

File Number:  
HR10-D-H

RECEIVED JAN 11 2018

U.S. DEPARTMENT OF LABOR

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

Date of Injury:  
Employee:

Dear Mr.

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 11/08/2017. 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 Seattle 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 14 SEA  
LONDON, KY 40742-8300

Sincerely,

electronically signed  
James Muskett  
Hearing Representative

PAUL H FELSER  
7393 HODGSON MEMORIAL DR  
STE 102  
SAVANNAH, GA 31406

*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.*

Washington DC,

U.S. Department of Labor  
Office of Workers' Compensation Programs

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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. A telephone hearing was  
held on

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The issue for determination in this case is whether the medical evidence of record supports the claimant's entitlement to a scheduled award for his having incurred a greater than 23% permanent partial impairment of one or both of his lower extremities as a result of accepted employment related conditions involving his hips and/or lower extremities

date of birth is employed by the  
as a On he filed a Form  
CA-2, Notice of Occupational Disease, indicating the development of bilateral hip dysplasia and torn labrum on both sides with moderate degenerative changes which he felt to be causally related to factors of his Federal employment.

On the claimant filed a Form CA-7, Claim for Compensation, indicating a claim was being made to a scheduled award of compensation for permanent partial impairment incurred as a result of the accepted employment related conditions.

By Formal Decision dated the Office provided the claimant with a scheduled award of compensation for his having sustained a 23% permanent partial impairment of each lower extremity as a result of the accepted employment related conditions.

By letter dated the claimant, through his representative, Paul H. Felser, wrote requesting an oral hearing with a representative of the Office of Workers' Compensation Programs.

A telephone hearing was held on Representing the claimant at hearing was Paul H. Felser. At hearing the claimant's representative requested 30 days within which to submit additional medical evidence and comment in support of the claim at issue. The claimant was permitted 30 days from hearing within which to submit additional evidence.

Washington DC,

The only evidence received subsequent to hearing is a copy of an operative report prepared by the \_\_\_\_\_ dated \_\_\_\_\_

A copy of the transcript was submitted to the employing agency for review and comment. No response has been received in the allotted time frame.

After a complete and thorough review of the evidence and testimony it is the opinion of this reviewer that the district office decision of June 1, 2017, must be SET ASIDE.

Although the District Medical Advisor is considered an expert in the analysis and application of the AMA Guide to Permanent Impairment, such examiner must utilize medical evidence prepared by a physician as determined under the Federal Employees' Compensation Act. (see C.G., ECAB Docket No. 13-1519 issued September 25, 2014.) In the case at issue the claimant was examined on December 13, 2016, by chiropractor, David J. Mulholland, who although not indicating the AMA Guide to Permanent Impairment, 6th Edition was utilized does provide citations, some calculations, and indicated the claimant to have incurred a 42% permanent partial impairment of the lower extremities. Since chiropractor Mulholland has not indicated x-rays were taken indicating a subluxation to have occurred he is not deemed to be a physician as determined under the Federal Employees' Compensation Act. (see 5 U.S.C. 8101 (2)) Accordingly, since there is no medical evidence of record from an examining physician addressing the claimant's degree of permanent partial impairment there is insufficient evidence for the District Medical Director to render an appropriate decision and the district office decision of June 1, 2017, must be SET ASIDE.

On REMAND, the district office is directed to refer the claimant and case file to a second opinion orthopedic specialist familiar with the AMA Guide to Permanent Impairment, 6th Edition, for an opinion and determination with regard to the degree of permanent impairment the claimant currently realizes in the lower extremities as a result of the accepted employment related conditions. Such physician should provide measurements, citations, and calculations utilizing the AMA Guides to support the opinion rendered.

Upon implementation of the aforesaid action the district office is directed to take appropriate action to be followed by issuance of a de novo decision.

ISSUED:  
WASHINGTON, D.C.

electronically signed  
James W. Muskett  
Hearing Representative  
For  
Director, Office of  
Workers' Compensation Programs

PAUL H FELSER  
ATTORNEY AT LAW  
7393 HODGSON MEMORIAL DR  
STE 102  
SAVANNAH, GA 31406