).
[8] *See Derrick C. Miller*, 54 ECAB 266 (2002); *James Kennedy, Jr.*, 40 ECAB 620 (1989).

permanent impairment and a description of physical findings is on file from an examining physician, but the percentage estimate by this physician is not based on the AMA *Guides*, and the District Medical Advisor gives a detailed opinion by which gives a percentage based on reported findings and the AMA *Guides*.[9]

In the present claim, Dr. did not provide an impairment rating according to the required Sixth Edition of the AMA *Guides*. Ratings that do not address how the extent of impairment was determined under the applicable edition of the AMA *Guides*, are of reduced probative value.[10] Dr. opinion is therefore insufficient to establish the schedule award claim.

The District Office's District Medical Advisors, Drs. and provided opinions regarding the claimant's impairment citing the Sixth Edition of the AMA *Guides*. Dr. noted for a radial head fracture, the default impairment is 3%. Dr. explained Dr. 6% rating likey was a typographical error, as 5% was the maximum impairment for a radial head fracture.

However, Drs. and did not explain how the claimant's grade modifiers would increase the default 3% impairment for a radial head fracture to the maxium of 5% impairment. Drs. and impairment evaluations are therefore incomplete. After the CDX is determined, including identification of a default grade value, the net adjustment formula is applied using the selected grade modifier for GMFH (functional history), grade modifier for GMPE (physical examination) and grade modifier for GMCS (clinical studies). Drs. and did not select any grade modifiers and did not apply the net adjustment formula to determine whether these findings raised or lowered the default impairment rating. For this reason, the District Office should seek clarification from their District Medical Advisor so that the appropriate standards of the Sixth Edition of the AMA *Guides* can be fully applied.

In a similar claim, *R.D.*, (Docket 10-152, issued July 20, 2010), the Board found that the impairment rating of the District Medical Advisor incomplete and requires further clarification, as while he made reference to the shoulder regional grid on page 403 of the AMA *Guides* and selected a diagnosis category and associated class rating, he did not provide any evaluation of the grade modifiers that applied to the claimant's case. As noted, grade modifiers should be considered for functional history, physical examination and clinical studies, as these grade modifiers can change the extent of a given impairment rating.[11]

Upon return of the case record, the District Office should ask their District Medical Advisor to provide a discussion of the claimant's grade modifiers and how they apply to the net adjustment formula for the default impairment of the claimant's diagnosis class.

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[9] *James Massenburg*, 29 ECAB 850.
[10] *See Derrick C. Miller*, 54 ECAB 266 (2002); *James Kennedy, Jr.*, 40 ECAB 620 (1989).
[11] See also *D.B.*, Docket No. 10-2376, issued June 23, 2011.

Following completion of any further development the District Office deems necessary, the District Office should issue a *de novo* decision on the schedule award claim.

Consistent with the above findings, the decision of the District Office dated September 26, 2014 is set aside and REMANDED, and the case file is returned for further action, as described above.

Date: MAY 12 2015
Washington, D.C.

Sherri Doiron
Hearing Representative
for
Director, Office of Workers'
Compensation Programs