

File Number:
HR10-D-H

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U.S. DEPARTMENT OF LABOR

OWCP/DFEC, PO Box 8311
LONDON, KY 40742-8311
Phone: (202) 693-0045

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Date of Injury:
Employee:

Dear . . .

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 or . . . 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 Kansas City District Office. You may contact that office by writing to our Central Mail Room at the following address:

US DEPARTMENT OF LABOR
OWCP/DFEC, PO Box 8311
LONDON, KY 40742-8311

Sincerely,

Electronically Signed
Division of Federal Employees' Compensation

PAUL H FELSER
ESQUIRE
FELSER LAW FIRM
7393 HODGSON MEMORIAL DRIVE
SUITE 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, September 02, 2020

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 Number
A telephone hearing was held on

The issue for determination is whether the evidence establishes that the claimant has additional permanent partial impairment of the right lower extremity due to her work injury.

is employed as a with the The District Office accepted that she sustained an injury on when she picked up a very large heavy parcel (an exercise bike). The case was accepted for right knee sprain and Lateral Meniscal Tear, Right Knee.

The claimant filed form CA-7, Claim for a schedule award. In support of the claim the Office received a medical report from MD which reported that the claimant had achieved maximum medical improvement, (MMI). In a report dated Dr. provided an impairment rating based on table 16-3 on page 509, the Knee Regional Grid. He reported that she had an impairment class of 1 for a medial meniscus tear. He reported a right lower extremity impairment of 1%.

The case file was referred to the District Medical Advisor for review. In a report dated the DMA opined that based on the Diagnosis Based Impairment (DBI) rating method, as she had undergone a partial medial meniscectomy, results in 1% impairment of the right lower extremity.

In a decision dated the claimant was compensated for 1% impairment of the right lower extremity.

The claimant disagreed with this decision and her attorney, Paul Felser requested a telephone hearing. Accordingly a hearing was scheduled and held on The claimant did not attend the hearing but was represented by her attorney at the hearing. Mr. Felser noted that there was at least one additional condition (chondromalacia patella) that appears to be work-related and appears to have been well documented in the past medical and should have already been accepted. He contended in this particular case that the additional condition could also lead additional findings of additional permanent impairment under the guidelines. He asked that the condition be taken into consideration. He also noted possible delays in providing additional documentation due to COVID-19. Mr. Felser was advised that the case was held open for 30 days to allow the claimant an opportunity to provide additional evidence to support the claim and to contact the Office if an extension is requested in excess of the time frame. A copy of the transcript was sent to the employing agency for review and comment. No comments were provided from the employing agency. A review of the case file was completed.

Subsequent to the hearing, Mr. Felser provided a copy of the operative report and formally requested expansion of the claim. In a decision dated he claim was expanded to include acceptance of Chondromalacia Patellae, Right.

Medical evidence received following the hearing consisted of physical therapy notes which appear to be related to treatment associated with a work injury that occurred on _____ when she lifted a heavy parcel. The claim number _____ was accepted for lumbar strain by decision dated _____

The impairment rating provided by Dr. _____ in the medical document dated _____ stated that he last evaluated the patient on _____ and felt that the patient had reached MMI on that date. He noted that she had undergone a right knee arthroscopy and medial meniscectomy and formulated an impairment rating based on the AMA Guides to the Evaluation of Permanent Impairment, 6th Edition. He referenced table 16-3 on page 509, the Knee Regional Grid and stated that she meets an impairment class of 1 for a medial meniscus tear. According to table 16-6 on page 516, the patient's functional history grade modifier was 0. According to table 16-7 on page 517, the patient's physical examination grade modifier was 0. Her clinical studies do not qualify for a clinical studies grade modifier. He stated that with the net adjustment of -2, the patient moves to "A" from the default of "C" within class 1. He concluded that the impairment was 1% to the right lower extremity.

Examination notes in file dated _____ reported that she was four months post surgery. It was reported that she was concerned about returning to squatting at work. She was released to return to work with permanent restrictions.

In a note dated _____, Dr. _____ reported "The patient's pathology that was encountered during arthroscopic examination demonstrated a medial meniscal tear rather than a lateral meniscal tear. Oftentimes, an MRI will demonstrate a tear when none is present, and conversely, an MRI will not demonstrate a tear when one is present. Arthroscopic examination is the definitive means to diagnose pathology within the knee joint. Once encountering the medial meniscus tear during arthroscopic examination, I felt it prudent to treat the observed pathology."

There are no physical examination notes after _____ as it pertains to the right knee.

The file was referred to the DMA for review and consideration of the schedule award claim. The DMA was provided a Statement of Accepted Facts, (SOAF) dated _____ which indicated the accepted conditions were Right Knee Sprain and Lateral Meniscal Tear, Right Knee.

The DMA report dated _____ reported that using the Diagnosed Based Impairment (DBI) method for partial medial arthroscopy the claimant had 1% impairment of the right lower extremity.

Based on the hearing testimony and review of the written evidence of record, I find that the decision of the District Office dated _____ should be set aside, and the case file should be remanded for further development. The decision was correct when issued based on the viewable evidence of file.

In the present case, the DMA was provided a Statement of Accepted Facts, (SOAF) dated _____ which indicated the accepted conditions were Right Knee Sprain and Lateral Meniscal Tear, Right Knee. However, after the impairment rating was determined, the claim was expanded to include acceptance of Chondromalacia Patellae, Right. In addition, Dr. _____ indicated that there was a medial meniscus tear rather than a lateral tear.

The CE is responsible for ensuring that the SOAF is correct, complete, unequivocal, and specific. When the DMA, second opinion specialist or referee physician renders a medical opinion based on an SOAF which is incomplete or inaccurate or does not use the SOAF as the

framework in forming his or her opinion, the probative value of the opinion is seriously diminished or negated altogether.¹

Upon receipt of the case file, the District Office should determine if the accepted condition should be updated to include the medial meniscus tear versus lateral meniscus tear. The SOAF should be updated to include the additional diagnosis accepted on [redacted] and the case should be referred back to the DMA for review and consideration of whether the claimant has additional impairment due to the additional condition of Chondromalacia Patella, Right.

Following completion of any further development the District Office deems necessary, the District Office should appropriately weigh the medical evidence and issue a *de novo* decision on the claim.

Consistent with the above findings, the decision of the District Office dated [redacted] is set aside, and the case is REMANDED for further action as described above.

ISSUED:
WASHINGTON, D.C.

Electronically Signed
Hearing Representative
Branch of Hearings and Review
for
Director, Office of Workers'
Compensation Programs

¹Federal (FECA) Procedure Manual, Part 2 -- Claims, *Statements of Accepted Facts*, Chapter 2.809.4(a)(2) (September 2009). Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.3.