

File Number:
HR55-D-H

U.S. DEPARTMENT OF LABOR

OFFICE OF WORKERS' COMP PROGRAMS
PO BOX 8300 DISTRICT 50
LONDON, KY 40742-8300
Phone: (202) 693-0045

RECEIVED SEP 27 2018

Date of Injury:
Employee:

Dear

I am writing with respect to the workers' compensation claim referenced above, and your request made to the Branch of Hearings and Review for a hearing regarding a formal decision dated

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 Seattle 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 14 SEA
LONDON, KY 40742-8300

Sincerely,

Electronically Signed

PAUL FESLER
ATTORNEY AT LAW
FELSER LAW FIRM
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 24, 2018

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

In the matter of the claim for compensation under Title 5, U.S. Code 8101 *et. seq.* of
Claimant; Employed by the Case No.

Merit Consideration of the case file was completed in Washington, D.C. Based on this review, the decision of the District Office dated _____, is set aside for the reasons set forth below.

The issue for determination is whether the claimant sustained more than a 5% permanent impairment of the left upper extremity (LUE) due to the accepted work injury.

The claimant, _____, was employed as a
(EMT) for the _____.

The claimant sustained a traumatic injury on _____.

The District Office accepted the claim for OTHER SHOULDER LESIONS, LEFT SHOULDER; STRAIN OF OTHER MUSCLES, FASCIA AND TENDONS AT SHOULDER AND UPPER ARM LEVEL, LEFT ARM, INITIAL ENCOUNTER.

The claimant filed a form CA-7, Claim for Compensation, to assert a claim for a schedule award for permanent impairment.

The claimant submitted an impairment rating from Dr. _____ dated _____ Dr. _____ used the Diagnostic Based Impairment (DBI) method and determined that the claimant had a 5% impairment of the LUE.

The District Office forwarded the impairment rating from Dr. _____ along with pertinent medical records, to their District Medical Advisor (DMA) pursuant to office policy. The DMA provided a report dated _____, in which he noted that pursuant to the Sixth Edition of the American Medical Association's *Guides to the Evaluation of Permanent Impairment (AMA Guides)*, the claimant's rating could be calculated through the DBI method or Range of Motion (ROM) method. However, the DMA noted that the medical evidence did not include "shoulder motions obtained for flexion, abduction, adduction, internal rotation and external rotation;" consequently, the ROM method could not be used. The DMA indicated that he concurred with Dr. _____'s DBI rating of 5%.

By decision dated _____ the District Office compensated the claimant with a schedule award for 5% permanent impairment of the LUE.

The claimant disagreed with the _____ decision and requested a hearing by an OWCP representative.

On _____, the claimant submitted an _____ letter signed by Dr. _____ who indicated that during his examination of the claimant on _____, the claimant was measured for his shoulder range of motion for flexion/abduction/internal rotation/external rotation. The claimant's right shoulder was measured as 180/180/90/90 and his left shoulder was measured as 170/170/40/60.

Washington DC, September 24, 2018

Based upon the written evidence of record, I find that the decision of the District Office dated [redacted] 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 [redacted]

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.¹

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 *AMA Guides* for determining the extent of permanent impairments.²

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 *AMA 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 *AMA 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 or ROM) and (2) whether the applicable tables in Chapter 15 of the *AMA Guides* identify a diagnosis that can alternatively be 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.³

OWCP procedures state that an OWCP medical adviser (also known as the DMA) 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.⁴

In the present case, the claimant's diagnosed conditions 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 a 5% impairment of the LUE due to the accepted work injury.

¹ 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).

² *James E. Archie*, 43 ECAB 180 (1991).

³ See also *Jeffrey J. Stickney*, 51 ECAB 616 (2000).

⁴ R.S., Docket No. 09-1331 (issued April 5, 2010).

Upon return of the case file, the District Office should forward Dr. _____ letter with the claimant's ROM measurements to the DMA and request that the DMA calculate the claimant's impairment using the reprinted 2009 version of the Sixth Edition of the AMA *Guides*, using both the DBI and the ROM rating method in accordance with FECA Bulletin 17-06. The Office should ask the DMA to cite the applicable sections of the *Guides* and to 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.

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
Division of Federal Employees' Compensation

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