File Number:
HR10-D-H

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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 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:

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Sincerely,

Division of Federal Employees' Compensation

PAUL FELSER
ESQ
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, April 30, 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 No.

The issue for determination is whether the claimant has established additional entitlement to a schedule award.

The claimant was employed as by the . On the claimant filed a timely claim of traumatic injury, claiming a left shoulder injury while dressing up in bunker gear. The office accepted the claim for a left rotator cuff tear and bicipital tendinitis. The claimant underwent left shoulder surgery in

On , the claimant requested a schedule award via form CA7. He provided a brief medical report dated in which his physician, , MD, opined a 12 percent permanent partial impairment (PPI) of the left upper extremity or a 20 percent impairment of the left shoulder. Unfortunately the report did not reference the 6th Edition of the AMA Guides to the Evaluation of Permanent Impairment or explain how the impairment was calculated. Examination findings of that date indicated the claimant had full range of motion in the right shoulder but restricted flexion, internal and external rotation in the left shoulder. Specific range of motion measurements were not provided.

On the office advised the claimant of the evidence needed to establish permanent impairment due to his injury.

The claimant responded that his physician does not use the 6th Edition of the AMA Guides. He requested a second opinion evaluation be undertaken on his behalf if the medical evidence was not sufficient to establish permanent impairment.

On the office referred the claim to a second opinion evaluation.

Or the claimant advised he was withdrawing his request for a schedule award as he hadn't realized he couldn't get disability and schedule award benefits concurrently.

Washington DC, April 30, 2020

By report dated , the second opinion physician MD addressed the claimant's ongoing shoulder condition. In so doing he noted full range of motion in the right shoulder and limited range of motion on the left but did not indicate a full range of motion examination consistent with the requirements of the 6th Edition of the AMA Guides. Dr. indicated the claimant had ongoing limits in use of the left shoulder as well as decreased strength due to his accepted injury. No permanent impairment assessment was provided.

On the claimant advised he was completing retirement papers and expected his retirement date would be He subsequently elected retirement benefits effective

On the claimant requested a schedule award via form CA7.

On the office advised the claimant of the evidence needed to establish permanent impairment due to his injury.

On the office referred the claim to a District Medical Advisor (DMA) for review of the medical evidence with regard to the claimant's permanent impairment.

By report dated the DMA, , MD opined a 5 percent PPI of the left upper extremity using the diagnosis based method. He noted the second opinion physician had not provided the required range of motion (ROM) measurements to assess impairment under that method.

By decision dated , the office provided the claimant with a schedule award for a 5 percent permanent partial impairment of the left upper extremity.

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

Hearing was held on The claimant was represented by Paul Felser. The claimant was not present.

At hearing, Mr. Felser noted that additional evaluation was needed with regard to the claimant's range of motion and the office should have asked for such, either by clarification from the second opinion physician or through a new second opinion. He advised that he and the claimant had asked for range of motion measurements from the physician and were in the process of obtaining additional evidence.

A transcript was provided to the employer and the claimant. Both were afforded 20 days to respond to the transcript. No comment was received.

In addition, the case record was held open for 30 days in order to allow the claimant time to submit any additional medical evidence.

By addendum report dated , Dr. indicated he had examined the claimant again in order to perform range of motion evaluation. He reported the claimant's range of motion measurements regarding the left shoulder.

After a thorough review of the evidence of record, I find that the decision dated should be set aside and the claim remanded for additional review by the District Medical Advisor.

The schedule award provision of the Federal Employees' Compensation Act compensates covered employees for the permanent impairment of specified members, functions and organs of the body. Before a formal evaluation of the employee's condition is carried out for the purpose of determining entitlement to a schedule award, an analysis of the history and course of the medical condition must support the conclusion that an impairment is permanent and well stabilized. Only then, when the evidence establishes that the employee has reached maximum medical improvement from the residuals of the accepted employment injury, can the extent of any impairment be considered "permanent," and only then can the employee's condition be evaluated for schedule award purposes.[1]

Once an employee is permanent and stationary, the Employees' Compensation Appeals Board has held 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 Board has concurred with the Office's decision to adopt the A.M.A. Guides for determining the extent of permanent impairments.[2] The current standard is the 6th Edition of the AMA Guides.

If the rating physician provided an assessment using the DBI method and the Guides allow for use of ROM for the diagnosis in question, the DMA should independently calculate impairment using both the ROM and DBI methods and identify the higher rating for the CE.

If the medical evidence of record is not sufficient for the DMA to render a rating on ROM where allowed, the DMA should advise as to the medical evidence necessary to complete the rating. However, the DMA should still render an impairment rating using the DBI method, if possible, given the available evidence.

Upon receipt of such a report, and if the impairment evaluation was provided from the claimant's physician, the CE should write to the claimant advising of the medical evidence necessary to complete the impairment assessment and provide 30 days for submission. Any evidence received in response should then be routed back to the DMA for a final determination. Should no evidence be received within 30 days of the date of the CE's letter, the CE should proceed with a referral for a second opinion medical evaluation to obtain the

[1] *See Orlando Vivens*, 42 ECAB 303 (1991) (a schedule award is not payable until MMI of the claimant's condition has been reached; maximum medical improvement means that the physical condition of the injured member of the body has stabilized and will not improve further).
[2] James E. Archie, 43 ECAB 180 (191).

medical evidence necessary to complete the rating. After receipt of the second opinion physician's evaluation, the CE should route that report to the DMA for a final determination.

In the present case, the claimant was re-examined by Dr. who has provided range of motion measurements for the claimant's left shoulder. I thus find that the claim is now in posture for referral to the District Medical Advisor for further review regarding the claimant's permanent impairment. Upon completion of that development, along with any other the office deems necessary, the office should issue a de novo decision.

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

ISSUED
WASHINGTON, D.C.

Hearing Representative
For
Director, Office of Workers'
Compensation Programs

Washington DC, April 30, 2020