

U.S. Department of Labor

Employment Standards Administration
Office of Workers' Compensation Programs
Division of Federal Employees' Compensation
Washington, D.C. 20210



JUL 5 2001

File Number: A25-547766

Christopher P. Usiak
6237 Winston Place East
Bealeton, VA 22712-9319

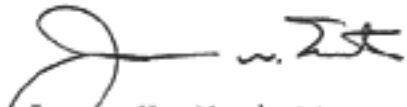
Dear Mr. Usiak:

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, 800 N. Capitol Street NW, 8th Floor, Washington, D.C. 20211.

Sincerely,



James W. Muskett
Hearing Representative

Enclosure

cc: The U.S. Department of the Army
CTP: William Wells
Walter Reed Army Medical Center
Civilian Personnel Office
Attention: HSHL CP
Washington, D.C. 20307

Paul H. Felser
Centurysouth Bank Building
7 E. Congress Street, Suite 400
P. O. 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, U.S. Code 8101 et seq. of CHRISTOPHER P. USIAK, Claimant; Employed by the U.S. DEPARTMENT OF THE ARMY, WALTER REED ARMY MEDICAL CENTER, WASHINGTON, D.C. Case No.: A25-547766.

Merit consideration of the case file was completed on June 8, 2001 in Washington, D.C. Based on this review, the March 1, 2001 decision of the District Office is vacated for the reason(s) set forth below.

The issue for determination in this case is whether the claimant has incurred a greater than 3% permanent partial impairment of the left upper extremity (previously awarded on March 1, 2001) as a result of the accepted employment injury sustained on September 3, 1999 and/or reparative surgery therefore.

Christopher P. Usiak, date of birth February 10, 1967, is employed by the U.S. Department of the Army, Walter Reed Army Medical Center, Washington, D.C., as a High Voltage Electrician. On September 7, 1999, the claimant filed a Form CA-1, Notice of Traumatic Injury, indicating injury to his left elbow incurred on September 3, 1989 when he fell off a ladder. The claim was accepted for a fracture of the left proximal radius, left open radius reduction surgery was performed with left internal fixation, and compensation was provided.

On May 17, 2000, the claimant filed a Form CA-7, "Claim for Compensation" indicating a claim was being made to a schedule of compensation with permanent partial impairment experienced by the claimant in association with the accepted employment injury and reparative surgery therefore.

By formal decision dated March 1, 2001, the Office provided the claimant with a schedule award of compensation for his having incurred a 3% permanent partial impairment of left upper extremity as a result of the accepted employment injury and reparative surgery therefore.

By letter postmarked March 15, 2001, the claimant wrote requesting an oral hearing before a representative of the Office of Workers' Compensation Programs.

After a thorough review of the evidence of record, I find the District Office decision of March 1, 2001 must be VACATED.

"Section 8123 (a) of the Federal Employees' Compensation Act provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.¹

In the case at hand, the claimant's treating orthopedic surgeon, Dr. Jeffrey Wise has in his medical report of June 19, 2000 indicated in part that,

"...I don't think he can return to his previous level of employment activity on an unrestricted basis. According to the AMA Guides for Disability Fourth Edition, his current flexion extension is -15 to 130, pronation of 90, 80 of supination, as well as severe crepitation of the elbow. As such, his impairment rating of the elbow is 23%, which would make the upper extremity impairment 16% and the whole person impairment 9%."

In a supplemental report dated March 28, 2000 Dr. Wise indicated that,

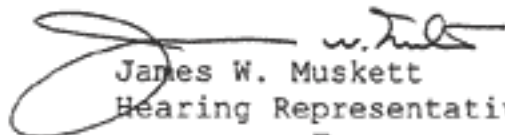
"At this point, I think Chris has obtained maximum medical improvement. He is no longer making gains in physical therapy. His current flexion and extension -15 of extension to 130 of flexion, 90 of pronation to 80 of supination, and in addition, he has severe crepitation to the elbow. As such, I have determined that his impairment rating at the elbow is 23%, which would make the upper extremity impairment 16% and the whole person impairment 9% impaired. These values were derived in the following manner. The impairment and extension is 2 at the elbow and flexion, 1, for a total of 3%. 70% of this would give the upper extremity rating of 2%. The whole person impairment

¹ Wen Ling Chang, 48 ECAB 272 (1997); Bertha J. Soule (Ralph G. Soule), 48 ECAB 314 (1997); Henry W. Sheperd, III, 48 ECAB 382 (1997); Lawrence C. Parr, 48 ECAB 445 (1997); H. Adrian Osborne, 48 ECAB 556 (1997).

determination with regard to the degree of permanent partial impairment is experienced by the claimant with regard to the right upper extremity as a result of the accepted employment injury and reparative surgery therefore. Such referral physician should display utilization of the AMA Guides, and provide complete citations (i.e., tables, pages, etc.) and calculations utilized, and percentage of permanent partial impairment experience by the claimant in his left upper extremity as a result of the accepted employment injury and reparative surgery therefore.

Upon implementation in the aforesaid action, the District Office is directed to take appropriate action to be followed by issuance of a de novo decision.

DATED: Jul 5 2001
WASHINGTON, D.C.



James W. Muskett
Hearing Representative
For
Director, Office of Workers'
Compensation Programs