

File Number:
HR20-D-H

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U.S. DEPARTMENT OF LABOR

OWCP/DFEC, PO Box 8311
LONDON, KY 40742-8311
Phone: (202) 693-0045

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Date of Injury:
Employee:

Dear

This is in reference to your workers' compensation claim. Pursuant to your request for a Review of the Written Record, the case file was transferred to the Branch of Hearings and Review.

The review was completed on . As a result of such review, 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
OWCP/DFEC, PO Box 8311
LONDON, KY 40742-8311

Sincerely,

Division of Federal Employees' Compensation

PAUL FELSER, ESQ.
7393 HODGSON MEMORIAL DRIVE
SUITE 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, August 06, 2020

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 No.

Examination of the Written Record was completed in Washington, D.C. Based on this review, the District Office's decision dated is set aside for the reasons below.

The issue is whether the claimant has more than 11% impairment to the right upper extremity for which he received a scheduled award.

The claimant, born is employed by the as a correctional officer. On he filed form CA-1, Notice of traumatic injury and claim for compensation indicating that or while performing a forced cell move he hit his right arm on the arm of the bed. The claim was accepted for right elbow contusion and right non displaced fracture of olecranon. The claim was expanded to include lesion of ulnar nerve, right, strain of triceps, right arm, other lesions of median nerve, right. Appropriate treatment and compensation benefits were authorized.

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

In support of the claim the Office received a medical report dated signed by Dr. on He indicated that as a result of the work injury the claimant has 12% upper extremity impairment or 7% whole person impairment.

On the Office referred the claimant to Dr. for an evaluation. He provided a history of the injury and his findings on examination. He indicated that the claimant has 6% DBI Impairment rating for the elbow contusion and 20% DBI Impairment rating for right ulnar neuropathy for a total right upper extremity impairment of 23%.

Or. the case file was referred to the District Medical Advisor (DMA) for review. He opined that since the stand alone range of motion (ROM) rating yields a higher value than the diagnosis based (DBI) calculation of impairment, the ROM impairment is submitted per the recommendation of FECA Bulletin 17-06. He stated that the total impairment is 6% and 5% ulnar nerve entrapment combined which yields 11% impairment to the right upper extremity. The DMA stated, "My determination differs, based on the determination for ulnar nerve entrapment using Table 15-23. I am unable to follow Dr. logic in his calculation, but the maximum available under this table is only 9%. Table 15-23, Upper Extremity Nerve Entrapment, involves assigning severity classes for history, testing, and physical examination. These values are then averaged and a range of impairment determined.

A Quick DASH functional modifier is then applied within the range to determine the final impairment. For the second entrapped nerve in an extremity, the impairment value is reduced by 50%.

On _____ Dr. _____ was asked to review and comment on the DMA's report.

On _____ Dr. _____ stated that he agree with District Medical Advisor's report.

By decision dated _____ the Office awarded the claimant a schedule award for 11% impairment to the right arm. The award was for 34.32 weeks and for the period _____

The claimant disagreed with the decision and requested a hearing before a representative of the Office of Workers' Compensation Programs. His request was later changed to a review of the written record.

In support of the claim the Office received a statement from the claimant's representative, Paul Felser dated _____. He described his disagreement with the Office's decision to award the claimant a schedule award for 11% impairment to the right upper extremity. He noted that the use of Table 15-21 was appropriate for rating of the accepted conditions. He further contended that there is a conflict of medical opinion between the claimants treating physician, the DMA and the second opinion physician regarding the percentage of impairment. Also received was a medical report from Dr. _____ dated _____. This report did not provide any information regarding permanent impairment.

I have carefully evaluated all the evidence of record and find that further development of the case file is warranted as a conflict of medical opinion exists.

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 form CA-7, Claim for a schedule award. In support of the claim the Office received a report from Dr. _____ who indicated that the claimant has 12% impairment to the right upper extremity or 7% whole person impairment. On _____ the Office referred the claimant to Dr. _____ for an evaluation. He provided a history of the injury and his findings on examination. He concluded that the claimant has 23% impairment to the right upper extremity. On _____ the case file was reviewed by the District Medical Advisor. He opined that based on the evidence of record

the claimant has 11% impairment to the right upper extremity due to the work injury. He stated that he was unable to follow Dr. [redacted] logic in his calculation. On [redacted] Dr. [redacted] was provided a copy of the DMA's report for review and comment. On [redacted] he stated that he agrees with the District Medical Advisors report.

Section 8123(a) of the Act provides that when there is a disagreement between the physician making the examination for the United States and the physician of the employee, a third physician shall be appointed to make and examination to resolve the conflict.
42 ECAB 172.

In the instant case counsel has provided sufficient argument to require further development of the case file. Dr. [redacted] indicated that the claimant has 12% impairment to the right upper extremity or 7% whole person impairment, while the second opinion physician reported that the claimant has a total right upper extremity impairment of 23%. The DMA reviewed the report and stated that the claimant has 11% impairment to the right upper extremity as a result of the work injury. The DMA indicated that he was unable to follow Dr. [redacted] logic in his calculation, so on [redacted] Dr. [redacted] was asked to review the DMA's report. On [redacted] Dr. [redacted] stated that he agrees with the DMA's report. Because the reports are of virtually equal weight an impartial examination is needed to resolve the conflict of opinion regarding the percentage of impairment the claimant is entitled to as a result of the accepted work injury.

On Remand the Office is directed to prepare a statement of accepted facts and refer the claimant, medical records and statement of accepted facts to an appropriate specialist for an impartial evaluation to resolve the issue of entitlement to a schedule award to the right upper extremity as a result of the accepted work injury. The specialist should be asked to provide medical rationale to support his opinions and to correlate his findings with the AMA Guides, 6th Edition.

The decision of the District Office dated [redacted] is hereby set aside and the case is remanded for the actions outlined above. Upon completion of the recommended action and any further development as 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