

RECEIVED FEB 06 2017

U.S. DEPARTMENT OF LABOR

OFFICE OF WORKERS' COMP PROGRAMS  
PO BOX 8300 DISTRICT 6 JAC  
LONDON, KY 40742-8300  
Phone: (904) 366-0100

February 2, 2017

Date of Injury:  
Employee:

Dear

This concerns your compensation case and your request for reconsideration received on January 5, 2017.

We have evaluated the evidence submitted and have reviewed the merits of your case under 5 U.S.C. 8128. You have provided sufficient evidence to warrant modification of the decision dated June 16, 2016. Based on the information received, the decision is now vacated.

The reasons for this decision are outlined in the enclosed Notice of Decision.

Sincerely,

Senior Claims Examiner

✓PAUL FELSER  
ATTORNEY AT LAW  
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.*

**NOTICE OF DECISION**  
**Claimant Name:**  
**Case Number:**

**ISSUE:** The issue for determination is whether the evidence presented is of sufficient probative value to vacate the decision dated June 16, 2016.

**REQUIREMENTS FOR ENTITLEMENT:** In accordance with the regulations set forth in 20 CFR § 10.609, if an application for reconsideration is accompanied by new and relevant evidence or by an arguable case for error, OWCP will conduct a merit review of the case to determine whether the prior decision should be modified. If sufficient evidence exists to overturn the prior decision, it should be vacated.

Under the schedule award provisions of 5 U.S.C. 8101 et. seq. (Federal Employees' Compensation Act), the Office of Workers' Compensation Programs can pay compensation for permanent disability to an affected extremity due to an accepted work-related condition. Schedule awards under the FECA are calculated according to the American Medical Association's Guides to the Evaluation of Permanent Impairment. The AMA Guides are the approved standard for evaluating permanent impairment.<sup>1</sup>

**BACKGROUND:** You are employed as a \_\_\_\_\_ with \_\_\_\_\_  
On September 17, 2012, you filed a Form CA-1, Notice of Traumatic Injury claiming that you sustained to your lower back, right shoulder, right shoulder and left and right thumbs while in the performance of assigned duties on \_\_\_\_\_. What you have described is an occupational injury and not a traumatic injury. A traumatic injury is a specific injury that occurs within one work shift. An occupational claim is a claim for an injury that has occurred over a period of time. Your claim was changed to an Occupational Claim and you were not entitled to continuation of pay.

Your claim was accepted for compete rotator cuff rupture, left, lumbosacral spondylosis without myelopathy and trigger finger (acquired) right which resolved. You have undergone surgical procedures performed on January 16, 2014, and April 9, 2015.

On September 25, 2015, you completed a Form CA-7, Claim for Compensation for a schedule award. Following development, by formal decision dated June 16, 2016, our Office denied your claim for a schedule award benefits because the requirements have not been met for entitlement to a schedule award.

You disagreed with the June 16, 2016 decision and on your behalf, your authorized representative, Paul H. Felser requested an Oral hearing by telephone with the Branch of Hearings and Review in a letter dated July 13, 2016. In a letter dated January 5, 2017, on your behalf your representative state, "With regard to the hearing request made on or about July 13, 2016, please accept this letter as the Claimant's request to withdrawn the telephone appeal. The Claimant wishes to purse his Reconsideration appeal right."

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<sup>1</sup> Anthony M. Kowal, 49 ECAB \_\_\_\_ (Docket No. 95-2529, issued December 10, 1997).

By letter dated January 13, 2017, your employer was advised of your request for reconsideration in accordance with our regulations. Our Office advises that the issue in question pertains to a medical issue; therefore, we would proceed accordingly with action on your request. New evidence not previously considered was also received.

**DISCUSSION OF EVIDENCE:** The evidence reviewed in support of your reconsideration request since the date of the contested decision dated June 16, 2016, includes Amended Impairment Rating dated December 2, 2016, letter dated December 12, 2012 from , M. D. and your representative, Mr. Felser letter dated January 5, 2017, requesting reconsideration.

In your representative's letter dated January 5, 2017, states, "Claimant submits this letter brief and additional evidence in support of his request for Reconsideration regarding the Decision of the District Office dated 06/16/2016. This additional evidence is submitted within one year of the 06/16/2016 decision. The Claimant contends that the new evidence submitted warrants a merit review of this request and the claim in its entirety. Based on the new evidence presented, the Claimant contends that his claim for additional permanent injury benefits was denied unfairly. The Notice of Decision should be rescinded; and additional benefits should be paid accordingly." His statement is of no probative value as the issue at hand is medical in nature.

On January 13, 2017, given the new medical evidence which consist of the Amended Impairment Rating dated December 2, 2016 and Dr. report dated December 12, 2016 and your entire file were forwarded to our District Medical Advisor (DMA), for review regarding the right and left lower extremities and the extent of impairment causally related to your work injury.

On January 18, 2017, the DMA, Dr. , agrees with the findings of Amended Impairment Rating which your treating physician, Dr. signed and determine 8% impairment of the right lower extremity and 10% impairment of the left lower extremity. In his report, Dr. reviewed the medical evidence and opined, "The AMA Guides 6th edition does not provide a Diagnosis Based Impairment (DBI) or any other method to calculate the claimant's residual lower extremity impairment for their lumbar radiculopathy. However, the AMA Guides Newsletter July/August 2009 describes an approach to rate spinal nerve impairments consistent with the Sixth Edition methodology. I am utilizing this recommended approach to calculate the extremity impairment at this time.

For purposes of calculating Schedule Award for the right lower extremity utilizing the *AMA Guides to the Evaluation of Permanent Impairment, sixth edition*, the claimant has 2% impairment of the lower extremity for residual problems with moderate pain/impaired sensation from their right L3 lumbar radiculopathy {CDX 1C}. The claimant has 3% impairment of the lower extremity for residual problems with moderate pain/impaired sensation from their right L4 lumbar radiculopathy {CDX 1C}. The claimant has 3% impairment of the lower extremity for residual problems with moderate pain/impaired sensation from their right L5 lumbar radiculopathy {CDX 1C}. This results in 8% right lower extremity impairment.

For purposes of calculating Schedule Award for the left lower extremity utilizing the *AMA Guides to the Evaluation of Permanent Impairment, sixth edition*, the claimant has 4% impairment of the lower extremity for residual problems with severe pain/impaired

sensation from their left L3 lumbar radiculopathy { CDX 1C}. The claimant has 3% impairment of the lower extremity for residual problems with moderate pain/impaired sensation from their left L4 lumbar radiculopathy {CDX 1C}. The claimant has 3% impairment of the lower extremity for residual problems with moderate pain/impaired sensation from their left L5 lumbar radiculopathy {CDX 1C}. This results in 10% left lower extremity impairment." It is also noted that DMA provided a rating for the left upper extremity which has already been paid.

The DMA explained in detailed his findings of ratings based on the A.M.A. Guides 6<sup>th</sup> Edition. A copy of the DMA's report and the treatment notes dated December 2, 2016 and December 12, 2016, are enclosed for your reference.

**BASIS FOR DECISION:** The evidence is sufficient to vacate the decision dated June 16, 2016, because the evidence now supports an 8% impairment of the right lower extremity and 10% impairment of the left lower extremity.

Under the schedule award provisions of 5 U.S.C. 8101 et. seq. (Federal Employees' Compensation Act), the Office of Workers' Compensation Programs can pay compensation for permanent disability to an affected extremity due to an accepted work-related condition. Schedule awards under the FECA are calculated according to the American Medical Association's Guides to the Evaluation of Permanent Impairment. The AMA Guides are the approved standard for evaluating permanent impairment.<sup>2</sup>

**CONCLUSION:** Therefore, the decision dated June 16, 2016, is **vacated**. Your schedule award claim will be processed for 8% impairment of the right lower extremity and 10% impairment of the left lower extremity.

A letter transmitting the explanation of benefits for the schedule award will also be forwarded shortly.

Senior Claims Examiner

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<sup>2</sup> Anthony M. Kowal, 49 ECAB \_\_\_\_ (Docket No. 95-2529, issued December 10, 1997).