

File Number:
Merit Review3-D-NO

RECEIVED DEC 06 2012

U S DEPARTMENT OF LABOR

OFFICE OF WORKERS' COMP PROGRAMS
PO BOX 8300 DISTRICT 6 JAC
LONDON, KY 40742-8300
Phone: (904) 366-0100

December 4, 2012

Date of Injury:
Employee:

Dear Mr

This concerns your compensation case and your request for reconsideration received 05/11/12

We have evaluated the evidence submitted in support of your request for review. Your case has been reviewed on its merits under Title 5, United States Code, Section 8128, in relation to your application including supporting evidence. It is determined that sufficient evidence has been received to support that your injury related lumbar condition has not ceased. The reasons for this decision are outlined in the enclosure.

Therefore, the decision dated 05/13/2011 is vacated and your case is revised to include the permanent aggravation of lumbar spondylolisthesis.

Sincerely,



Nancy Sprague
Senior Claims Examiner

Enclosure -- Reports from Dr

PAUL L FELSER
FELSER LAW FIRM, INC
PO BOX 10267
SAVANNAH, GA 31412

If you have a disability (a substantially limiting physical or mental impairment), please contact our office/claims examiner for information about the kinds of help available, such as communication assistance (alternate formats or sign language interpretation), accommodations and modifications.

Employee:

NOTICE OF DECISION

Issue

The issue for determination is whether or not the evidence submitted along with your appeal form received on 05/11/12 requesting reconsideration of the decision of 05/13/11 is of sufficient probative value and effect, or of such a substantial nature, as to require modification of the decision rendered by the office.

Requirements for Entitlement

Title 20 of the Code of Federal Regulations 10.606 states that you are entitled to a merit review of your claim if you have new and relevant evidence in support of your request for reconsideration. In order for the prior decision to be modified, the evidence submitted must be relevant to the issue or argument would have to be of sufficient weight to require further development or outright modification or vacation of the prior decision.

Background

You were employed by the _____ as a _____ You filed a notice of traumatic injury and claim for compensation for an injury that occurred on _____ when your stool broke and you tried to break your fall by grabbing a structure in front of you. Your claim was accepted for a lumbosacral strain. It was later expanded to include the aggravation of lumbar spondylolisthesis at L5/S1 and the aggravation of a herniated disc at L4/5.

On 05/15/06 you underwent low back surgery including decompressive hemilaminectomy, foraminotomy L4-5, right, exploration of previous fusion L5-S1; repair of pseudoarthrosis L5/S1 with bilateral lateral fusion L4/5. Prior to this work injury, you had undergone a lumbar fusion for spondylolisthesis at L5/S1 in 1980; a cervical fusion in 1992, left shoulder surgery in 1996 and 2003.

You have other claims that have been accepted for left and right shoulder strains; the aggravation of bilateral degenerative joint disease of the shoulders; the aggravation of bilateral shoulder tendonitis; cervical and lumbar strains; right wrist tendonitis and a right hip contusion.

You stopped working on 02/05/06 and have not returned to work since then. You were receiving compensation for temporary total disability on the periodic roll. You were referred for an office directed second opinion exam on 02/03/08 that was performed by Dr. _____ in _____ to determine your work related injury residuals and work capacity.

Based on the opinion of Dr. _____, that your pre-existing lumbar spondylolisthesis was temporarily aggravated by your 06/09/05 work injury, a proposed decision to terminate your medical benefits and wage loss was issued on 03/31/10. A final decision was issued on 05/04/10.

You appealed the termination on 07/14/10 and a merit review decision was issued on 08/26/10 denying modification of your claim on the basis that the medical reports from Dr. _____, a general practitioner, were insufficient to overcome the opinion of Dr. _____, an orthopedic surgeon.

On 03/23/11 you requested a new reconsideration review. A merit review decision was issued on 05/13/11 denying modification of your claim. The decision noted that the report from Dr. [redacted] regarding your cervical condition was not related to this claim.

On 05/11/12 we received a third reconsideration request from your legal representative, attorney Paul Felser. He provided new medical evidence and new legal arguments

Discussion of Evidence

You were entitled to a merit review because the original Statement of Accepted Facts (SOAF) did not list the physical requirements of your job or list your prior accepted work injuries and surgeries. Several of your prior claims were retired and we had to recall these paper cases from the federal records center before a new SOAF could be prepared for a new orthopedic examination

You were examined by Dr. [redacted] in [redacted] on 07/27/12. He reviewed your medical records, the new SOAF and performed a physical examination. His initial report was received in our office on 09/04/12. During the course of your examination, Dr. [redacted] noted left shoulder drooping and minimal listing to the left at the dorsolumbar region. He initially opined that your 06/09/05 work injury resulted in temporary aggravations of your right shoulder degenerative joint disease and your lumbar spondylolisthesis and herniated disc. He did not restriction of motion of your left shoulder as a result of your prior surgeries.

However, Dr. [redacted] also noted current evidence of cervical strain. However, when asked if you could return to work as a full duty food inspector he stated that you were unable to return because of the residuals from your lumbar surgery and your right hip replacement surgery. He noted that you were able to perform other work that does not require lifting over 10 pounds, walking or standing over 2 hours, sitting over 4 hours with limits on reaching, bending and stooping.

We wrote Dr. [redacted] and asked him to clarify his opinion and medical reasoning regarding the temporary nature of the aggravation of your lumbar condition, the impairment rating for your left shoulder, the reasoning regarding any permanent injury to your right shoulder and hip and your work capacity.

He responded with an addendum dated 11/29/12. Dr. [redacted] stated that he re-reviewed the medical records and SOAF and advised that he felt the aggravation of your pre-existing lumbar spondylolisthesis was permanent, rather than temporary, due to "residual limitations of motion with significant symptoms." He also noted that you do have permanent impairment of your shoulder and confirmed that he agreed with the ratings calculated by the district medical advisor. He did not provide adequate reasoning regarding whether or not your work injury caused, aggravated or precipitated the need for your right total hip replacement.

Regarding work capacity, Dr. [redacted] noted that you would be unable to perform the inspection of chickens due to limitations related to your bilateral shoulder injuries and your residuals from your lumbar surgery.

Basis for Decision

The Employees' Compensation Appeals Board has held,

A rationalized medical opinion must include a discussion of the nature of the underlying conditions; their natural or traditional course; how the underlying conditions may have been affected by appellant's employment as determined by medical records covering the period of

employment; whether such affects, if any, caused material changes in the underlying conditions; or, if no material changes occurred, would the symptoms or changes indicative of a temporary aggravation have subsided or resolved immediately upon appellant's removal from the employment environment and, if not, at what point would such symptoms or changes have resolved; and whether any aggravation of appellant's underlying conditions caused by factors of his or her employment caused disability during or subsequent to appellant's employment. Newton Ky Chung, 39 ECAB ___ (1988)

Dr. _____ medical reasoning is sufficient to accept that the aggravation of your lumbar condition has not ceased and that you are disabled from returning to your date of injury job as a as the result of several of your accepted work conditions

Dr _____ opinion is not of probative value because he was not provided with information and medical records from your other claims

Conclusion

The decision dated 05/13/11 is vacated and your claim has been revised to include the permanent aggravation of lumbar spondylolisthesis. Additionally, your compensation for wage loss will be reinstated.

Nancy Sprague
Senior Claims Examiner
December 4, 2012