

File Number:
HR11-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

JUL 07 2009

Date of Injury:
Employee:

Dear Mr. :

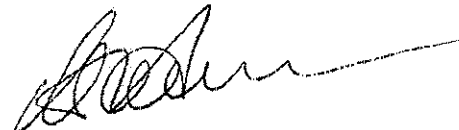
This is in reference to your workers' compensation claim. Pursuant to your request for a hearing, the case file was transferred to the Branch of Hearings and Review.

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 Jacksonville District Office. You may contact that office by writing to our Central Mail Room at the following address:

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

Sincerely,



Karen S. Hunt
Hearing Representative

UNITED STATES POSTAL SERVICE
MOBILE OFFICE
INJURY COMPENSATION OFFICE
250 ST JOSEPH STREET
MOBILE, AL 36601

PAUL H FELSER
7 EAST CONGRESS STREET
SUITE 400
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
, claimant, employed by the United States Postal Service, Mobile, Alabama,
case file number*

*Merit consideration of the case file was completed. Based on this review, the decision of
the district office dated March 24, 2009, is set aside for the reasons set forth below*

The issue is whether the claimant sustained an employment-related low back injury as claimed

The United States Postal Service employed the claimant, , born , as a clerk in Mobile, Alabama. On June 8, 2006, the claimant timely filed notice of an employment-related low back condition of which he first became aware on December 10, 2005, and first realized was caused or aggravated by his employment on December 29, 2005. The claim was eventually accepted for L3-4 disc bulge. The claimant stopped work on December 31, 2005, and did not return. He was separated from Postal employment effective October 12, 2007.

On February 3, 2009, the claimant filed Form CA-7 for wage-loss compensation beginning December 31, 2005.

By letter dated February 19, 2009, the Office advised the claimant regarding the medical evidence necessary to establish disability. The Office noted the medical records referenced diagnoses not accepted as employment-related and there was no rationalized medical opinion regarding a causal relationship between the additional conditions and the accepted employment injury. The Office afforded the claimant 30 days to provide appropriate evidence documenting disability for the period claimed.

By letter dated February 27, 2009, the claimant's attorney, Paul Felser, requested an extension of time to respond to the Office letter of February 19, 2009. By separate letter of the same date Mr. Felser provided a copy of an August 11, 2008, report of John Semon, M.D., which was previously of record. Mr. Felser argued that Dr. Semon's report was sufficient to establish the claimant's disability beginning December 31, 2005.

By letter dated March 17, 2009, the Office advised Mr. Felser it could not grant an extension of time to provide supportive evidence.

On March 24, 2009, the Office received a March 20, 2009, letter from Mr. Felser and a March 18, 2009, report from Dr. Semon, which addressed the issue of the claimant's disability from 2005 and continuing.

By decision dated March 24, 2009, the Office denied the claim for compensation beginning December 31, 2005, for the reason that there was no contemporaneous medical evidence disabling the claimant due to the accepted employment-related condition. The Office noted that it received two letters from Mr. Felser dated February 27, 2009, and that neither letter provided contemporaneous medical documentation to support that the claimant's work stoppage was causally related to the accepted employment-related condition. The Office did not mention or discuss the March 18, 2009, report of Dr. Semon, who had treated the claimant since 1986

The claimant disagreed with the Office decision and by letter postmarked April 21, 2009, Mr. Felser requested an oral hearing. Mr. Felser specifically argued that Dr. Semon's report of March 18, 2009, was received but not considered by the Office prior to the issuance of its decision of March 24, 2009.

I have reviewed the evidence of record and find that the Office failed to consider all of the relevant evidence properly submitted and of record at the time of issuance of its decision.

The FECA provides that the Office shall determine and make findings of fact in making an award for or against payment of compensation after considering the claim presented by the employee and after completing such investigation as the Office considers necessary with respect to the claim. Since the Board's jurisdiction of a case is limited to reviewing that evidence which was before the Office at the time of its final decision, it is necessary that the Office review all evidence submitted by a claimant and received by the Office prior to issuance of its final decision. As the decisions of the Board are final as to the subject matter appealed, it is crucial that all evidence relevant to that subject matter which was properly submitted to the Office prior to the time of issuance of its final decision be addressed by the Office. The case was remanded to the Office to consider a medical report submitted by appellant and received prior to the issuance of its compensation order denying modification of his claim.¹

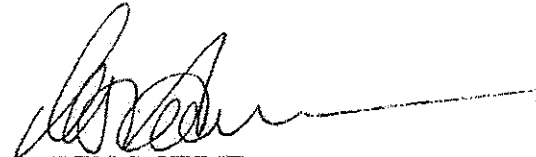
The Office clearly failed to consider the March 18, 2009, report of Dr. Semon that was received on March 24, 2009, the prior to issuing its decision rejecting the claim. On remand, the Office should consider Dr. Semon's report of March 18, 2009, and take appropriate action to issue payment of compensation or an appropriate decision regarding the claimant's entitlement to benefits.

¹ *William A Couch*, 41 ECAB ___ (Docket No. 89-1910 issued March 23, 1990).

Accordingly, the decision of the Office dated March 24, 2009, is hereby set aside and the case is remanded for further action as described above.

DATED: JUL 07 2009

WASHINGTON, D.C.

A handwritten signature in black ink, appearing to read 'K. S. Hunt', with a long horizontal line extending to the right.

KAREN S. HUNT
Hearing Representative
For
Director, Office of Workers'
Compensation Programs