File Number:
Merit Review3-D-RECO

RECEIVED JUN 0 5 2015

U.S. DEPARTMENT OF LABOR

OFFICE OF WORKERS' COMP PROGRAMS
PO BOX 8300 DISTRICT 16 DAL
LONDON, KY 40742-8300
Phone: (214) 749-2320

June 1, 2015

Date of Injury:
Employee:

Dear Ms.

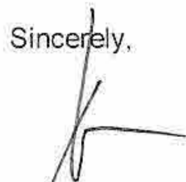
This concerns your compensation case and your request for reconsideration received on 04/01/2014.

We have evaluated the evidence submitted and have reviewed the merits of your case under 5 U.S.C. 8128. As the new evidence is sufficient to support vacating the decision dated 10/17/2013 in part, modification of the decision is warranted. However, as the evidence is not sufficient to overturn the entire decision, it is also affirmed in part.

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

If you disagree with this decision read the following instructions carefully.

Sincerely,



XAVIER SAAVEDRA
Senior Claims Examiner

Enclosures: Appeal Rights, Notice of Decision

PAUL FELSER
ATTORNEY AT LAW
P.O. 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.

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NOTICE OF DECISION
Claimant Name:
Case Number:

ISSUE: The issue for determination is whether the evidence presented is of sufficient probative value to modify the decision dated 10/17/2013.

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.

5 U.S.C. 8107 and 20 C.F.R. 10.404 provide for payment of a schedule award for permanent loss, or loss of use, of a listed member or function of the body. To support a schedule award, the file must contain competent medical evidence as follows:

(1) A statement that the impairment has reached maximum medical improvement, which is a permanent and fixed state, and indicates the date on which this occurred.

(2) A description of the impairment in sufficient detail to visualize the character and degree of loss. This should include, where applicable the loss in degrees of active and passive motion of the affected member or function, the amount of any atrophy or deformity, decreases in strength or disturbance of sensation, or other pertinent description of the impairment.

(3) All findings and conclusions must be reported in accordance with the Sixth Edition of the AMA's Guides to the Evaluation of Permanent Impairment.

BACKGROUND: You are employed by the
as a On you filed a CA2 Notice of Occupational Disease Claim alleging injury due to typing which involved repetitive movement of your right thumb with pain and swelling in your joints. You stated you sustained trigger thumb and had pain and swelling in your MP joint. You stated that you first became aware of your condition and realized that it was related to factors of your federal employment on

By decision dated 01/30/2007 the Office accepted that you sustained bilateral trigger thumbs and bilateral carpal tunnel syndrome. By decision dated 02/20/2009 the Office accepted that you sustained other synovitis and tenosynovitis.

On a left carpal tunnel release was performed. On a right MP joint fusion with local bonegraft was performed. On a removal of right thumb hardware was performed.

You stopped working on and returned to work on and was paid disability compensation benefits.

On you filed form CA7 Claim for Compensation requesting schedule compensation benefits. By letter dated 01/03/2013 the Office requested that you submit a medical report regarding your work- related condition in accordance with the Sixth Edition of the AMA Guides.

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You submitted a report from Dr. to support your claim which was forwarded to our District Medical Advisor (DMA) for review and to determine if your sustained a permanent partial impairment and if you were entitled to schedule award compensation benefits. In his report dated 01/14/2013 the DMA noted that Dr. did not provide measurement findings to support his recommended impairment determination, but that his methodology supported the impairment determination provided. The DMA stated in relevant part, "25% Thumb (T.15-12, p.421) is 10% Hand (T. 15-12, p.421) is 9% upper extremity. Permanent impairment of the RUE is 9%."

By decision dated 03/20/2013, the Office issued an award of compensation for 9% permanent partial loss of use of the right upper extremity.

You disagreed with the decision and requested appeal before the Branch of Hearings and Review.

By decision dated 10/17/2013 the Hearing Representative affirmed the prior decision.

You disagreed with the decision and requested reconsideration through your attorney by letter received by the Office on 06/26/2014.

By letter dated 07/18/2014 the Office advised your employing agency that you had timely petitioned for reconsideration of the decision of 10/17/2013, per the requirement of 20 C.F.R. § 10.609(a). The letter advised no comment was necessary as the issue was medical in nature.

By reference, the previous Notice of Decisions dated 03/20/2013 and 10/17/2013 are hereby incorporated into this decision and sets forth the factual evidence of record previously considered by the Office in arriving at its' prior decisions.

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

Your attorney's letters received by the Office on and requesting reconsideration of the 10/17/2013 decision.

A report of impairment by Dr. dated

Your reconsideration request is considered timely filed as it is within the 1 year time limitation for such requests and you submitted additional evidence and argument. Therefore, a Merit Review was undertaken.

The Office referred Dr. report to our DMA on (in order to assess the level of impairment based on the 6th Edition of the AMA Guides. In his report dated the DMA states,

> Dr. reports right thumb metacarpophalangeal joint fusion with tenosynovitis, right hand carpal tunnel syndrome, right hand Guyon's canal syndrome, right hand de Quervain's stenosing tenosynovitis, left trigger thumb, left carpal tunnel syndrome, and left Guyon's syndrome, and impairment of 19% RUE consisting of 9% for thumb MCP joint fusion. 2% for de Quervain's, and 9% for carpal tunnel syndrome, and 12% LUE

> consisting of 3% for trigger thumb and 9% for carpal tunnel syndrome. EMG/NCV study (7/22/11) reported as normal right and minimal residual left carpal tunnel syndropme.
>
> Dr. report is of.concern for several reasons including possible duplication (right thumb fusion and de Quervain's), interpretation of EMG/NCV study carpal tunnel classification as a grade three modifier (axon block), questionable diagnoses (Guyon's canal syndrome) etc. Therefore, it is my recommendation that an impairment evaluation be obtained from a board certified PM&R specialist who is familiar with the sixth edition Guides and OWCP procedures.

You were seen in an Office directed medical examination in order to resolve the question of your entitlement to a schedule award. You were examined by Dr. on In her report of examination, Dr. concludes you sustained 10% permanent partial loss of use of the right upper extremity and 1% permanent partial loss of use of the left upper extremity.

On , the Office referred Dr. report to our DMA for review and comment on the degree of impairment and date of maximum medical improvement utilizing the appropriate tables in the 6th Edition of the AMA Guides. The DMA reviewed the file on 09/30/2014 and states;

> Maximum medical improvement was achieved (date of evaluation). Determination of permanent impairment for the RUE is as follows.
>
> For wrist sprain, T. 15-3 p,395, Class 1, default value 1%.
> CDX 1, GMFH 1, GMPE 1, GMCS 0,
> NET ADJUSTMENT:
> (GMFH - CDX) (1-1) = 0
> (GMPE - CDX) (1-1) = 0
> (GMCS - CDX) (0-1) -1
> Net adjustment = -1
> Result is Class 1 with an adjustment -1 from the default value C which equals Class 1, grade B = 1%.
>
> The claimant has already received 9% PPI for the RUE based on loss of thumb motion (see my report dated 1/14/2013). The current determination should be combined with the previous value and then the previous value is to be subtracted to determine additional impairment. 1% combined with 9% yields 10%. 10% minus 9% yields 1% additional impairment.
>
> Additional permanent impairment of the RUE is 1%.
>
> Determination of permanent impairment for the LUE is as follows.
>
> For wrist pain, T. 15-3, p, 395, Class 1, default value 1%.
> CDX 1, GMFH 1, GMPE 1, GMCS 1,

NET ADJUSTMENT:
(GMFH-CDX)(1-1) 0

(GMPE - CDX) (1-1)= 0
(GMCS - CDX) (1-1)=0
Net adjustment 0
Result is Class 1 with an adjustment 0 froth the default value C which equals Class 1 grade C = 1%.
Permanent impairment of the LUE is 1%.

The evidence is sufficient to AFFIRM the decision, in part, to reflect the issuance of 9% permanent partial loss of use of the right upper extremity and to MODIFY the prior award to reflect an additional 1% permanent partial loss of use of the right upper extremity and 1% permanent partial loss of use of the left upper extremity.

BASIS FOR DECISION: The FECA[1] provides that the Office may review an award for or against compensation upon application by an employee (or his or her representative) who receives an adverse decision. The employee may obtain this relief through a request to the district Office. The request, along with the supporting statements and evidence, is called the application for reconsideration.[2] To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant must file his or her application for review within one year of the date of that decision.[3] The Board has found that the imposition of the one-year limitation does not constitute an abuse of the discretionary authority granted the Office under section 8128(a) of the Act.[4]

As your request was filed within 1 year of the last merit decision and you submitted new argument not previously considered a merit review was performed.[5]

The evidence discussed above supports that there is an additional ratable impairment to right upper extremity and to the left upper extremity due to the accepted work injury. The DMA properly applied the Guides to Dr. findings. The DMA provided a report that is in accordance with the Guides. The date of maximum medical improvement was determined by the DMA based on the medical evidence of record.

Section 8107 of the FECA and its implementing regulations set forth the number of weeks of compensation to be paid for the permanent loss or loss of use of specified members, functions and organs of the body known as permanent impairment. 20 C.F.R. 10.404; see also 20 C.F.R. Part 10. The commencement period of the schedule award

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[1] 5 U.S.C. § 8101 *et seq*

[2] 20 C.F.R. § 10.605.

[3] 20 C.F.R. § 10.607(a).

[4] 5 U.S.C. § 8128(a); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

[5] Effective 08/29/2011 C.F.R. 10.607 modified the date of the reconsideration request for timeliness purposes from the date mailed to the date received by OWCP.

is usually the date of maximum medical improvement, the date that the physical condition of the injured member has stabilized and is not expected to improve further.

The FECA, however, does not in most instances specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The implementing regulations have adopted the American Medical Association, Guides to the Evaluation of Permanent Impairment, as the appropriate standard for evaluating schedule losses. Currently, schedule awards are calculated using the Sixth Edition of the AMA Guides.

While Dr. provided an assessment of impairment it was determined to be of diminished value as the application of the Guides was not properly made. The DMA's assessment and application of the Guides is proper.

The DMA's assessment and Dr. findings on examination constitutes the weight of medical opinion as to the nature and extent of physical impairment as the evaluations conform with the A.M.A. Guides and OWCP procedure.

The evidence is sufficient to AFFIRM the decision of 03/20/2013, in part, to reflect the issuance of 9% permanent partial loss of use of the right upper extremity and to MODIFY the prior award to reflect an additional 1% permanent partial loss of use of the right upper extremity and 1% permanent partial loss of use of the left upper extremity.

CONCLUSION: Therefore, the decision dated 10/17/2013 is hereby modified and thus vacated in part, but also affirmed in part.

The evidence presented is sufficient to AFFIRM the decision dated 03/20/2013, in part, to reflect the issuance of 9% permanent partial loss of use of the right upper extremity and to MODIFY the prior award to reflect an additional 1% permanent partial loss of use of the left upper extremity. A de novo decision will be issued awarding an additional compensation award for 1% permanent partial loss of use of the right upper extremity and 1% permanent partial loss of use of the left upper extremity.

XAVIER SAAVEDRA
Senior Claims Examiner

File Number:
Employee:
Date: June 1, 2015

FEDERAL EMPLOYEES' COMPENSATION ACT APPEAL RIGHTS

If you disagree with the attached decision, you have the right to request an appeal. If you wish to request an appeal, you should review these appeal rights carefully and decide which appeal to request. There are 2 different types of appeal which apply to this decision: RECONSIDERATION, and ECAB REVIEW. YOU MAY ONLY REQUEST ONE TYPE OF APPEAL AT THIS TIME.

Place an "X" on the attached form indicating which appeal you are requesting. Complete the information requested at the bottom of the form. Place the form on top of any material you are submitting. Then mail the form with attachments to the address listed for the type of appeal that you select. Always write the type of appeal you are requesting on the outside of the envelope ("RECONSIDERATION REQUEST", or "ECAB REVIEW").

NOTE - If you have a substantially limiting physical or mental impairment, Federal disability nondiscrimination law gives you the right to receive help from DFEC in the form of communication assistance, accommodation and modification to aid you in the FECA claims process. For example, we will provide you with copies of documents in alternate formats, communication services such as sign language interpretation, or other kinds of adjustments or changes to account for the limitations of your disability. Please contact the appropriate office below to ask about this assistance.

1. RECONSIDERATION: If you have additional evidence or legal argument that you believe will establish your claim, you may request, in writing, that OWCP reconsider this decision. **The request must be signed, dated and received within one calendar year of the date of the decision. It must** clearly state the grounds upon which reconsideration is being requested, and be accompanied by relevant evidence not previously submitted, such as medical reports, sworn statements, or a legal argument not previously made, which apply directly to the issue addressed by this decision. A person other than those who made this decision will reconsider your case. (20 C.F.R. 10.605-610)

2. REVIEW BY THE EMPLOYEES' COMPENSATION APPEALS BOARD (ECAB): If you believe that all available evidence that would establish your claim has already been submitted, you have the right to request review by the ECAB (20 C.F.R. 10.625). The ECAB will review only the evidence received prior to the date of this decision (20 C.F.R. Part 501). **Request for review by the ECAB must be made within 180 days from the date of this decision.** More information on the new Rules is available at www.dol.gov/ecab.

Note: If you request reconsideration under as set forth in appeal right #1, OWCP will issue a decision that includes your right to further administrative review of that decision. If you should receive a reconsideration decision from OWCP, the 180 day period within which you may request review by the ECAB will run from the date of any later decision by the OWCP.

File Number:
Employee:
Date: June 1, 2015

APPEAL REQUEST FORM

If you decide to appeal this decision, read these instructions carefully. You must specify which procedure you request by checking one of the options listed below. Place this form on top of any materials you submit. **Be sure to mail this form, along with any additional materials, to the appropriate address. YOU MAY ONLY REQUEST ONE TYPE OF APPEAL AT THIS TIME.**

_____ **RECONSIDERATION:**

Your request must be signed, dated and received by OWCP within 1 calendar year of the date of the decision. You must state the grounds upon which reconsideration is being requested. Your request must also include relevant new evidence or legal argument not previously made. **Mail your request to:**

DOL DFEC Central Mailroom
P. O. Box 8300
London, KY 40742

_____ **ECAB APPEAL:**

Submit this form within 180 calendar days of the date of the decision. No additional evidence after the date of OWCP's decision will be reviewed. To expedite the processing of your ECAB appeal, you may include a completed copy of the AB 1 form used by ECAB to docket appeals available on the Department of Labor Web Site at www.dol.gov/ecab. **You must mail your request to:**

Employees' Compensation Appeals Board
200 Constitution Avenue NW, Room S-5220
Washington, DC 20210

SIGNATURE________________________________ TODAY'S DATE____________
PRINTED NAME______________________________ DECISION DATE___________
ADDRESS___________________________________ PHONE______________
CITY_______________ STATE_______________________ ZIP______________