

File Number: 062012045
HR10-D-H

U.S. DEPARTMENT OF LABOR

EMPLOYMENT STANDARDS ADMINISTRATION
OFFICE OF WORKERS' COMP PROGRAMS
PO BOX 8300 DISTRICT 50
LONDON, KY 40742-8300
Phone: (202) 693-0045

JAN - 5 2007

Date of Injury: 07/03/2000
Employee: CARL E. MILLER

CARL E MILLER
287 ASTRO CT
TALLAHASSEE, FL 32312

Dear Mr. MILLER:

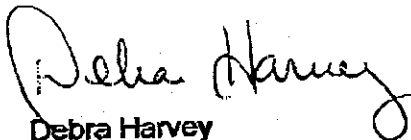
This is in reference to your workers' compensation claim. Pursuant to your request for a hearing, the case file was transferred to the Branch of hearings and Review.

A hearing was held on 10/12/2006. As a result of such hearing, 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.

Future correspondence should be addressed to: U.S. Department of Labor, Office of Workers' Compensation Programs:

US DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
OFFICE OF WORKERS' COMP PROGRAMS
PO BOX 8300 DISTRICT 6 JAC
LONDON, KY 40742-8300

Sincerely,



Debra Harvey
Hearing Representative

US POSTAL SERVICE
NORTHERN FLORIDA PERF CLUSTER
INJURY COMPENSATION OFFICE
1100 KINGS ROAD
JACKSONVILLE, FL 32203

PAUL H FELSER
ESQ
POST OFFICE BOX 10267
SAVANNAH, GA 31412

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, United States Code 8106 et seq. of Carl E. Miller, Claimant; Employed by the U.S. Postal Service, Tallahassee, Florida. Case No: 062012045. Hearing was held on October 12, 2006 in Atlanta, Georgia.

The issue in this case is whether the claimant is entitled to schedule award benefits in excess of the five percent already awarded.

The claimant, date of birth, September 12, 1955, is employed by the U.S. Postal Service in Tallahassee, Florida, as a Letter Carrier. He sustained an injury to his left arm on July 3, 2000 when he fell against a curb. The claim was accepted for a left arm fracture and later expanded to include left arm reflex sympathetic dystrophy, a rupture of the left wrist tendon, and a left shoulder impingement. The claimant has undergone multiple surgeries since his injury.

On July 27, 2005, he filed the Form CA-7, Claim for Compensation, for Schedule Award benefits for permanent partial impairment of his left upper extremity.

On July 24, 2004, Dr. Christian Berg stated the claimant had permanent impairment to the wrist and rated him as having 4% impairment to the left upper extremity. This rating was based upon the 1996 *Florida Guidelines*. On December 12, 2003, Dr. William Thompson provided a rating of 5% whole person, due to shoulder impairment.

The claimant was evaluated on April 9, 2004 by Dr. Thomas Stanley, neurosurgeon, who stated there was no evidence of peripheral neuropathy and permanent impairment of the left upper extremity from a neurological standpoint. However, by July 13, 2005, Dr. Stanley found evidence of a peripheral neuropathy on examination. He ordered an EMG and nerve conduction study. This study was performed on December 3, 2004 and was "essentially normal."

Dr. Thompson provided a rating of 8% on June 2, 2005, based upon the shoulder. A copy of this report was sent to the District Office's District Medical Advisor (DMA) on September 15, 2005. The DMA reviewed the report that day and stated there was a lack of objective findings upon which to justify the rating provided by Dr. Thompson. The DMA stated due to the lack of objective findings, there was no impairment.

Dr. Thompson provided a supplemental report containing objective findings to substantiate his 8% impairment and stated the impairment was based upon the *AMA Guides to the Evaluation of Permanent Impairment*, 5th edition. He also stated the claimant had "permanent pain in the shoulder."

On February 15, 2006, the DMA reviewed Dr. Thomas' calculations and stated the *AMA Guides* had been incorrectly combined. The DMA calculated a 5% permanent partial impairment to the left upper extremity. On February 24, 2006 the District Office issued a decision awarding schedule award benefits for five percent impairment to the left upper extremity. The claimant disagreed with this decision and requested an oral hearing.

The hearing was held on October 12, 2006 in Atlanta, Georgia. The claimant did not attend the hearing, but was represented by his Attorney, Paul Felser. The claimant's spouse, Penny Miller, attended and testified on her husband's behalf.

At the hearing, Mr. Felser stated he felt that the impairment rating had considered only the shoulder impairment and not the impairments caused by the other accepted conditions, specifically to the wrist and the reflex sympathetic dystrophy. In addition, Mr. Felser stated that Dr. Thompson had diagnosed a chronic pain syndrome and he felt this condition should also be accepted.

Mrs. Miller testified, stating that the claimant is able to perform most activities of daily living, but he uses his right arm more to compensate for the injury. She stated there are some things, such as cutting the grass, that he is unable to complete without resting the arm. She testified he has chronic pain and props the elbow up on a pillow to drive.

On October 19, 2006 a copy of the hearing transcript was sent to the Postal Service for review and comment. There has been no reply from the Postal Service.

Subsequent to the hearing, Mr. Felser submitted a post-hearing brief, in which he reiterated the points made at hearing. Also submitted was an October 13, 2006 left upper extremity impairment rating, evaluated by Antonio Cofer, physical therapist, and co-signed by Dr. Stanley. This report combined the shoulder, arm, and wrist impairments and calculated 20% impairment to the left upper extremity, based upon the 5th edition of the *AMA Guides*. In addition, a narrative report from Dr. Stanley, dated November 3, 2006, was submitted, in which he provided rationale for the impairment rating.

I have reviewed all the evidence of file and have determined that, based upon the new medical reports from Dr. Stanley, the Office's decision of February 24, 2006 should be SET ASIDE.

The schedule award provision of the FECA and its implementing regulations set forth the number of weeks of compensation to be paid for permanent loss, or loss of use, of body members listed in the schedule. The Act, however, does not specify the manner in which the percentage of loss of a member 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 to calculate schedule awards so that there may be uniform standards applicable to all claimants. The Office has adopted, and the Board has approved, the use of the American Medical Association, *Guide to the Evaluation of Permanent Impairment*, as an appropriate standard for evaluating schedule losses.¹

While an initial rating was given in this case, it considered only the shoulder and did not consider any impairment as a result of the rupture of the wrist tendon or the reflex sympathetic dystrophy. Therefore, on REMAND the District Office should refer the October 13 and November 3 medical reports to the DMA. The DMA should review these reports and calculate a permanent impairment to the left upper extremity based upon this new evidence. Once these calculations have been received, a *de novo* decision concerning permanent partial impairment to the left upper extremity should be issued.

While the Attorney has requested the case be accepted for a chronic pain syndrome, there has been no evidence presented to establish the claimant has been diagnosed with chronic pain syndrome, nor is there a causal relationship established between a chronic pain syndrome and the employment injury of July 3, 2000, as required. Dr. Thompson stated the claimant had "permanent pain" in the shoulder, but this does not constitute a diagnosis of chronic pain syndrome. In order for the office to consider such a condition for acceptance, the claimant should submit a physician's report "in which the physician reviews the factors of employment identified by appellant as causing his condition and, taking these factors into consideration as well as findings upon examination of appellant and appellant's medical history, state whether these employment factors caused or aggravated appellant's diagnosed conditions and provide medical rationale in support of his opinion"². At this time, such report has not been received and a chronic pain syndrome cannot be accepted.

¹ Andrew Aaron, Jr., 48 ECAB 141 (1996).

² Donald W. Long, 41 ECAB (Docket No. 89-1497 issued October 30, 1989).