

File Number:
HR22-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.

Your case file has been returned to the Dallas 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

If you disagree with the decision attached to this letter, you have the right to submit new evidence to the Office of Workers' Compensation Programs, and the request reconsideration of the case or, if you have no additional evidence to present to the Office of Workers' Compensation Programs, you may appeal the decision to the Employees' Compensation Appeals Board.

Sincerely,

Division of Federal Employees' Compensation

PAUL FELSER
FELSER LAW FIRM, P.C.
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 04, 2020

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RECONSIDERATION: If you have additional evidence, not previously considered, which you believe is pertinent, you may request, in writing, the OWCP reconsider this decision. Such a request must be made within one year of the date of the attached decision, clearly state the grounds upon which reconsideration is being requested, and be accompanied by relevant evidence not previously submitted, such as medical reports or affidavits, or a legal argument not previously made. Your request for reconsideration and the new evidence you are submitting should be sent to the

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In order to ensure that you receive an independent evaluation of the evidence, your case will be reconsidered by persons other than those who made this determination.

APPEALS: If you believe that all available evidence has been submitted, you have the right to appeal to the Employees' Compensation Appeals Board (ECAB) (20 C.F.R. 10.625). The ECAB will review only the evidence received prior to the date of this decision (20 C.F.R. Part 501). Effective November 19, 2008, ECAB has changed its Rules of Procedure on the time limit to appeal and has eliminated its practice of allowing one year to file an appeal. **Request for review by the ECAB must be made within 180 calendar days from the date of this decision.** More information on the new Rules is available at www.dol.gov/ecab.

To expedite the processing of your ECAB appeal, you may include a completed copy of the AB 1 form used by ECAB to docket appeals available on the Department of Labor Web Site at www.dol.gov/ecab. You must mail your request to:

**Employees' Compensation Appeals Board
200 Constitution Avenue NW, Room S-5220
Washington, DC 20210**

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 decision of the District Office _____ is affirmed for the reasons set forth below.

The issue for determination is whether the Office's _____ decision was correct.

_____ born _____, was employed by the _____ as a correctional officer. On _____, she was injured while searching inmate housing. She filed a claim for traumatic injury which was accepted for left rotator cuff stain with incomplete tear. She stopped work on the date of injury and underwent approved left shoulder arthroscopy on _____. She returned to full time limited duty on _____ but was found unable to perform those duties on _____. On _____ Ms. _____ filed form CA-7 claiming schedule award. Following medical development, on _____ she was awarded compensation for 3% impairment of the left upper extremity.

Or _____ Ms. _____ was awarded compensation for an additional 17% impairment of the left upper extremity, for 20% total impairment. Following request for hearing, on _____ the Branch affirmed the level of impairment but remanded the case for action on the issue of pay rate.

On _____, the Office awarded Ms. _____ additional compensation of \$411.68, finding her pay rate to be \$1,094.16.

Ms. _____ disagreed with this decision and requested a hearing, which was scheduled for _____. Her representative, Paul Felser, later changed this to a request for review of the written record. By letter dated _____, the employing agency was notified of this request and they were allowed time to respond. Such time has now passed, and no response has been received.

Review of the record shows that Ms. _____ first claimed award on _____ via form CA-7. This request was accompanied by an _____ report from Dr. _____ noting a maximum medical improvement (MMI) date of _____ and a 3% diagnosis based impairment (DBI). Range of motion (ROM) was not provided. District medical advisor (DMA) Dr. _____ concurred with the rating but found the MMI date to be the date of Dr. _____ evaluation. Ms. Watson was awarded compensation for 3% permanent impairment of the left upper extremity on _____ using a pay rate of \$1,087.12 as of the date disability began (DDB).

Following a request for reconsideration, which was accompanied by a _____ report from Dr. _____ including ranges of motion. The report supported a 28% impairment rating. This was referred to DMA Dr. _____ who found a 20% impairment, noting that Dr. _____ incorrectly assigned 10% impairment for adduction of zero degrees rather than 2%. On _____

the Office awarded Ms. compensation for an additional 17% impairment, again at the same pay rate. Following request for review of the written record, the award was affirmed as to the rate of impairment, but remanded for review of the pay rate. Specifically, the Office was directed to ask the employing agency to clarify Ms. pay rates both on the date of injury (DOI,) and the date disability began (), as well as verifying the work hours and schedule and any premium pay as of each date. A de novo decision was ordered.

By e-mail, on , the Office requested additional pay rate information for both the DOI and DDB.

On the employing agency verified that Ms. base pay on both dates was \$56,530, with an additional pay of \$159.84 (Sunday differential) and \$206.46 (holiday pay). Her work schedule was 8:00am to 4:00pm Saturday through Wednesday. An memorandum to file noted a pay rate calculation of \$1,087.12 (base pay, \$56530/52) plus Sunday premium of 43.07 (\$159.84/52) and holiday pay of \$3.97 (\$206.46/52).

On Ms. was awarded compensation in the amount of \$411.68 for the difference in pay rates.

The schedule award provision of the Federal Employees' Compensation Act¹ and its implementing regulations² set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of scheduled members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. 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 A.M.A. *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses. Office procedures provide that to support a schedule award, the file must contain competent medical evidence which shows that the claimant has reached a permanent and fixed state and which establishes a date of maximum medical improvement.³

I note that the Office's calculations in this case do not make it clear whether the cited Sunday differential provided by the employer is a weekly amount (which seems likely given the fact that Ms. regular schedule includes Sunday) or a year prior figure. The amount appears, to this reviewer, inconsistent with an annual figure. The employing agency did not provide this information, nor was the Office's request specific as to the period covered by the figure in the computations.

1 5 U.S.C. § 8107

2 20 C.F.R. § 10.404 (1999).

3 Federal (FECA) Procedure Manual, Part 2 -- Claims, *Evaluation of Schedule Awards*, Chapter 2.808.6(b) (August 2002).

Given this, the case is **REMANDED** for clarification as to the period covered by the Sunday differential and holiday pay figures (i.e., whether the \$159.84 (Sunday differential) and \$206.46 (holiday pay) were weekly or year prior figures). Insofar as the Office's decision again awarded compensation for the 20% impairment previously awarded and affirmed by the Branch, the percentage of impairment awarded for left upper extremity, and insofar as this is fully supported by the medical evidence, the level of left upper extremity impairment is **AFFIRMED**.

Issued:
Washington, D.C.

Hearing Representative
for the
Director, Office of Workers'
Compensation Programs