

File Number:
HR20-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 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 Office should be vacated and the case remanded to the 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 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,

Division of Federal Employees' Compensation

PAUL FELSER
FELSER LAW FIRM
7993 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 15, 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;

Case No.

Examination of the Written Record was completed in Washington, D.C. Based on this review, the Office's decision dated 02/28/2020 is set aside for the reasons below.

The issue is whether the claimant has more than 10% permanent partial impairment to the left arm for which she received a schedule award.

The claimant, _____ born _____ is employed by the _____ as a letter carrier. On _____ she filed form CA-1, Notice of traumatic injury and claim for compensation indicating that on _____ she went to pick up a package and injured her left arm, chest and neck. The claim was accepted for left shoulder strain, chest wall muscle strain and bicipital tendinitis, left shoulder. Appropriate treatment and compensation benefits were authorized.

On _____ claimant filed form CA-7, Claim for a schedule award.

In support of the claim the Office received a medical report from Dr. _____ dated _____. He provided a history of the injury and his findings on examination. He indicated that the claimant has 9% impairment to the left shoulder as a result of the work injury.

On _____ the case file was referred to the District Medical Advisor (DMA) for review. He noted that from review of the medical records the following diagnoses have been established; 1. Status post left shoulder arthroscopic subacromial decompression and acromioplasty, _____ and 2. Status post left shoulder arthroscopic subacromial decompression, distal clavicle excision, loose body removal and debridement, _____. He stated, "Diagnosis Based Impairment Method: For purposes of calculating schedule award utilizing the AMA Guides to the Evaluation of Permanent Impairment, 6th Edition, the claimant has 10% upper extremity impairment for having undergone excision of distal clavicle {CDX 1C} (Table 15-5/Page 403)... Range of Motion Method: There is insufficient information contained in the case file in order to calculate impairment utilizing the Range of Motion Method. The report of Dr. _____ does not contain the complete measurements for the left shoulder and there is no documentation of retained shoulder extension, abduction or adduction.

By decision dated _____ the Office awarded the claimant a schedule award for 10% impairment to the left arm. The award was for 31.2 weeks and for the period _____

Washington DC, September 15, 2020

The claimant disagreed with the decision and requested an oral hearing before a representative of the Office of Workers' Compensation Programs. Her request was later changed to a review of the written record.

I have carefully reviewed all the evidence of record and find that further development of the case file is warranted by the District Office.

The schedule award provisions of the FECA set for the number of weeks of compensation to be paid for permanent loss of use of the members of the body listed in the schedule. The Act, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a matter which rests in the sound discretion of the Office. However, as a matter of administrative practice the Board has stated 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 Office has adopted the AMA Guides as the standard for evaluating permanent impairment for schedule award purposes, and the Board has concurred with the Office's adoption of this standard. Kenneth D. Loney, 47 ECAB 660.

In the instant case, the evidence of record reveals that the office accepted that as a result of the incident the claimant sustained left shoulder strain, chest wall muscle strain and bicipital tendinitis, left shoulder. The claimant filed a claim for a schedule award. In support of the claim the Office received a medical report from Dr. dated . He provided a history of the injury and his findings on examination. He stated that the claimant has 9% impairment to the left shoulder. On the case file was referred to the District Medical Advisor for review. He opined that based on the Diagnosis Based Impairment Method the claimant has 10% impairment to the left upper extremity. Regarding the Range of Motion Method there was insufficient information contained in the case file in order to calculate impairment rating utilizing the Range of Motion Method. Because the evidence on file is insufficient to calculate the Range of Motion Impairment Method further development of the case file is warranted.

On Remand the Office should prepare a detailed statement of accepted facts and refer the claimant to an appropriate specialist for a second opinion examination. The specialist should be asked to explain all conditions that are causally related to the work incident and should be rated. The specialist should be asked to document the complete measurements for the left shoulder, to include documentation of retained shoulder extension, abduction or adduction. All three range of motion measurements for the shoulder should be provided. Upon receipt of the second opinion report the Office should send the case file to the District Medical Advisor for review on whether the claimant has more than 10% impairment to the left upper extremity that was previously awarded. The District Medical Advisor should provide medical rationale to support his opinion and correlated his findings with the AMA Guides, 6th Edition.

The decision of the District Office dated is hereby set aside and the case is

remanded for the actions outlined above. Upon completion of the recommended action and any further development as deemed necessary, the Office should issue a de novo decision.

Issued
Washington, D.C.

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