File Number:
HR10-D-H

RECEIVED MAY 0 6 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 hearing, the case file was transferred to the Branch of Hearings and Review.

A hearing was held on 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 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
ESQ.
QUEENSBORO BANK BLDG
7393 HODGSON MEMORIAL DR
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, May 02, 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 Claimant; Employed by the Case No.

The issues for determination are (1) whether the Office of Workers' Compensation properly found an overpayment of compensation of $9853.20; (2) whether the claimant is without fault in the creation of the overpayment; and, if so (3) whether recovery of the overpayment may be waived.

The claimant was employed as a by the On , the claimant filed a timely claim of traumatic injury, claiming injury due to an assault or
The office initially accepted the claim for a closed head injury, with left hemiparesis. They later expanded the claim to include migraine, post-traumatic stress disorder, post-concussion syndrome, ulcer of the buttock. and left hemiplegia. The claimant stopped work but returned to limited duty in

In the claimant sought treatment for additional symptoms in the low back, coccyx and right thigh.

In or around the office advised the claimant that she may be due a schedule award in her claim. By telephone call dated the claims examiner advised her the suggestion was made due to her reported left hemiparesis. The claimant then requested a schedule award by CA7 dated

On the office advised the claimant of the medical evidence necessary to establish a permanent impairment due to her injury.

Ir the office accepted the claim for a right hip bursitis based upon a second evaluation report from , MD.

Also in the referred the claim to a second opinion evaluation regarding the claimant's permanent impairment. The office noted in the Statement of Accepted Facts that they had recently expanded the claim to include a right hip bursitis.

The second opinion physician assessed cognitive impairment and other brain injury related conditions not covered by the Federal Employees' Compensation Act with regard to

Washington DC, May 02, 2019

permanent impairment. He also noted left upper and lower extremity symptoms for which he assigned an impairment rating. While he noted complaints of pain in the right lower extremity in response to the claimant's altered gait on the left, he provided no impairment rating for the right lower extremity, nor did he provide physical findings for that extremity. He assigned a 23 percent whole person impairment.

On the office referred the claim to a District Medical Advisor (DMA) for review and calculation with regard to any permanent impairment. The DMA, MD, opined that the only ratable impairment was for the diagnosed right hip bursitis. He assigned a 5 percent permanent partial impairment based upon that diagnosis. The office then requested clarification from the second opinion physician advising that the DMA had indicated there was no impairment under the 6th Edition based upon the method he used but did opine a 5 percent based upon a diagnosed hip condition.. The second opinion physician then concurred with the 5 percent.

On the office provided the claimant with a schedule award for a 5 percent PPI of the right lower extremity.

The claimant disagreed with the decision and requested an oral hearing before an OWCP representative.

By hearing decision dated , the hearing representative noted that the claimant's left sided impairment had not been appropriately addressed. He affirmed the decision with regard to the right lower extremity but remanded the claim for further development regarding the left lower and upper extremities. The office was to refer the claim to a DMA for review and clarification on the left extremity findings.

By report dated the DMA, , MD opined a 10 percent PPI of the left upper extremity and a 10 percent PPI of the left lower extremity. He concurred with the calculation of the right lower extremity impairment.

By decision dated , the office provided a schedule award for a 10 percent PPI of the left upper and lower extremities. They included notation of the 5 percent PPI previously provided for the right lower extremity.

The claimant disagreed with the decision and requested an oral hearing before an OWCP representative.

By hearing decision dated the hearing representative remanded the claim directing a new second opinion evaluation regarding the claimant's permanent impairment. By report dated the second opinion physician, MD advised that motor findings in the right extremities were normal. She assessed impairment for cognitive impairment, dysphasia, migraines, and left upper and lower extremity impairment.

By report dated the DMA, MD, reviewed Dr. findings and opined 0 percent impairment for the right upper and lower extremity, a 34 percent PPI of the left upper extremity a 49[1] percent left lower extremity impairment.

By decision dated , the office provided the claimant with an additional schedule award for 24 percent PPI of the left upper extremity and a 39 percent PPI of the left lower extremity.

The claimant disagreed with the decision and requested an oral hearing before an OWCP representative.

By preliminary decision dated the hearing representative remanded the claim for clarification from Dr. on the claimant's permanent impairment. She noted his inconsistency in the reported impairment percentages and also noted he didn't address the claimant's impairment on migraine, dysphasia and cognitive impairment.

By report dated Dr. indicated he erred on the numbers he presented for the lower extremity. He corrected his calculation reporting the claimant actually had a 38 percent PPI for the lower extremity. He calculated whole person impairment for the claimant's migraine, dysphasia and cognitive impairment but advised that there was no way to convert them into extremity impairment.

By decision dated the office denied an additional schedule award.

The claimant disagreed with the decision and requested an oral hearing before an OWCP representative.

By hearing decision dated , the hearing representative affirmed the decision that no entitlement to an additional schedule award was established. She noted however that Dr. Fellers had corrected his finding to reflect a lower percentage of impairment for the left lower extremity and also had found no impairment for the right lower extremity. She advised the office should review the claim for overpayments with regard to the previously paid schedule awards. She also indicated the claimant's attorney was requesting expansion of the claim for multiple medical conditions and indicated the office should review the claim for a decision on that matter.

By preliminary overpayment decision dated the office advised the claimant that she had been overpaid $9853.20 because she received a schedule award for the 5 percent PPI of the right lower extremity erroneously. The office advised the claimant that she was without fault in the matter.

The claimant disagreed with the preliminary overpayment decision and requested a pre-recoupment hearing before an OWCP representative.

Hearing was held on The claimant was represented by Paul Felser.

[1] Alternately stated in the report as 39 percent.

At hearing, Mr. Felser essentially argued that a great deal of confusion ensued over the ongoing development of the claimant's permanent impairment due to her injury but the right lower extremity impairment should not have been in question. He thus asserted that the office's overpayment decision was erroneous.

Based upon a thorough review of the evidence of record, I find that the preliminary overpayment decision dated should be set aside and the claim remanded for additional medical development.

I note that ongoing reports don't actually establish a right hip bursitis condition. The condition was previously diagnosed as an alleged consequence of altered gait in the left lower extremity. However, I note Dr. who previously examined the claimant in a appeared to have mentioned the bursitis not as her diagnosis but as part of the history reported by the claimant. Dr. did not in fact indicate physical findings of such a condition, nor did she note it in her conclusions. I note that in her report, Dr. reported no findings pertaining to the right lower extremity, nor did she suggest a current impairment for either the upper or lower right extremity. She did note there was no motor impairment in either of the right extremities. Neither she nor Dr. commented on a right hip bursitis condition. I find that the most appropriate action is to refer the claimant to a second opinion evaluation with regard to whether the claimant has any evidence of a right hip bursitis and thus any right lower extremity impairment due to the condition.

I further note that the office still did not address the overpayment with regard to the claimant's left lower extremity. As above, the prior hearing representative noted that the office provided the claimant with an additional 39 percent PPI of the left lower extremity. However, Dr. subsequently advised he made an error when originally asserting a 49 percent PPI in that extremity. He advised it was actually a 38 percent PPI. Hence the claimant should only have received an additional 28 percent for the left lower extremity. While I note the office should address this overpayment as well, I recommend they await the second opinion evaluation results so that they may issue one decision for any overpayment on the claimant's schedule awards.

Upon completion of that development along with any other the office deems necessary, the office should issue a de novo decision on any overpayment.

Consistent with the above findings, the preliminary overpayment decision of the District office dated is set aside and the claim remanded for the action noted above.

ISSUED
WASHINGTON, D.C.

Hearing Representative
For
Director, Office of Workers'
Compensation Programs

Washington DC, May 02, 2019