

RECEIVED JAN 11 2019

U.S. DEPARTMENT OF LABOR

OFFICE OF WORKERS' COMP PROGRAMS
PO BOX 8300 DISTRICT 3 PHI
LONDON, KY 40742-8300
Phone: (267) 687-4160

January 08, 2019

Date of Injury:
Employee:

Dear

Under the schedule award provisions of the Federal Employees' Compensation Act (FECA) at 5 U.S.C. 8107, the Office of Workers' Compensation Programs makes the following:

DE NOVO AWARD OF COMPENSATION

1. Degree and Nature of Permanent Impairment: 11% right upper extremity
2. Date of Maximum Medical Improvement (MMI): 05/16/2018

Initial 10% Award (Issued 07/18/2018)

3. Period of 10% Award: 05/17/2018 to 12/21/2018
4. Number of Weeks of Compensation: 31.2
5. Weekly Pay: \$2369.67 X Compensation Rate: 75 % = \$1777.25
6. Effective Date of Pay Rate: 03/06/2017
7. Your Initial Payment and the Period Covered: \$9647.94 from 05/17/2018 to 06/23/2018.
8. Your Continuing Payment each Four Weeks: \$7109.01

Payment of your initial award ended because you were paid for the last day shown in item 3 above.

Additional 1% Award (This Decision)

9. Period of Additional 1% Award: from 12/23/2018 to 01/13/2019
10. Number of Weeks of Additional Compensation: 3.12
11. Your Additional Payment and the Period Covered: \$5545.03 from 12/23/2018 to 01/13/2019

Payment of your additional award ends when paid for the last day shown in item 9 above.

Section 8107 of the FECA and its implementing regulations set forth the number of weeks of compensation to be paid for the permanent loss or loss of use of specified members, functions and organs of the body known as permanent impairment. 20 C.F.R. 10.404; see also 20 C.F.R. Part 10. The commencement period of the schedule award is usually the date of maximum medical improvement, the date that the physical condition of the injured member has stabilized and is not expected to improve further.

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.

File Number:
CA-181-D-S

The FECA, however, does not in most instances specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The implementing regulations have adopted the American Medical Association, Guides to the Evaluation of Permanent Impairment, as the appropriate standard for evaluating schedule losses. Currently, schedule awards are calculated using the Sixth Edition of the AMA Guides.

A schedule award is payable consecutively but not concurrently with an award for wage loss for the same injury. Therefore, the starting date of the additional 1% schedule award has been adjusted to 12/23/2018 because you received compensation for 10% disability through 12/21/2018.

On July 18, 2018 you were awarded compensation based on 10% impairment of the right upper extremity. You appealed this award.

On September 24, 2018, a Hearing Representative issued a Decision on your Appeal which remanded your claim for further development, providing in part as follows:

In the present case, the claimant's diagnosed condition 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 10% impairment of the right upper extremity due to the accepted work injury.

Upon return of the case file, the District Office should forward the DMA's report to Dr. _____ for a written addendum, clarifying the number of the claimant's ROM measurements. Upon receipt of this addendum, the District Office should forward

Dr. _____ addendum report to the DMA to have 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."

Pursuant to the Remand, this Office referred your claim back to Dr. _____. Thereafter, Dr. _____ issued an Addendum report dated 10/01/2018.

Thereafter, Dr. _____ Addendum report was provided to the District Medical Advisor (DMA), who reviewed the report and issued a Clarification report dated 10/02/2018.

The 11% right upper extremity permanent impairment noted above was based on the medical findings and Addendum report of Dr. _____ dated 10/01/2018 and the Clarification report of the DMA dated 10/02/2018. Copies of these reports are provided for your reference.

File Number:
CA-181-D-S

The percentage of impairment shown above was calculated by a DMA, who applied the Guides to the medical findings provided by Dr. _____ and determined the date of maximum medical improvement based on the medical evidence of record. The DMA's impairment percentage above differs from the percentage provided by Dr. _____. The DMA explained why as follows:

"He had a second opinion evaluation by _____ MD on _____. At the time of the evaluation he was complaining of constant pain and weakness in the right hand and wrist. His Quick Dash score was 75. The physical evaluation of the right wrist revealed severe tenderness with mild swelling. The grip strength was 2/5. He indicated that he lost approximately 50% of the motion of the forearm. He had little or no functional supination. He did not provide the motion in degrees. He did not provide the motions of flexion, extension or pronation. He obtained a RUEI rating of 10% using the DBI method and rating the TFCC tear. He rated GMFH as 3, GMPE as 3 and GMCS as 2. He obtained a RUEI rating of 25% using the ROM method. He stated that this was because of loss of supination.

In the addendum dated 10/01/2018 he indicated that he agreed with the motions obtained in the FCE. These were flexion of 40 degrees, extension of 40 degrees, ulnar deviation of 30 degrees and radial deviation of 10 degrees. Pronation was 80 degrees and supination was 25 degrees. He then explained why the strength could vary during evaluations. He obtained a RUEI rating of 33% using the ROM method. He rated flexion of 40 degrees as a 3% impairment, extension of 40 degrees as a 3% impairment, ulnar deviation of 30 degrees as a 0% impairment and radial deviation of 10 degrees as a 2% impairment. He obtained the motion of supination of 25 degrees as a 25% impairment. He then added the impairments and obtained the motion of 33%. He had an FCE dated 11/28/2017. This was reviewed. The wrist flexion was 40 degrees, extension was 40 degrees, radial deviation was 10 degrees, ulnar deviation was 30 degrees, pronation was 80 degrees and supination was 25 degrees. The strength was rated as 4/5.

Dr. _____ obtained a DBI RUEI rating of 10%. I obtained a DBI RUEI rating of 10%. I agree with Dr. Manderson.

Dr. _____ obtained a ROM RUEI rating of 33%. I obtained a RUEI rating of 11%. The reason our values are different is because of the rating we gave for supination. The claimant had supination of 25 degrees. Dr. _____ rated the impairment as if the claimant had ankylosis of the joint of 25 degrees which would result in a 25% impairment. In the glossary on page 609 of the Guides it gives the definition of ankylosis. It states the following; Ankylosis-Immobilization of a joint in a specific position due to disease, injury, or surgery. When surgically created, the goal is to fuse the joint in the most functional position. The FCE upon which the motions were obtained indicated that there were major deficits for the right wrist towards all planes. It did not indicate that the joint was ankylosed. Dr. _____ indicated that his motions were the same as those in the FCE. The joint motion was decreased but not ankylosed. I used the rating for the motion of supination of 25 degrees which was 2%. That is why our range of motion impairments are different.

The RUEI rating is 11%."

In reviewing the evidence, the DMA determined that Dr. _____ incorrectly applied the Guides to the findings on examination, and explained the reason for this finding. The greater weight of the medical evidence regarding the percentage of impairment is being given to the DMA because he

File Number:
CA-181-D-S

correctly applied the Guides to the examination findings, and showed clearly the basis for Dr. error in the calculation of impairment under the 6th Edition Guides.

IMPORTANT INFORMATION

Please read the following information carefully. Keep this award letter so you can refer to it when necessary. If you have questions concerning this award, write to the address shown in the letterhead.

1. **HOW COMPENSATION IS PAID** - Direct deposit is the fastest and most secure way to receive your award payments. We strongly encourage you to submit a **Standard Form 1199A**, which will enable us to direct deposit your payment(s) into your bank. Your first payment will be issued within 30 days. If further payments are due, they will be made every four weeks until the expiration of the award.
2. **LUMP SUM PAYMENTS** - If you are currently working, or if you are receiving retirement benefits from the Office of Personnel Management, you may be entitled to a "lump-sum" payment of your schedule award. Please contact the District Office at the address listed on the first page of this letter and specifically request information concerning this option.
3. **CHANGE OF ADDRESS** - Notify this office immediately of any change of address either for correspondence or for direct deposit. Notification must be in writing, signed by you, to the address shown on the first page of this letter. Include your file number, your old address, and your new address.
4. **CHANGE IN STATUS OF DEPENDENTS** - If your award is paid at the augmented rate of 3/4 because you have one or more dependents, you are required to provide written notification immediately of any change in status of your dependents, to the address on the first page of this letter. The notice must be signed by you and include your file number, the name of the dependent whose status changed, the effective date of the change, and the nature of the change in status. If you originally claimed only one dependent, and there is a change in the status of your sole dependent, do not cash any checks you receive after the change in status of that dependent. Return the checks promptly for adjustment by this Office.
5. **RETURN TO WORK** - You may work or receive retirement benefits from the Office of Personnel Management (OPM) during the period of this award without any effect on your schedule award payments.
6. **SOCIAL SECURITY DISABILITY BENEFITS** - Please contact your local Social Security Office regarding this award if you are receiving or have filed for Social Security Disability Benefits.
7. **VA BENEFITS** - You are required to notify this office if you have received, or are receiving any VA benefits for the same part of the body.
8. **EXPIRATION OF AWARD** - After the ending date of this award noted in item 3, your entitlement to compensation will be based solely on disability for work resulting from the accepted injury. You may claim continuing compensation by submitting evidence showing that the accepted injury prevents you from performing the kind of work you were doing when injured and from earning comparable wages. Please note that compensation for disability cannot be paid for any period during which you receive retirement benefits from OPM.

File Number:
CA-181-D-S

9. ATTORNEY AND REPRESENTATIVE FEES – Please be mindful of the following regarding fees for representative services:

- In each case where a representative's fee is desired, an application for approval of the fee must be submitted to OWCP.
- Fees collected prior to OWCP approval may constitute a misdemeanor under 18 U.S.C. § 292.
- Contingency fees are not allowed in any form. See 20 C.F.R. § 10.702 (a). Further, a fee will not be approved merely on the basis of a percentage of the amount of compensation awarded. All fees claimed for services rendered must be calculated on an hourly basis.
- The ultimate collection of the fee is a matter between the representative and the claimant.

If you disagree with this decision, you should carefully review the attached appeal rights, and pursue whichever avenue is appropriate to your situation.

Sincerely,

Division of Federal Employees' Compensation

Enclosures: Above noted Addendum and Clarification reports and Appeal Rights

PAUL H FELSER ATTORNEY
7393 HODGSON MEMORIAL DRIVE
STE 102
SAVANNAH, GA 31406