

File Number:  
HR10-D-H

**RECEIVED OCT 01 2019**

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

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 . 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

Sincerely,

Division of Federal Employees' Compensation

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

*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.*

Washington DC, September 27, 2019

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. A  
telephonic hearing was held on

---

The issue is whether the claimant has greater than 4 percent permanent partial impairment to the left upper extremity for which he received a schedule award.

The claimant, \_\_\_\_\_ born \_\_\_\_\_ is employed by U.S. Postal Service, \_\_\_\_\_ as a \_\_\_\_\_ On \_\_\_\_\_ filed form CA-1, Notice of traumatic injury and claim for compensation indicating that on \_\_\_\_\_ he reached up to change gears and heard a pop, then a burning sensation in his left shoulder. The claim was accepted for sprain of shoulder and upper arm, rotator cuff, left and left rotator cuff tear. Appropriate treatment and compensation benefits were authorized.

On \_\_\_\_\_ the claimant filed form CA-7, Claim for a schedule award.

By letter dated \_\_\_\_\_ the claimant was advised of the specific evidence needed to support entitlement to a schedule award.

In support of the claim the Office received a medical report from Dr. \_\_\_\_\_ dated \_\_\_\_\_. He advised that the claimant has 3% impairment to the left upper extremity using the Diagnosis Based Impairment (DBI) method and 12% impairment to the left upper extremity using the Range of Motion (ROM) method.

On \_\_\_\_\_ the case file was referred to the District Medical Advisor for review. He opined that using the ROM method the claimant has 2% impairment to the left upper extremity and using the DBI method the claimant has 4% impairment to the left upper extremity. He stated, "For the DBI Method: Dr. \_\_\_\_\_ stated that the functional grade modifier is 4. He did not take into consideration that the grade modifier for physical examination is 2 and clinical studies is 1. The functional history is 2 or more grades higher than the physical examination or clinical studies. It is excluded in the adjustment...Even if the grade modifier he provided are used; The functional history (4) is still 2 grades higher than the clinical studies. (2)." "For the ROM method, Dr. \_\_\_\_\_ did not compare the ROM of the right shoulder with that of the left shoulder. There is nothing in the file sent to me that there is a previous injury to the right shoulder. In this case, the right shoulder is considered the normal shoulder. As the normal shoulder it should have a 0% impairment rating."

By decision dated \_\_\_\_\_ the office awarded the claimant a schedule award for 4%

impairment to the left arm. The award was for 12.48 weeks and for the period to

The claimant disagreed with the decision and requested a hearing before a representative of the Office of Workers' Compensation Programs.

At the hearing held on \_\_\_\_\_ the claimant was not present but was represented by his attorney, Paul Felser.

Mr. Felser presented the claim describing his disagreement with the Office's decision to award the claimant a schedule award for 4% impairment to the left upper extremity. He indicated that the claimant had multiple cases over time. This situation is based on the conclusion by the District Medical Advisor that Dr. \_\_\_\_\_ did not compare the range of motion of the right shoulder with that of the left shoulder. He quoted the DMA noting that there is nothing in the file sent to him that there is a previous injury to the right shoulder and with that understanding he goes on to say, "in this case the right shoulder is considered the normal shoulder. As the normal shoulder it would have a 0 percent impairment rating. This is what is completely contrary under the circumstances. Complete information was not sent to the DMA as the claimant had a right rotator cuff injury under claim \_\_\_\_\_ for which she received a 14% impairment to the right upper extremity. He noted that the DMA is operating on incorrect premise. They had requested expansion of the claim based on the second opinion report of Dr. \_\_\_\_\_ in \_\_\_\_\_. He noted that the claimant had right shoulder injuries in \_\_\_\_\_ and \_\_\_\_\_. He stated that further development must be undertaken to provide the claimant the correct percentage of impairment.

I have carefully evaluated all the evidence of record to include the argument presented at the hearing. I find that the counsel has provided sufficient argument to require further development of the claim.

The schedule award provisions of the FECA set for the number of weeks of compensation to be paid for permanent loss of use of the members of the body listed in the schedule. The Act, 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. However, as a matter of administrative practice the Board has stated 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 Office has adopted the AMA Guides as the standard for evaluating permanent impairment for schedule award purposes, and the Board has concurred with the Office's adoption of this standard. Kenneth D. Loney, 47 ECAB 660.

In the instant case, the claimant filed a claim for a schedule award. In support of the claim the Office received a medical report from Dr. \_\_\_\_\_ dated \_\_\_\_\_. He indicated that using the DBI method the claimant has 3% impairment to the left upper extremity and using the ROM method the claimant has 12% impairment to the left upper extremity. On \_\_\_\_\_ the case file was reviewed by the District Medical Advisor. He opined that using the ROM method the claimant has 2% impairment to the left upper

extremity and using the DBI method the claimant has 4% impairment to the left upper extremity. He stated that Dr. [redacted] did not compare the ROM of the right shoulder with that of the left shoulder. He advised that there was nothing in the file provided to him to support a previous injury to the right shoulder. At the hearing the claimant's representative, Mr. Felser, stated that the claimant had prior injuries to the right shoulder in [redacted] and [redacted] and that he also received a 14% impairment to the right upper extremity in [redacted]. He also noted that based on a prior second opinion evaluation they requested expansion of the claim. Further development of the claim is warranted to establish entitlement to a schedule award to the left upper extremity.

On remand the office should combine all files dealing with the right upper extremity, [redacted] and [redacted] with this claim and then update the statement of accepted facts to reflect all accepted work injuries to the right arm, all authorized surgeries, and prior schedule award. The office should then refer the case file, statement of accepted facts and medical records back to the District Medical Advisor to determine the percentage of impairment the claimant has sustained to the left upper extremity as a result of the accepted work related conditions. The DMA should independently calculate the impairment using the DBI and ROM methods and identify the higher rating. He should correlate his findings with the AMA Guides, 6<sup>th</sup> Edition and provide medical rationale to support all opinions rendered. The office should also formally adjudicate the expansion claim argued by Mr. Felser at the hearing based on a 2015 second opinion.

The decision of the District Office dated [redacted] is therefore, set aside and the case remanded for the actions outlined above. Upon completion of the recommended action and any further developmental action as is deemed necessary, the Office should issue a de novo decision.

Issued:  
Washington, D.C.

Hearing Representative  
Branch of Hearings and Review  
for  
Director, Office of  
Workers' Compensation Programs