

File Number:  
HR20-D-H

RECEIVED JUN 30 2018

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,

Electronically Signed

Hearing Representative

PAUL H FELSER, ESQ.  
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, June 26, 2018

U.S. DEPARTMENT OF LABOR  
Office of Workers' Compensation Programs

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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.

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 is whether the claimant has greater than 2 percent permanent partial impairment to the right upper extremity and 4 percent permanent partial impairment to the left upper extremity for which she received schedule awards.

The claimant, is employed by the , as a medical records technician. On she filed form CA-2, Notice of occupational disease and claim for compensation contending that her wrist and finger conditions are due to factors of her federal employment. She attributes her condition to the repetitive nature of her position. The claim was accepted for bilateral carpal tunnel syndrome and trigger finger acquired bilateral. Appropriate treatment and compensation benefits were authorized. The claimant underwent authorized surgery.

On the 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 assigned a 1% impairment for each trigger finger and 1% for De Quervain's of the right hand. He assigned a total of 8% for the right upper extremity. He assigned a 3% of the left hand. Combining the impairments for each extremity resulted in 11% impairment.

On the case file was referred to the District Medical Advisor for review. He advised that the claimant has 6% impairment to the right ring finger. He noted that although Dr. provided a rating for carpal tunnel syndrome, trigger finger and De Quervain's tenosynovitis, he did not provide an actual medical evaluation for these conditions.

On the Office referred the claimant for a second opinion evaluation with Dr. He provided a history of the injury and his findings on examination. He concluded that the claimant has 2% impairment of each upper extremity.

On the case file was referred to the District Medical Advisor for review. He concurred with Dr. opinion as it related to the carpal tunnel syndrome. He noted that there was no objective evidence of trigger finger and as such there is no entitlement to

impairment.

By decision dated \_\_\_\_\_ the Office awarded the claimant a schedule award for 2% impairment to the left and right upper extremities. The award was for 12.48 weeks and for the period \_\_\_\_\_ to \_\_\_\_\_

The claimant disagreed with the decision and requested a hearing. Hearings and Review in their decision dated \_\_\_\_\_ remanded the case file back to the District Office for further development. The office was directed to update the statement of accepted facts and reference should be made file \_\_\_\_\_ which was accepted for right carpal tunnel syndrome, right De Quervain's and radial tenosynovitis. The Office was then directed to refer the claimant back to the second opinion examiner for re-evaluation and issuance of a de novo decision regarding impairment.

On \_\_\_\_\_ the claimant was re-evaluated by Dr. \_\_\_\_\_. He provided a history of the injury and his findings on examination. He stated, "The patient has evidence of left index finger trigger finger. She has a very small nodule in the flexor tendon sheath and tenderness over the flexor tendon sheath. The patient has no evidence of any residual De Quervain's tenosynovitis. There is no tenderness over the first dorsal compartment in either wrist. Her right wrist has a well healed surgical scar. I have reviewed the opinions offered by Dr. \_\_\_\_\_ in his reports of \_\_\_\_\_ and \_\_\_\_\_. I disagree that there is any impairment to the right ring trigger finger. The patient has no symptoms of a right trigger finger. She has never had any treatment for the right ring trigger finger. And physical examination has no evidence of a right ring trigger finger. The patient had a left middle trigger finger which was treated surgically and she has symptoms currently of a left index trigger finger. I'm not sure where the discrepancy came from. According to the table 15 2 digit regional grid on page 392 under digital stenosing tenosynovitis the patient is a class 0 to the right ring finger. There are no residual findings. The functional history grade modifier table 15 7 page 46 is 0 there are no problems. The physical examination grade modifier is 0 no problem. The clinical studies grade modifier is 0 no problem. She has a 0% impairment right ring finger according to the AMA guidelines, sixth edition. The date of maximum medical improvement to the right ring finger is today \_\_\_\_\_

On \_\_\_\_\_ the case file was referred to the District Medical Advisor for review. He stated, "Dr. \_\_\_\_\_ provided no valid ROM measurements per AMA Guides 6<sup>th</sup> Edition criteria... As a result, the claimant is rated using the Diagnosis Based Impairment (DBI) method. The most impairing diagnosis is trigger in the left index finger region and this condition is used for final calculations... The impairment calculations for this report are as follows: The right upper extremity impairment is 3%. The combined left upper extremity impairment is 4%. Dr. \_\_\_\_\_ provided no impairment calculations for the claimant's carpal tunnel syndrome or the left index finger. He stated that there was no impairment for a right ring finger condition. The date of MMI is \_\_\_\_\_. This is the date of the impairment examination performed by Dr. \_\_\_\_\_. The claimant has a prior award of 2% UEI for the right each median nerve. In this report, the claimant was assigned 3% for the right median nerve which exceeds the prior award for this condition by 1% UEI. The claimant has a prior award of 2% UEI for the left each median nerve. In this report, the claimant was assigned 4% (3% for the left median nerve and 1% UEI for the

left index trigger finger) which exceeds the prior award for this condition by 2% UEI.”

By decision dated \_\_\_\_\_ the Office awarded the claimant a schedule award for additional 1% right arm impairment and additional 2% for the left arm. The award was for 9.36 weeks and for the period \_\_\_\_\_ to \_\_\_\_\_

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

Based upon the written evidence of record, I find that the decision of the District Office dated \_\_\_\_\_ should be set aside and the claim remanded for further development based upon the guidance of Federal Employees' Compensation Act (FECA) Bulletin 17-06, issued \_\_\_\_\_

5 U.S.C. § 8107 provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.<sup>1</sup>

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 concluded with the Office's decision to adopt the American Medical Association's *Guides to the Evaluation of Permanent Impairment* (AMA Guides) for determining the extent of permanent impairments.<sup>2</sup>

Per Federal Employees' Compensation Act (FECA) Bulletin 17-06, Chapter 2, page 20, of the AMA *Guides* states that one of the fundamental principles is if the AMA *Guides* provide more than one method to rate a particular impairment or condition, the method producing the higher rating must be used. The Bulletin noted that unfortunately, the complexities of the explanations and the language throughout Chapter 15 has sometimes led physicians who have evaluated claimants to provide inconsistent interpretations for calculating upper extremity impairments. The Employees' Compensation Appeals Board (ECAB) held that in light of the conflicting language in the Sixth Edition of the *Guides* it is incumbent upon OWCP through its implementing regulations and/or internal procedures to establish a consistent method for rating upper extremity impairment. Impairment ratings should be based upon the most recent version of the Sixth Edition *Guides*. Currently, the reprinted 2009 AMA *Guides to the Evaluation of Permanent Impairment*, Sixth Edition is the most recent version. As such, this version should be consistently utilized by the DFEC (Department of Federal Employees' Compensation). The DMA should identify (1) the methodology used by the rating physician (i.e. DBI (diagnosis-based impairment) or ROM (range of motion) and (2) whether the applicable tables in Chapter 15 of the *Guides* identify a diagnosis that can alternatively be

<sup>1</sup> 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.404(a).

<sup>2</sup> *James E. Archie*, 43 ECAB 180 (1991).

rated by ROM. If the *Guides* allow for the use of both the DBI and ROM methods to calculate an impairment rating for the diagnosis in question, the method producing the higher rating should be used.<sup>3</sup>

OWCP procedures state that an OWCP medical adviser must review the impairment report to verify correct application of the AMA Guides and confirm the percentage of permanent impairment, as well as specify his or her reasons for assigning a certain percentage of loss of use to the measurements or factors provided by the examining physician.<sup>4</sup>

In the present case, the claimant's diagnosed condition can alternatively be rated using the ROM rating method per the Sixth Edition of the AMA Guides. However, the medical evidence of record requires further development for compliance with FECA Bulletin 17-06. Therefore, the District Office will need to undertake additional development to determine whether the claimant sustained greater than 3% impairment to the right upper extremity and 4% impairment to the left upper extremity due to the accepted work injury.

Upon return of the case file, the District Office should refer the claimant for a re-evaluation with Dr. [redacted] the second opinion examiner. The Office should ask that the specialist provide an assessment of the claimant's permanent partial impairment in accordance with the reprinted 2009 version of Sixth Edition of the AMA Guides, using both the DBI and ROM rating methods in accordance with FECA Bulletin 17-06. The Office should have the specialist cite the applicable sections of the Guides and provide medical rationale with a discussion of the evidence that supports all opinions given.

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

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<sup>3</sup> See also *Jeffrey J. Stickney*, 51 ECAB 616 (2000).

<sup>4</sup> *R.S.*, Docket No. 09-1331 (issued April 5, 2010).

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

Issued:  
Washington, D.C.

Electronically Signed  
Jacqueline Neugent  
Hearing Representative  
for  
Director, Office of Workers'  
Compensation Programs