

File Number:
HR11-D-H

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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 preliminary review has been completed, and it has been determined that the case is not in posture for a hearing at this time. The decision of the District Office has been vacated and returned to the district office for further action as explained in the attached Remand Order.

Your case file has been returned to the San Francisco 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 13 SFC
LONDON, KY 40742-8300

Electronically Signed

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, September 11, 2018

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 James
Claimant; Employed by the (VA),
Case number

Merit consideration of the case file was conducted in Washington, D.C. Based on this
review, the Office's decision of is set aside for the reasons set forth below.

The issue for determination is schedule award entitlement.

The claimant is employed as a nurse. On the claimant filed a timely Notice of Traumatic Injury and Claim for Compensation, claiming that on he sustained an injury when he was transporting a patient on a cart and had to stop suddenly. The Office accepted the claim for left shoulder sprain, left biceps tendon rupture, open wound of left elbow, reduction deformity of left upper limb, right rotator cuff rupture, left ulnar nerve lesion, pharyngitis, and ulcer.

The claimant underwent authorized biceps tendon repair (), left rotator cuff repair (), left shoulder debridement (), left rotator cuff repair and resection (), left rotator cuff revision (), right rotator cuff repair () with revision (), and left ulnar nerve transposition ().

On the claimant submitted a CA7 form to claim a schedule award in connection with the accepted injury.

In a report of MD, opined to 10% right upper extremity impairment. Dr. noted range of motion deficits and cited the *AMA Guides to the Evaluation of Permanent Impairment*, 6th edition generally at class 1, grade E for shoulder tendinosis. Dr. stated the claimant had reached maximum medical improvement (MMI).

In a report of MD, a District Medical Advisor (DMA), opined that Dr. report was incomplete as to physical findings. Range of motion was noted for one set of measurements in only three of the shoulder planes (flexion, abduction, and external rotation). Dr. also noted that prior assessments of shoulder impairment reported and by , were not consistent with

Washington DC, September 11, 2018

the 6th edition *AMA Guides*.¹ Dr. [redacted] recommended an independent second opinion medical examination to determine upper extremity impairment.

The Office prepared a Statement of Accepted Facts (SOAF) and referred the claimant to DO, a board certified orthopedic surgeon, for a second opinion medical examination. In a [redacted] report Dr. [redacted] noted findings of range of motion loss in all shoulder planes (adduction, abduction, flexion, extension, internal and external rotation), negative Tinel's test, 1/5 strength left, 5/5 right strength, and tenderness. Dr. [redacted] noted injury-related bilateral rotator cuff tear and left ulnar nerve lesion. Dr. [redacted] opined to 51% combined upper extremity impairment based on loss of range of motion. Dr. [redacted] placed the claimant at MMI as of [redacted] Dr. [redacted] opined that the [redacted] work incident did not cause or contribute to a cervical spine condition.

The Office referred the file to DMA [redacted] for an opinion as to upper extremity impairment. In a report of [redacted] Dr. [redacted] cited findings presented by Dr. [redacted] and determined for the left shoulder 12% referable to table 15-5, at class 1 with a default value of 10% for full-thickness rotator cuff tear with acromioclavicular joint disease, and modifiers of 2 for functional history (pain) and 3 for physical exam (motion deficit). The net adjustment was +3 for a final grade E, or 12% impairment.

For the right shoulder Dr. [redacted] determined a class 1 impairment with 5% default value referable to full-thickness rotator cuff tear, and modifiers of 1 for physical exam for motion loss, for a net adjustment of zero and final grade C, or 5% impairment.

For the left elbow Dr. [redacted] cited table 15-21 (peripheral nerve impairment) for rating ulnar nerve lesion. Dr. [redacted] determined a class 1, or 1% impairment based on neurologic findings (mild sensory deficit).

Dr. [redacted] stated that impairment could not be rated under the alternate range of motion method because Dr. [redacted] reported only one set of shoulder plane measurements.

On [redacted] the Office awarded a schedule award for 12% left upper extremity (shoulder), 1% left upper extremity (elbow), and 5% right upper extremity (shoulder). The award commenced [redacted] because the claimant had been paid compensation for wage loss through [redacted] The Office accorded weight to the opinions of Drs. [redacted] and [redacted]. The claimant disagreed with the Office's decision and requested an oral hearing.

The case is not in posture for a hearing. Based upon a review of the evidence of record, I find that the Office's decision of [redacted] should be set aside.

Section 8107 of the Federal Employees' Compensation Act (FECA)² provides for compensation to employees sustaining impairment from loss, or loss of use of, specified

¹ DMA Estaris noted that Dr. [redacted] determined impairment values in excess of the maximum percentages allowed under table 15-5 referable to rotator cuff tear.

members of the body. The FECA, 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. For consistent results and to ensure equal justice, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants. The *AMA Guides* has been adopted by the Office as a standard for evaluation of schedule losses and the Board has concurred in such adoption.³

The Office Procedure Manual provides that the attending physician should make the evaluation of permanent impairment whenever possible. The attending physician's report should include a detailed description of the impairment, as well as an estimate of the impairment in terms of percentage.⁴ The Procedure Manual provides that after obtaining all necessary medical evidence, the file should be routed to the DMA for an opinion concerning the nature and percentage of impairment.⁵

The *AMA Guides*, 6th edition, provides two methods for rating upper extremity impairment: Diagnosis-Based Impairment (DBI) and range of motion (ROM). Office procedures provide that where the Guides allow for either method to be used, the Office must calculate impairment under both methods and determine which method produces the higher rating.⁶ The 6th edition *AMA Guides* identify rotator cuff tear as ratable under both methods. Peripheral nerve impairment is not identified for both methods.⁷

Office procedures provide that if the rating physician provided an assessment using the DBI method and the *Guides* allow for use of the ROM method, the DMA should independently calculate impairment using both methods and identify the higher rating for the claims examiner.⁸ 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 needed to complete such a rating. If sufficient medical evidence is not received from the claimant's physician the Office should refer the claimant to a second opinion medical examination to complete the rating.⁹ In turn, where the second opinion examiner's report is deficient, the Office should request clarification from the second opinion examiner.¹⁰

DMA correctly calculated upper extremity impairment via the DBI method, citing table 15-5 for the shoulder and 15-21 for the left elbow based on Dr. findings. DMA found the record incomplete as to range of motion deficits required to rate shoulder

² 5 U.S.C. §8107

³ *Jacqueline S. Harris*, 54 ECAB 139 (2002)

⁴ Federal (FECA) Procedure Manual, Part 2—Claims, *Schedule Awards*, Ch. 2-808-6(a) (March 2017)

⁵ Federal (FECA) Procedure Manual, Part 2—Claims, *Schedule Awards*, Ch. 2-808-6(f) (March 2017)

⁶ FECA Bulletin 17-06, paragraph 4 (May 8, 2017)

⁷ *AMA Guides*, table 15-5, p. 403 and 15-21, p. 443 (conditions marked with an asterisk in the *Guides* may be rated under either method, see *AMA Guides*, p 390)

⁸ FECA Bulletin 17-06, paragraph 7 (May 8, 2017)

⁹ FECA Bulletin 17-06, paragraphs 8-9 (May 8, 2017)

¹⁰ *Peter C. Belkind*, 56 ECAB 580 (2005)

impairment. It is therefore necessary to obtain from Dr. three sets of shoulder range of motion measurements in all planes as required by the *AMA Guides*.¹¹

Accordingly, the Office's decision of is hereby set aside and REMANDED.

Upon return of the case file, the Office should update the SOAF as needed and prepare questions for the second opinion examiner. The Office should refer the claimant to Dr. Steingart for re-examination and a report containing three sets of measurements of range of motion of the shoulders in all planes. Upon receipt of Dr. Steingart's report the Office should refer the file to DMA for an opinion as to upper extremity (shoulder) impairment via both the DBI and ROM methods, and the DMA should identify which method produces the higher rating. Following any additional development deemed necessary, the Office should issue a *de novo* decision as to schedule award benefits.

It is recommended that the Office amend the accepted conditions to bilateral rotator cuff rupture (full-thickness tear) based on the opinions of Drs. and

Issued:
Washington, D.C.

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

¹¹ *AMA Guides*, 6th ed., p. 464