

File Number:
HR20-D-H

RECEIVED APR 04 2019

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

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 on _____ 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,

Division of Federal Employees' Compensation

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

If you have a disability and are in need of communication assistance (such as alternate formats or sign language interpretation), accommodation(s) and/or modification(s), please contact OWCP.

Washington DC, April 01, 2019

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 _____ Case
_____, Claimant; Employed by the _____
No. _____

Examination of the Written Record was completed in Washington, D.C. Based on this review, the District Office's decision dated _____ is set aside for the reasons below.

The issue for determination is whether Ms. Finch has additional permanent impairment related to her accepted conditions.

_____ born _____, is employed by the _____ she filed a claim for occupational disease, linking hand symptomatology to her employment. Her claim was accepted for bilateral carpal tunnel syndrome and bilateral acquired trigger finger. On _____ she was awarded compensation for 2% bilateral upper extremity impairment. She disagreed with this decision, and requested a hearing, which resulted in remand for a second opinion re-evaluation to include discussion of an additional claim. Following that, on _____ Ms. _____ was awarded compensation for an additional 1% impairment of the right upper extremity and 2% of the left.

She again requested hearing, and the case was again remanded on _____ for re-evaluation by Dr. _____, second opinion examiner, to consider both diagnosis-based (DBI) and range of motion (ROM) methods of impairment rating.

Following _____ opinion from Dr. _____, on _____ additional award was denied.

Ms. _____ disagreed with this decision and requested a hearing, which was scheduled for _____. Her representative, Paul Felser, requested conversion to review of the written record. This request was provided to the employer on _____ and they were allowed time to respond. Such time has now passed, and no such response has been received.

I have now undertaken review of the entire record. On _____ Dr. _____ found 1% impairment for each trigger finger and 1% impairment for _____ of the right hand; he used the combined values chart to find 8% of the right hand. He found 2% of the left, or total upper extremity impairment of 11% of both. This was referred to District Medical Advisor (DMA) Dr. _____ who found 6% impairment of the right ring finger due to triggering. Insufficient evidence of impairment due to carpal tunnel syndrome was noted.

Given this, a second opinion evaluation was scheduled on _____ with Dr. _____. Dr. Hayes found 2% bilateral upper extremity impairment. On _____, Dr. _____ reviewed this and concurred with a 2% bilateral upper extremity rating and Ms. Finch was awarded compensation in this amount on _____.

Washington DC, April 01, 2019

On _____ after request for hearing, the case was remanded, noting that the right ring finger triggering had not been addressed, nor had DeQuervain's tenosynovitis. Referral back to the second opinion physician to address this issue was ordered.

On _____, Dr. _____ noted "no evidence of any residual de Quervain's tenosynovitis...I disagree that there is any impairment to the right ring trigger finger. The patient has no symptoms...she has never had any treatment...patient had a left middle trigger finger which was treated surgically and she has symptoms of a left index trigger finger...she has a 0% impairment to the right ring finger." This was referred to Dr. _____ who on _____ found 3% of the right upper extremity and 4% of the left. On _____, compensation was awarded for the additional 1% on the right and 2% on the left.

On _____ this decision was remanded for the further development of the diagnosis-based impairment (DBI) versus range of motion (ROM) as required by FECA Bulletin 17-06. On _____ Dr. _____ performed another second opinion, finding no restriction of movement and a 2% default bilateral impairment. This was referred to Dr. _____ who concurred, while noting "Dr provided no valid ROM measurements. ROM is not used to rate CTS. The doctor only rated CTS, he did not find an impairment for trigger finger(s).

The schedule award provision of the Federal Employees' Compensation Act¹ and its implementing regulations² set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of scheduled members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. 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 A.M.A. *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses. Office procedures provide that to support a schedule award, the file must contain competent medical evidence which shows that the claimant has reached a permanent and fixed state and which establishes a date of maximum medical improvement.³

In the case at issue, the medical evidence of record is still insufficient to address the concerns raised by the Branch in its _____ remand. Specifically, there is no indication that ROM measurements were provided. While Dr. _____ notes that ROM is not measured for carpal tunnel syndrome, he also notes that there was no mention of the trigger finger, for which _____ was

1 5 U.S.C. § 8107

2 20 C.F.R. § 10.404 (1999).

3 Federal (FECA) Procedure Manual, Part 2 -- Claims, *Evaluation of Schedule Awards*, Chapter 2.808.6(b) (August 2002).

earlier compensated. As such, the Office's } decision must be set aside and the case **REMANDED** for further development of the appropriate rating for the trigger finger utilizing ROM versus DBI. After this and any other development as proves necessary, a de novo decision should be issued.

Issued:
Washington, D.C.

Hearing Representative
for the
Director, Office of Workers'
Compensation Programs