

File Number:
HR31-D-H

RECEIVED MAR 22 2010

U.S. DEPARTMENT OF LABOR

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

MAR 16 2010

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.

Since the enclosed order provides for the reinstatement of compensation for wage loss, you must forward a completed CA7 to the district office cited below, through your employing agency.

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:

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

Sincerely,



Karen S. Hunt
Hearing Representative

DEPARTMENT OF THE NAVY
MILITARY SEALIFT COMMAND
NORFOLK NAVAL AIRSTATION
471 C STREET, BLDG SP-47
NORFOLK, VA 23511

PAUL FELSER
FELSER LAW FIRM, P.C.
PO 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
, employed by the Department of the Navy, Virginia Beach, Virginia, case file number*

Merit consideration of the case file was completed. Based on this review, the decision of the district office dated February 9, 2009, is set aside for the reasons set forth below.

The issue is whether the Office met its burden of proof to terminate compensation and medical benefits effective February 15, 2009, on the basis that the claimant no longer had any residuals of his accepted employment-related conditions.

The Department of the Navy employed the claimant, , born , as a storekeeper. The claimant timely filed a claim for an employment injury of June 28, 1996, when he tripped and fell while carrying a box of paper, injuring his low back. The Office initially accepted the claim for lumbosacral strain and in 2000 it expanded the claim to accept an aggravation of lumbosacral degenerative disc disease at L4-5 and L5-S1. The claimant did not return to work and the Office paid wage-loss compensation for temporary total disability.

The Office referred the claimant for a second opinion examination to determine the relationship of his present condition and any related disability to the June 28, 1996, work injury. In addition to the medical records and questions, the Office provided the second opinion physician, Alexander N. Doman, a Board-certified orthopaedic surgeon, with a statement of accepted facts dated January 31, 1999, along with an addendum dated September 12, 2008. Dr. Doman was instructed to use the statement of accepted facts as the only framework for his opinion.

Dr. Doman examined the claimant on October 28, 2008, and noted that he had reviewed the statement of accepted facts, questions to be answered, and the case medical records. Dr. Doman provided physical examination findings and noted a left lower extremity nerve conduction study showed evidence of a chronic left L5 radiculopathy. Dr. Doman diagnosed degenerative disc disease of the lumbar spine with symptom exaggeration. Dr. Doman opined that the work related aggravation of the degenerative disc disease had ceased and that there was no relationship between the claimant's current diagnosed condition and the June 28, 1996, employment injury.

By letter dated December 16, 2008, the Office advised the claimant that it proposed to terminate his medical benefits for the reason that the weight of the medical evidence, represented by the second opinion of Dr. Doman, established that his injury-related conditions and disability had ceased.

The claimant's attorney, Paul Felser, provided evidence and argument against the Office's proposed termination of benefits.

By decision dated February 9, 2009, the Office made the proposed termination final effective February 15, 2009. The claimant disagreed with that decision and by letter dated March 2, 2009, Mr. Felser requested an oral hearing.

I have reviewed the evidence of record and find that the Office did not meet its burden of proof to terminate compensation and medical benefits.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.¹

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition, which would require further medical treatment.²

When a second opinion specialist renders a medical opinion based on an incomplete or inaccurate statement of accepted facts, the probative value of the opinion is seriously diminished or negated altogether.³

The Office's termination of medical benefits was based on the second opinion report of Dr. Doman, to whom it afforded the weight of the evidence as comprehensive, well reasoned, and based on consideration of previous medical reports. The Office also noted Dr. Doman was an appropriate specialist whereas the claimant's treating physician, Ram Reddy, M.D., was an internist.

The statement of accepted facts and addendum provided to Dr. Doman contain improper information including recitations of medical findings and opinion and histories of case decision and administrative actions by the Office. The January 31, 1999, statement of accepted facts, in addition to noting diagnostic testing procedures, related the findings of those procedures. Medical treatment received, including diagnostic testing, may be properly included in a statement of accepted facts but the claims examiner is specifically instructed not to give a recitation of medical opinions or findings.⁴

The September 12, 2008, addendum to the statement of accepted facts, improperly includes: a statement about the claimant's lack of interest in returning to work versus retirement made by a therapist administering a functional capacity evaluation; a statement of the medical opinion of a

¹ *Adina D. Blanco*, 39 ECAB ____ (1988).

² *James F. Weikel*, 54 ECAB 660 (2003).

³ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.3 (October 1990); see also *James A. Wyrich*, 31 ECAB 1805 (1980).

⁴ FECA Procedure Manual, 2-0809-6(a)(2)