

RECEIVED AUG 22 2016

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 Mr.

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 07/06/2016. 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:

US DEPARTMENT OF LABOR  
OFFICE OF WORKERS' COMP PROGRAMS  
PO BOX 8300 DISTRICT 6 JAC  
LONDON, KY 40742-8300

Electronically Signed

Alan Stein  
Hearing Representative

PAUL H FELSER  
FELSER LAW FIRM, P.C.  
7393 HODGSON MEMORIAL DRIVE  
SUITE 102  
SAVANNAH, GA 31406

*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.*

Washington DC, August 17, 2016

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 number \_\_\_\_\_ Hearing was held by  
telephone conference on July 6, 2016.

---

The issue for determination is schedule award entitlement.

The claimant, born \_\_\_\_\_ is employed as an \_\_\_\_\_ with the \_\_\_\_\_  
of \_\_\_\_\_ in \_\_\_\_\_. On \_\_\_\_\_ the claimant filed a timely Notice of  
Occupational Disease and Claim for Compensation, claiming that as of \_\_\_\_\_ he  
developed sinus and vertigo conditions due to exposure to altitude pressure in the course of  
flying as an \_\_\_\_\_. The Office accepted the claim for bilateral benign paroxysmal  
positional vertigo, bilateral otitic barotrauma, and bilateral sensorineural hearing loss.

On \_\_\_\_\_ the claimant underwent authorized left tympanostomy tub removal  
with tube placement and aspiration of blood from the ear space.

On \_\_\_\_\_ the claimant underwent authorized bilateral myringotomy.

\_\_\_\_\_, MD, a board-certified otolaryngologist, conducted a second opinion  
medical examination and submitted a report dated \_\_\_\_\_. Dr. \_\_\_\_\_ opined that  
the vertigo condition had resolved, while bilateral hearing loss remained active.

On March 14, 2007 the Office awarded a schedule award for 22% bilateral hearing loss  
based on the opinion of a District Medical Advisor (DMA), A.E. Anderson, Jr., MD, dated  
March 7, 2007.

The claimant underwent additional authorized bilateral myringotomy surgery on  
\_\_\_\_\_ and \_\_\_\_\_ and \_\_\_\_\_

On March 4, 2015 the claimant filed a form CA7 to claim an increased schedule award. In a  
report of \_\_\_\_\_ MD, an otolaryngologist, stated the claimant  
reached maximum medical improvement (MMI) as of \_\_\_\_\_. Dr. \_\_\_\_\_ did not  
proffer an opinion as to percentage of hearing loss.

Post hearing the record was held open for 30 days to allow for the submission of additional written evidence. A copy of the hearing transcript was provided to the employing agency and 20 days allowed for the submission of written comments. No comments or additional written evidence were received.

The schedule award provisions of the Federal Employees' Compensation Act (FECA) provide for compensation to employees sustaining impairment from loss, or loss of use of, specified 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.<sup>3</sup> 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.<sup>4</sup> The 6<sup>th</sup> edition *AMA Guides* provides at chapter 11 a method for rating hearing loss referable to auditory injury/noise exposure.<sup>5</sup>

The opinion of a second opinion medical specialist, if sufficiently rationalized, may be accorded the weight of medical evidence.<sup>6</sup> However, the medical specialist's opinion must be based on a complete and accurate history and review of all relevant medical documentation.<sup>7</sup> In turn, the SOAF provided to the medical specialist should include other relevant workers' compensation injuries.<sup>8</sup>

Where the Office refers a claimant for a second opinion examination it has an obligation to secure a report on the relevant issues.<sup>9</sup> Where the second opinion examiner's report does not adequately address relevant issues, the Office should secure a report which addresses such issues.<sup>10</sup>

Dr. [redacted] opinion was based on an incomplete history of accepted auditory injuries. The SOAF did not include such other injuries. As a result [redacted] did not have an opportunity to review relevant history and medical documentation. Consequently the doctor's opinion cannot be accorded weight. The Office should request clarification from Dr. [redacted] based on a review of the complete medical history and record.

Accordingly, the Office's decision of October 30, 2015 is hereby set aside and REMANDED.

<sup>3</sup> *Janet L. Adamson*, 52 ECAB 431 (2001)

<sup>4</sup> *Id.*

<sup>5</sup> *AMA Guides*, 6<sup>th</sup> ed., section 11.2 ff.

<sup>6</sup> Federal (FECA) Procedure Manual, Part 2—Claims, *Developing and Evaluating Medical Evidence*, Ch. 2-810-9(i) (September 2010)

<sup>7</sup> *Michael S. Mina*, 57 ECAB 379 (2006)

<sup>8</sup> Federal (FECA) Procedure Manual, Part 2—Claims, *Statements of Accepted Facts*, Ch. 2-809-6 (September 2009)

<sup>9</sup> *Peter C. Belkind*, 56 ECAB 580 (2005)

<sup>10</sup> *Id.*



Upon return of the case file the Office should merge the present file with files 234 and 347, and prepare an updated SOAF that includes all accepted auditory injuries and conditions.

The Office should then prepare questions for Dr. \_\_\_\_\_ and refer such questions as well as the SOAF and copies of medical records from the merged file to Dr. \_\_\_\_\_ for review and a supplemental report which contains a rationalized opinion as to (1) percentage of bilateral permanent hearing impairment in accord with the 6<sup>th</sup> edition *AMA Guides*, and (2) the date of MMI. Upon receipt of Dr. \_\_\_\_\_ supplemental report, and any additional development deemed necessary, the Office should issue a *de novo* decision as to schedule award benefits.

Issued:  
Washington, D.C.

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