

U.S. DEPARTMENT OF LABOR

OFFICE OF WORKERS' COMP PROGRAMS
PO BOX 8300 DISTRICT 6 JAC
LONDON, KY 40742-8300
Phone: (904) 366-0100

February 28, 2018

Date of Injury:
Employee:

DE NOVO DECISION

RECEIVED MAR 03 2018

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:

ADDITIONAL AWARD OF COMPENSATION

1. Degree and Nature of Permanent Impairment: an additional 4% impairment of left arm (9% total degree of left arm impairment, minus the 5% previously paid)
2. Date of Maximum Medical Improvement:
3. Period of Award: (fraction of a day)
4. Number of Weeks of Compensation: 12.48
5. Weekly Pay: \$1043.40 X Compensation Rate: 75 % = \$782.55
6. Effective Date of Pay Rate:
7. After Cost-of-Living Adjustments, Your Weekly Compensation is: \$839.25
8. Your Payment and the Period Covered: \$10,406.70 from to
(This is plus an additional \$67.14 which you are owed due to a system glitch; that payment is expected to be issued separately, within 30 days.) Thus, the payments total \$10,473.84.

Payment of your award ends when you have been paid for the last day shown in item 3 above. Therefore, this represents full and final payment for this schedule award.

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 (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.

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. On _____, you were paid a schedule award from _____ through _____ for 4% right arm and 5% left arm; therefore, the starting date for the additional schedule award has been adjusted to begin

On _____, Dr. _____ assigned an 18% or 23% impairment rating according to the Fifth Edition of the *AMA Guides*. Therefore, you were referred to an Office-directed examination to determine whether there was permanent impairment due to the work injury of _____. The second opinion physician, Dr. _____, provided an impairment rating of 1% to your right arm. Dr. _____ also indicated there was no impairment to the cervical spine due to no spinal nerve impairment from the work injury.

On _____ your case was referred to the District Medical Advisor (DMA), to review the medical in the record and to calculate the impairment to the upper extremities. The DMA opined:

Reflects 3 years post-op with right shoulder stabilized with no change expected.
Injured right shoulder and neck on the job _____. Severe neck pain and headaches and right shoulder pain. Required right shoulder arthroscopic SAD for impingement syndrome and ACDF C5-7 in _____. with residual neck pain.

Based on *AMA 6 Guides*, Table 15-5, page 402, a 1% schedule award right upper extremity is assigned for Class 1C impingement syndrome for post-op right shoulder pain.

By decision dated _____, you were awarded compensation for 1% permanent impairment of your right arm as a result of your injury.

You disagreed with the decision and requested a hearing with the Branch of Hearings & Review. The telephonic hearing was conducted on _____. Subsequently, a decision was issued on _____ which affirmed the original schedule award decision of 1% permanent impairment of the right arm.

Through your attorney, you stated that you disagreed with the _____ decision and requested reconsideration by letter/appeal request form received on _____.

On _____ a formal decision was issued in your case finding that the evidence presented was insufficient to modify the decision dated _____.

By letter dated _____, your attorney requested a reconsideration of the denial decision issued _____ and requested a referral to a second opinion examiner to calculate the impairment for the accepted cervical conditions.

By decision dated _____ the reconsideration request was denied for the reason that the evidence presented was not sufficient to warrant review of the decision dated _____.

By letter dated _____ your attorney requested a reconsideration of the denial decision issued

On _____, your case was forward to the DMA for review of the medical evidence for the schedule award. The DMA opined:

The claimant's impairment rating is 5% (Class 1) for the non-dominant left upper extremity and 5% (Class 1) for the dominant right upper extremity and this 5% represents an additional 4% that was added to the initial 1% that was already awarded to the claimant. This number was arrived at using Table 13-11 in the guidelines to the evaluation of permanent impairment 6th edition page 335. This table was utilized because it represents impairment of upper extremity due to central nervous system (CNS) dysfunction as the impairment is as a result of spinal cord compression that was treated surgically. The diagnosis-based impairment (DBI) cannot be used as it involves injury to soft tissue, muscle/tendon and ligament/bone/joint.

By decision dated _____, you were paid a schedule award of 5% for the left arm and an additional 4% for the right arm.

By letter dated _____, your attorney requested an oral hearing be scheduled in reconsideration of the schedule award decision issued _____.

As a result of the hearing held on _____, your case was returned to the district office for further development with the DMA. The DMA was asked to review and analyze the medical evidence of record in association with the July/August 2009 *AMA Guides* Newsletter for Rating Spinal Nerve Impairment under the Sixth Edition (Procedure Manual 3-700, Exhibit 4).

On _____, your case was referred to the DMA for review. The DMA opined:

The claimant's impairment rating is 5% (Class 1) for the non-dominant left upper extremity and 5% (Class 1) for the dominant right upper extremity and this 5% represents an additional 4% that was added to the initial 1% that was already awarded to the claimant. This number was arrived at using Table 13-11 in the guidelines to the evaluation of permanent impairment 6th edition page 335. This table was utilized because it represents impairment of upper extremity due to central nervous system (CNS) dysfunction as the impairment is as a result of spinal cord compression that was treated surgically. The diagnosis-based impairment (DBI) cannot be used as it involves injury to soft tissue, muscle/tendon and ligament/bone/joint.

Regarding the impairment rating provided by your physician, the DMA opined:

The treating physician states that the impairment rating is 30% (Class IV) and has utilized impairment of specific spinal nerves and grades motor strength at C5, C6, C7, C8 and T1 to be 4/5. This is not consistent with the physical examination that only shows 4/5 grip strength on the left. C5 and C6 do not contribute to grip strength.

[...]

I have reviewed Dr. _____ note dated _____ and he states that the claimant has 30% impairment rating to her upper extremities. I do not agree with this assessment

because his chart states that there is 4/5 strength at C5, C6, C7, C8 and T1 but this is not consistent with the physical examination provided during office visits.

5. The claimant's treating physician, Dr. _____ has indicated in medical reports of _____ and _____, that the claimant possesses a 30% permanent partial impairment of the upper extremities, based on her having Class IV impairment to the upper extremities utilizing table 17.2, on page 565 of the AMA Guides of the Evaluation of Permanent Impairment, 6th Edition. He has provided little in the way of a rationale to support the opinion rendered except to state such is based on "spinal nerve impairments as a result of the injury to the cervical spine."

[...]

Based on the examination provided, the claimant has 5/5 strength in the right upper extremity and 4/5 in the left upper extremity and there is decreased sensation in the left upper extremity in the C6 distribution. According to the July/August 2009 AMA Guides Newsletter for rating spinal nerve impairment-under the Sixth Edition, Table 1 states that a mild sensory and motor deficit is characterized as a Class 1 impairment with a sensory Grade of 4 described as 1-25% sensory deficit and a motor Grade of 4 which represents 1-25% motor deficit. Table 1 also shows that for a Class 1 impairment with a mild motor deficit, the default impairment rating for the C6 nerve is 9%; therefore, this claimant based on July/August 2009 AMA Guides Newsletter for rating spinal nerve impairment-under the Sixth Edition has an impairment rating of 9% in the left upper extremity.

Based on the medical opinion of the DMA's report dated _____ you are awarded an additional 4% for the left upper extremity (arm). The additional 4% impairment rating gives a total of 9% impairment for the left upper extremity, which 5% was previously awarded/paid on _____

The percentage of impairment shown above was calculated by a DMA, who applied the *Guides* to the medical findings provided by your treating physician and determined the date of maximum medical improvement based on the medical evidence of record. The impairment percentage above differs from the percentage provided by your treating physician. In reviewing the evidence, DMA has determined that your physician incorrectly applied the *Guides* to the findings on examination. A copy of the DMA's calculation, which explains this discrepancy, is attached. The weight of the medical evidence regarding the percentage of impairment is being given to the DMA because he correctly applied the *Guides* to the examination findings.

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 - Your first payment will be issued within 30 days, via a paper check.

2. 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.

3. 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.

4. 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.

5. 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.

6. 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.

7. 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.

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

Sincerely,

I agree,

Claims Examiner

Senior Claims Examiner

Enclosures: Appeal Rights, Appeal Request Form, Copy of medical reports as noted above