

File Number:
HR11-D-H

RECEIVED MAY 26 2018

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 preliminary review has been completed, and it has been determined that the case is not in posture for a hearing at this time. The decision of the District Office has been vacated and returned to the district office for further action as explained in the attached Remand Order.

Your case file has been returned to the Seattle 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 14 SEA
LONDON, KY 40742-8300

Sincerely,

Electronically signed,
Paula Strange
Hearing Representative

PAUL FESLER
ATTORNEY AT LAW
FESLER LAW FIRM
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, May 23, 2018

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.

Merit consideration of the case file was completed in Washington, DC. Based on this review, the decision of the District Office is vacated for the reasons set forth below.

The issue for consideration is the claim for Schedule Award.

The claimant, , born has been employed with the as a He sustained a left shoulder injury in the performance of his duties on when he jerked his hand back while working. He filed a timely workers' compensation claim, and the District Office of Workers' Compensation Programs accepted the claim for left shoulder strain. The claimant did not stop work initially but worked with restrictions.

The claimant stopped work on The Office initially paid compensation for intermittent disability and total wage loss compensation beginning

According to the record the claimant returned to modified work on

On the claimant filed a claim for Schedule Award.

On the Office denied the claim for Schedule Award.

The claimant's attorney, Paul Felser, requested a hearing on behalf of the claimant. Additional medical evidence was submitted. I find that the additional evidence compels further case development.

5 U.S.C. § 8107 provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.¹

The Employees' Compensation Appeals Board has held that, for consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a

¹ 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.404(a).

single set of tables so that there may be uniform standards applicable to all claimants. The Board has concluded with the Office's decision to adopt the American Medical Association's *Guides to the Evaluation of Permanent Impairment* (AMA Guides) for determining the extent of permanent impairments.²

Per Federal Employees' Compensation Act (FECA) Bulletin 17-06, Chapter 2, page 20, of the AMA *Guides* states that one of the fundamental principles is if the AMA *Guides* provide more than one method to rate a particular impairment or condition, the method producing the higher rating must be used. The Bulletin noted that unfortunately, the complexities of the explanations and the language throughout Chapter 15 has sometimes led physicians who have evaluated claimants to provide inconsistent interpretations for calculating upper extremity impairments. The Employees' Compensation Appeals Board (ECAB) held that in light of the conflicting language in the Sixth Edition of the *Guides* it is incumbent upon OWCP through its implementing regulations and/or internal procedures to establish a consistent method for rating upper extremity impairment. Impairment ratings should be based upon the most recent version of the Sixth Edition *Guides*. Currently, the reprinted 2009 AMA *Guides to the Evaluation of Permanent Impairment*, Sixth Edition is the most recent version. As such, this version should be consistently utilized by the DFEC (Department of Federal Employees' Compensation). The DMA should identify (1) the methodology used by the rating physician (i.e. DBI (diagnosis-based impairment) or ROM (range of motion) and (2) whether the applicable tables in Chapter 15 of the *Guides* identify a diagnosis that can alternatively be rated by ROM. If the *Guides* allow for the use of both the DBI and ROM methods to calculate an impairment rating for the diagnosis in question, the method producing the higher rating should be used.³

OWCP procedures state that an OWCP medical adviser must review the impairment report to verify correct application of the AMA *Guides* and confirm the percentage of permanent impairment, as well as specify his or her reasons for assigning a certain percentage of loss of use to the measurements or factors provided by the examining physician.⁴

Dr. _____ MD, orthopedic surgeon, reported on _____ that the claimant had sustained 5% impairment of the left upper extremity. He utilized the DBI method, citing the sections of the AMA *Guides* he used.

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.

² James E. Archie, 43 ECAB 180 (1991).

³ See also Jeffrey J. Stickney, 51 ECAB 616 (2000).

⁴ R.S., Docket No. 09-1331 (issued April 5, 2010).

Based upon the written evidence of record, I find that the decision of the District Office dated [redacted] should be set aside and the claim remanded for further development based upon the guidance of Federal Employees' Compensation Act (FECA) Bulletin 17-06, issued [redacted].

Therefore, the District Office will need to undertake additional development to determine whether the claimant sustained ratable permanent impairment due to the accepted work injury.

On REMAND, the Office should prepare a Statement of Accepted Facts and refer the case record, together with the Statement, to the District Medical Advisor (DMA). Bulletin 17-06 advises that if the rating physician provided an assessment using the DBI method and the *Guides* allow for use of ROM for the diagnosis in question, the DMA should independently calculate impairment using both the ROM and DBI methods and identify the higher rating. If the medical evidence of record is not sufficient for the DMA to render a rating on ROM where allowed, the DMA should advise as to the medical evidence necessary to complete the rating.

Following completion of any further development the District Office deems necessary, the Office should issue a *de novo* decision on the claim.

ISSUED:
WASHINGTON, DC

Electronically signed,
Hearing Representative
for
Director, Office of Workers'
Compensation Programs