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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

JUN 15 2007

Date of Injury: 12/14/1998
Employee: DONALD E. MOORE

DONALD E. MOORE
689 POPPY AVE
MACON, GA 31204

Dear Mr. Moore:

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.

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

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

Sincerely,



Sherri L. Doiron
Hearing Representative

DEPARTMENT OF THE AIR FORCE
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WR-ALG/DPLC
BYRON STREET, SUITE 465
ROBINS AFB, GA 31098

PAUL H. FELSER
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PO BOX 10267
SAVANNAH, GA 31401

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 Donald E. Moore, Claimant; Employed by the Department of the Air Force at Robins Air Force Base, Georgia. Case No. 060719277.

Merit consideration of the case file was completed in Washington, D.C. Based on this review, the decision of the District Office dated January 27, 2007 is set aside and the case file is remanded for the reasons set forth below.

The issue for determination is whether the claimant is entitled to a schedule award for permanent partial impairment of a scheduled member under the Federal Employees' Compensation Act.

The claimant, born July 8, 1945, was employed as an Aircraft Mechanic for the Department of the Air Force at Robins Air Force Base in Georgia. The claimant sustained an injury at work on December 14, 1998, which the District Office accepted for a lumbar strain, displacement of lumbar intervertebral disc without myelopathy, and thoracic or lumbosacral neuritis or radiculitis.

The claimant's attending physician, Byron Watson, M.D., provided an impairment rating dated June 27, 2004. He opined the claimant had sustained 28.8% lower extremity impairment due to his work injury.

On November 19, 2002, the claimant filed a form CA-7, Claim for Compensation, asserting a claim for a schedule award.

In accordance with established procedure, the case file's medical records were referred to the District Medical Advisor (DMA), who was asked to provide an opinion on Dr. Watson's assessment of the claimant's work-related permanent partial impairment. The DMA indicated in his report dated July 15, 2004 that Dr. Watson had improperly applied the American Medical

Association's Guides to the Evaluation of Permanent Impairment, fifth edition, (AMA Guides).

On August 2, 2004, the District Office requested Dr. Watson supply the information indicated by the DMA. Dr. Watson responded that the claimant had 44% impairment to his lower extremity. The Office referred the case back to the DMA along with Dr. Watson's report. The DMA opined in his report of March 8, 2005 that the claimant had no impairment to the lower extremities based on a functional capacity evaluation of January 7, 2004.

By decision dated March 17, 2005, the District Office denied the claim for a schedule award, finding that the claimant did not sustain a ratable, work-related impairment based upon the DMA's opinion.

The claimant disagreed with the March 17, 2005 decision and requested an oral hearing before an OWCP representative through his attorney. By decision dated July 14, 2005, the Hearing Representative remanded the claim back to the District Office, noting that the DMA had not mentioned Dr. Watson's report giving the claimant 44% impairment. The Hearing Representative directed the Office to refer Dr. Watson's report to the DMA for consideration and the issuance of a de Novo decision.

In accordance with the July 14, 2005 directive, the District Office forwarded the case back to the DMA. The DMA opined in his July 26, 2005 report that the EMG studies used by Dr. Watson in support of his impairment rating were several years old and no longer accurate, and their findings did not correlate with the more recent physical findings shown by the functional capacity evaluation. He recommended that new EMG studies be obtained.

By decision dated August 19, 2005, the District Office denied the claim for a schedule award, again finding the record did not support he had sustained ratable work-related impairment. The claimant disagreed with the August 19, 2005 decision and requested an oral hearing before an OWCP representative through his attorney.

By decision dated November 3, 2006, the Hearing Representative remanded the case back to the District Office. The Hearing Representative found a conflict of medical opinion existed between Dr. Watson and the DMA and directed a referee opinion be obtained to resolve the conflict.

On December 8, 2006, the District Office advised the claimant of the necessity for him to schedule and undergo EMG studies so action could be taken as directed by the remand order.

By decision dated January 26, 2007, the District Office again denied the claim for a schedule award. The decision noted that the claimant had been allowed a reasonable amount of time to have an EMG study, but no further evidence had been received.

The claimant disagreed with the decision and requested an oral hearing before an OWCP Representative. I find that the case is not in posture for a hearing. Based upon my review of the file, the decision of the District Office dated January 26, 2007 should be set aside and the case file should be remanded for further development.

The 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 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* for determining the extent of permanent impairments.¹

As long as the DMA explains his or her opinion, shows values and computation of impairment based on the *AMA Guides*, and considers each of the reported findings of impairment, his or her opinion may constitute the weight. However, the Office must ensure that the DMA properly considers all reported findings, gives rationale and uses the *AMA Guides* correctly in computing the percentage.²

In the present case, the case record reveals a new EMG study dated May 31, 2006 was received, but it does not appear that this was considered before the January 26, 2007 decision was issued.

Upon return of the case file, the District Office should complete the remand directed in the November 3, 2006 decision. The Office should prepare a Statement of Accepted Facts (SOAF)³ and refer the claimant along with the case records for an examination with an appropriate board certified specialist, in accordance with procedures for resolving a conflict in medical

¹James E. Archie, 43 ECAB 180 (1991).

²Susie Hall, 34 ECAB 1311

³See Part 2-0809 of the FECA Procedure Manual.

evidence⁴ for an opinion regarding whether the claimant has sustained permanent partial impairment.

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

Consistent with the above findings, the decision of the District Office dated January 29, 2007 is set aside and the case file is REMANDED for further action as described above.

JUN 15 2007

DATED:
WASHINGTON, D.C.



Sherri Doiron
Hearing Representative

For
Director, Office of Workers'
Compensation Programs

⁴FECA Procedure Manual, Chapter 2-810-11.