

File Number:
HR10-D-H

RECEIVED DEC 10 2012

U.S. DEPARTMENT OF LABOR

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

DEC - 4 2012

Date of Injury:
Employee:

Dear Mr. :


This is in reference to your late husband's workers' compensation claim. Attorney Paul Felser advised me at the hearing that your husband had recently passed away. I wish to extend my condolences. Pursuant to your husband's request for a hearing, the case file was transferred to the Branch of Hearings and Review.

A hearing was held on 10/03/2012. 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.

The 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,


Carol E. Adams
Hearing Representative

PAUL FELSER
FELSER LAW FIRM, PC
PO BOX 10267
SAVANNAH, GA 31412

If you have a disability (a substantially limiting physical or mental impairment), please contact our office/claims examiner for information about the kinds of help available, such as communication assistance (alternate formats or sign language interpretation), accommodations and modifications.

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
deceased claimant; Employed by the Case
number A hearing was held on October 3, 2012.

The issue for determination is whether the claimant has greater than 9% permanent impairment of the left arm.

The claimant, at the time of injury, was employed with the
as an . The claimant filed a traumatic claim of injury for date of injury of
The claim was accepted for closed fracture of the upper end of the left
arm humerus neck, closed fracture of the upper end of the left arm humerus tuberosity
and proximal humerus fracture of the left arm.

The claimant filed a claim for schedule award for permanent impairment.

In a report dated March 6, 2012, Dr. , orthopedist, provided examination findings as follows:

Decreased active range of motion for shoulder flexion 170 degrees and shoulder abduction 160 degrees, internal rotation 58 degrees, and external rotation 54 degrees. Decreased strength of the left shoulder to 4/5. Decreased ability to tolerate overhead work activities on a frequent to constant basis.

Further, the doctor provided diagnosis based impairment (DBI) rating and determined that the diagnosis class was 1 with a default value of 3% permanent impairment of the upper extremity. He then applied the grade modifiers to the formula for DBI ratings and found that there was no increase in permanent impairment from the grade modifiers. The doctor determined that the claimant had a 3% left upper extremity impairment, based on the DBI method found in the AMA Guides, 6th edition.

On April 19, 2012 the Office referred the case to a District Medical Advisor (DMA) for review of the record and permanent impairment rating. In a memo dated April 19, 2012, the DMA noted that the date of maximum medical improvement (MMI) was February 21, 2012. The DMA discussed the diagnosed conditions and provided a partial permanent impairment (PPI) rating based on the stand-alone range of motion (ROM) method rather than the DBI method. The DMA found that the claimant had 9% PPI of the left upper extremity. The DMA attached a ROM calculation worksheet to support his determination. The worksheet showed that Table 15-34 on page 475 was used to determine the rating. The DMA gave 3% PPI for 170° forward flexion, 3% PPI for 160° abduction, 2% PPI for 58° internal rotation and 1% for 54° for external rotation for a total

not had an opportunity to review. On remand, the Office should write to Dr. _____ and Dr. _____ and inquire as to whether they have information on record sufficient to provide complete ROM findings as listed on the DMA's SA worksheet. The doctors should also be advised to state if any of the ROMs were normal.

When a response is received, the Office should refer the case back to the DMA. The DMA should be asked to review any new evidence that has been received, since his original rating, to include the second opinion report. The DMA should be asked to provide a well-reasoned report, regarding the degree of the claimant's permanent impairment of the left upper extremity. If the Grid in the Guides refers the DMA to the ROM method, the DMA should reference the Grid and so state in his report. The DMA should also explain as to why the ROM method is the best method to determine the claimant's degree of permanent impairment from the injury.

Once all necessary development is completed, a new decision should be issued.

In accordance with the aforementioned findings, the Office decision of June 28, 2012 is set aside and the case **remanded** for further development.

Date:

DEC - 4 2012

Washington, D.C.



Carol E. Adams
Hearing Representative
For
Director, Office of Workers'
Compensation Programs