

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 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 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,

Electronically Signed

Branch of Hearings & Review

PAUL H. FELSER, ESQ.
QUEENSBOROUGH BANK BLDG
7393 HODGSON MEMORIAL DR
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, January 24, 2017

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 Case No.

Merit Consideration of the case file was completed in Washington, D.C. Based on this review, the decision of the Office dated September 27, 2016 is set aside for the reasons set forth below.

The issue for determination is whether the claimant sustained greater than 25% permanent partial impairment of his left lower extremity or any permanent impairment of his right lower extremity due to his accepted work injury.

The claimant, born _____ was employed as a _____ for the _____

On April 19, 2000, the claimant timely filed a form CA-2, Notice of he sustained an injury in the performance of his federal duties. The District Office accepted the claim for a permanent aggravation of chondromalacia (synovial chondromatosis of the left ankle); a ganglion of the right ankle and foot; localized primary osteoarthritis of both ankles and feet; and traumatic arthropathy of the right ankle and foot. The Office authorized the claimant's left ankle surgeries performed in 2007 and 2010.

The claimant submitted a form CA-7, Claim for Compensation, to assert a claim for a schedule award for permanent impairment. In response, the District Office advised the claimant of the medical evidence needed to support the schedule award claim, which requires an impairment rating done according to the Sixth Edition of the American Medical Association's *Guides to the Evaluation of Permanent Impairment (AMA Guides)*.

By decision dated November 13, 2001, the District Office compensated the claimant with a schedule award for permanent partial impairment of the left lower extremity. The decision advised the period of the award was from August 22, 2001 to January 7, 2003. The decision did not actually identify the percentage of impairment they awarded to the claimant. However, the Office's payment paperwork states the percentage of loss awarded was 25% of the left lower extremity, which is consistent with the District Medical Advisor's (DMA) report of September 12, 2001.

The claimant asserted a claim for an additional schedule award. By decision dated February 23, 2009, the District Office denied the claim for an additional schedule award, as his physician had not yet found that the claimant had reached maximum medical improvement for his accepted work injuries.

The claimant asserted a claim for an additional schedule award. The District Office had their DMA review the medical evidence of record. By report dated April 24, 2013, the DMA opined the claimant had 26% right lower extremity impairment due to severe arthritis. He opined the claimant had 68% left lower extremity impairment; however, he erroneously stated the claimant already received a schedule award for 75% left ankle impairment from August 22, 2001 to January 7, 2003, so he opined the claimant had no additional impairment of the left lower extremity. The Office issued no decision regarding the DMA's opinion at this time.

Washington DC, January 24, 2017

By letter dated May 19, 2015, the claimant's attorney, Mr. Felser, inquired about the schedule award claim. He noted that the DMA's memo regarding the claimant previously receiving a 75% impairment was incorrect, as the claimant received 25% in the November 13, 2001 decision. He contended the claimant was entitled to 43% of the left lower extremity and 26% of the right lower extremity. He provided the claimant's new CA-7 form to claim an additional schedule award.

By report dated September 26, 2016, the DMA advised he had been asked to assess permanent impairment of the left lower extremity, and he had been advised that the claimant previously received 75% impairment of the left lower extremity. The DMA referenced the prior DMA's report of April 23, 2013, but he did not mention the DMA's report of September 12, 2001. The DMA noted he reviewed the most recent medical evidence from Drs _____ and _____. The DMA opined that per the Sixth Edition of the *AMA Guides*, the claimant sustained 56% left lower extremity impairment, which is less than what he was previously awarded, so no additional impairment had been incurred.

By decision dated September 27, 2016, the District Office denied the request for an additional schedule award. Specifically, the Office stated while the DMA found the claimant currently had 56% impairment of the left lower extremity, they previously paid the claimant a schedule award for 75%. The Office stated since the current impairment is less than the prior percentage of impairment, no additional impairment was incurred. The Office did not make a decision regarding entitlement to a schedule award for the right lower extremity.

The claimant disagreed with the September 27, 2016 decision and requested an oral hearing before an OWCP representative. Based on my review of the case record, the decision of the District Office dated September 27, 2016 should be set aside and remanded for further development.

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 American Medical Association's *Guides To The Evaluation Of Permanent Impairment* for determining the extent of permanent impairments.²

The Sixth Edition of the *AMA Guides* provides a diagnosis-based method of evaluation utilizing the World Health Organization's International Classification of Functioning, Disability and Health (ICF).³ Under the Sixth Edition, the evaluator identifies the impairment class for the *Class of Diagnosis* (CDX), which is then adjusted by grade modifiers based on GMFH, GMPE and GMCS.⁴ The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX). Evaluators are directed to provide reasons for their impairment rating choices, including the choices of diagnoses from regional grids and calculations of modifier scores.⁵

¹5 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*AMA Guides* (6th ed. 2009), page 3, section 1.3, International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement.

⁴*AMA Guides* (6th ed. 2009), pages 494-531.

⁵See *R.V.*, Docket No. 10-1827 (issued April 1, 2011).

OWCP procedures state that an OWCP medical adviser 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.⁶

In the present claim, the District Office based their September 27, 2016 decision on the erroneous assumption that they the claimant already received a schedule award for 75% impairment. However, the Office did not identify when the claimant received a schedule award in this amount. The claimant has no other federal workers' compensation claims. A review of the claimant's compensation payment history reveals the Office paid no other schedule award, except for the 25% of the left lower extremity he received by decision dated November 13, 2001. Furthermore, there is no evidence the claimant ever received a schedule award for the accepted work-related injury to his right lower extremity. As the DMA indicated the claimant currently has 56% impairment of the left lower extremity and 26% right lower extremity impairment, further development of the schedule award claim is necessary. In addition, Mr. Felser submitted a new impairment rating from Dr. [redacted] dated November 17, 2016. Dr. [redacted] opined the claimant sustained 60% impairment of his left lower extremity and 20% impairment of his right lower extremity per the Sixth Edition of the *AMA Guides*. This additional medical evidence also requires review.

Upon return of the case file, the District Office should refer the claimant's medical records and Dr. [redacted] new impairment rating to their District Medical Advisor (DMA), pursuant to Office procedures. The Office should advise the DMA that the claimant only previously received a schedule award for 25% impairment for his left lower extremity and he received no impairment of the right lower extremity. The Office should ask that the DMA review all of the DMA's prior permanent impairment assessments. The Office should also have the DMA review Dr. [redacted] November 17, 2016 impairment rating. The Office should ask the DMA to provide a new assessment of the claimant's permanent partial impairment to both of his lower extremities in accordance with the Sixth Edition of the *AMA Guides*. The Office should have the DMA provide medical rationale for his or her opinion, citing the applicable sections from the Sixth Edition of the *AMA Guides* and explain what evidence 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 schedule award claim.

Consistent with the above findings, the decision of the District Office dated September 27, 2016 is set aside, and the case file is REMANDED for further action as described above.

Issued:
Washington, D.C.

Electronically Signed
Sherri Doiron
Assistant Chief
Branch of Hearings and Review
for
Director, Office of Workers'
Compensation Programs

⁶R.S., Docket No. 09-1331 (issued April 5, 2010); Federal (FECA) Procedure Manual, Chapter 2.810.8(d).