

File Number:
Merit Review4-D-RECO

RECEIVED MAY 26 2017

U.S. DEPARTMENT OF LABOR

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

May 22, 2017

Date of Injury:
Employee:

Dear

This concerns your compensation case and your request for reconsideration received on

We have evaluated the evidence submitted and have reviewed the merits of your case under 5 U.S.C. 8128. You have provided sufficient evidence to warrant modification of the decision dated
Based on the information received, the decision is now vacated.

The reasons for this decision are outlined in the enclosed Notice of Decision.

Sincerely,

Senior Claims Examiner

PAUL H FELSER ATTORNEY
FELSER LAW FIRM PC
QUEENSBOROUGH BANK BUILDING
7393 HODGSON MEMORIAL DR SUITE 102
SAVANNAH, GA 31406

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.

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NOTICE OF DECISION

Claimant Name:
Case Number:

ISSUE: The issue for determination is whether the evidence presented is of sufficient probative value to vacate the decision dated

REQUIREMENTS FOR ENTITLEMENT: In accordance with the regulations set forth in 20 CFR § 10.609, if an application for reconsideration is accompanied by new and relevant evidence or by an arguable case for error, OWCP will conduct a merit review of the case to determine whether the prior decision should be modified. If sufficient evidence exists to overturn the prior decision, it should be vacated.

BACKGROUND: On you filed a claim for Traumatic Injury indicating you sustained an injury or medical condition on as a result of your employment as a Clerk with the in You stated that you sustained an injury when the BMC door flipped down on you and hit your right ear, behind right ear on heard and your right shoulder. Your claim was accepted for the following conditions: broken tooth; contusion face, scalp, and next excepts eye(s); BROKEN TOOTH; CONTUSION FACE, SCALP AND NECK EXCEPT EYE(S); CONTUSION OF SHOULDER REGION, RIGHT; DISPLACEMENT OF CERVICAL INTERVERTEBRAL DISC WITHOUT MYELOPATHY; HEADACHE; OTHER CONSTIPATION; SPRAIN OF NECK, RIGHT; SPRAIN OF SHOULDER AND UPPER ARM, UNSPECIFIED SITE, RIGHT.

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 your 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 prior decision was not modified. The reason for the decision was that the new evidence submitted did not contain an impairment rating for your injury.

You disagreed with the decision and requested reconsideration by letter/appeal request form received on Your agency and attorney were notified by letter dated

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DISCUSSION OF EVIDENCE: The evidence reviewed in support of your reconsideration request includes the following: medical reports from Dr. [redacted] dated [redacted] and [redacted]; visit note from Dr. [redacted] dated [redacted] and DMA report dated [redacted].

BASIS FOR DECISION: The evidence is sufficient to vacate the decision dated [redacted] because the DMA report dated [redacted] states that the following, "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 (DBT) cannot be used as it involves injury to soft tissue, muscle/tendon and ligament/bone/joint. 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. [redacted] note dated [redacted] and he states that the claimant has 30% impairment rating to her upper extremities. I do not agree with this assessment because her 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."

CONCLUSION: Therefore, the decision dated [redacted] is vacated.

Your case is now approved for an additional schedule award of 5% permanent impairment of the left arm and 5% permanent impairment of the right arm (minus 1% previously paid permanent impairment of the right arm).

Senior Claims Examiner
May 22, 2017