

File Number:
HR12-D-H

U.S. DEPARTMENT OF LABOR

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

RECEIVED APR 02 2012

MAR 28 2012

Date of Injury:
Employee:

Dear Ms. _____ :

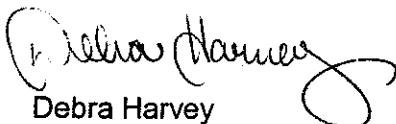
This is in reference to your workers' compensation claim. Pursuant to your request for a hearing, the case file was transferred to the Branch of Hearings and Review

A hearing was held on _____. Based upon that hearing, it has been determined that the decision of the District Office should be reversed as outlined in the attached decision.

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
OFFICE OF WORKERS' COMP PROGRAMS
PO BOX 8300 DISTRICT 6 JAC
LONDON, KY 40742-8300

Sincerely,


Debra Harvey
Hearing Representative

PAUL FELSER
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
, Claimant; Employed by the

Case No: Oral hearing was held on January 9, 2012, in Jacksonville,
Florida.

The issue is whether the District Office properly terminated wage loss benefits finding no employment related disability.

The claimant was employed by the , as a . She was initially injured on , and her claim was accepted for right lateral epicondylitis under case number

The instant claim was filed for an injury on , when she was lifting tubs of mail. The claim was accepted for bilateral lateral epicondylitis and bilateral medial epicondylitis. She underwent surgery on August 2, 2010, for a left tennis elbow release. She returned to light duty on August 25, 2010, but stopped working on August 27, 2010, as the Postal Service no longer had light duty available. The Office accepted the work stoppage as a recurrence and paid compensation benefits for total disability.

The Attending Physician, Dr. , kept the claimant off work with restrictions that could not be accommodated. On January 12, 2011, the Office wrote Dr. to determine if she had reached maximum medical improvement and if she had permanent restrictions. On February 9, 2011, he responded stating she was having tenderness of the elbow and wanted right elbow surgery. Dr. stated he had reservations about performing surgery.

A March 4, 2011, letter from Dr. stated the claimant had reached maximum medical improvement on her left elbow but her right elbow was giving her the same problem. He stated she had not reached maximum medical improvement on that date on the right. He stated she had a 10-pound restriction on pushing, pulling and lifting that could be long term.

On March 11, 2011, the Office prepared a Statement of Accepted Facts. The Office, however, failed to describe the prior injury to the right elbow or mention that the Office had accepted a right lateral epicondylitis.

On April 5, 2011, the District Office referred the claimant to Dr. , orthopedic surgeon, for a second opinion evaluation. Dr. provided a history of

elbow injuries from lifting tubs of mail in . Examination showed a well-healed surgical scar over the left elbow with diffuse tenderness over both elbows. There was no swelling or erythema. Flexion was 110 degrees to both elbows with a subjective soft end-point with extension of both elbows at 20 degrees. There was no evidence of elbow effusion. X-rays were normal. He diagnosed bilateral lateral epicondylitis and bilateral medial epicondylitis with psychogenic symptomatology. He stated the claimant had reached maximum medical improvement as of August 2, 2010.

Dr. stated the claimant is able to return to work as a . He stated her complaints of pain are subjective and without objective etiology. He recommended an MMPI evaluation "to assess motivational and other psychological issues that may play a role on this claimant's willingness to return to work for reasons unrelated to the work injury." He stated there were no work restrictions.

Dr. referred the claimant to Dr. who provided a May 20, 2011, report. Dr. recounted a history of pain that developed while the claimant was working sorting mail. He stated since the surgery she has had a difficult time recovering full motion and has had persistent pain. On examination, vascularity and sensation of the hands was normal bilaterally. The left elbow had a flexion contracture of 70 degrees and she could flex to 125 degrees. She could pronate and supinate without difficulty. She had residual tenderness fairly diffusely over the lateral side of the left elbow. The radial head was nontender. The medial side was asymptomatic. On the right, range of motion was 25 degrees to 125 degrees. There was full pronation and supination with similar diffuse tenderness laterally. There was no point tenderness over the radial head. The MRI scan of the right elbow did not show any significant underlying pathology. The impression was that the "flexion contracture in the left upper extremity is certainly unusual after lateral elbow release. He stated that relief after right elbow surgery would be low. "In summary then, the symptoms on the right side to seem to be consistent with lateral epicondylitis." He recommended nonsurgical management on the right.

On June 8, 2011, the Office issued a Notice of Proposed Termination of Benefits, finding the weight of evidence lay with Dr. as Drs. and had identified no objective findings on which to base their opinion. The Office advised the claimant that she could provide supporting evidence within 30 days if she disagreed with the Office's decision. Some evidence was received from the claimant's attorney, Paul Felser, to include prior medical reports and a written brief arguing that, among other things, Dr. Doman did not note that his opinion was based on a review of the Statement of Accepted Facts and review of the medical records and did not provide sufficient rationale on which to base a termination.

The District Office wrote Dr. on August 1, 2011, and stated, "We are needing clarification that you reviewed the Statement of Accepted Facts, and medical records in this file and that this information was included in your assessment and opinions given in your report. Please provide a statement indicating if this is correct."

Dr. _____ responded on August 12, 2011, stating, "It is noted that I have specifically reviewed the Statement of Accepted Facts as well as the medical records contained in the file of the claimant and that the information was included in my assessment and opinions given in this report."

On August 26, 2011, the Office finalized the termination of wage loss benefits. The claimant remained entitled to medical benefits. The claimant disagreed with the termination decision and requested a hearing before an OWCP Hearing Representative.

Prior to the hearing, additional medical reports were received. Dr. _____ stated the claimant had a "bizarre pain pattern" in both elbows and "appears to be frustrated by this continued lack of improvement. Dr. _____ stated there was a "lot of guarding and anxiety and probably some degree of psychiatric overlay." He continued to state she had work restrictions.

The hearing was held on January 9, 2012, in Jacksonville, Florida. The claimant did not appear for the hearing but was represented by Attorney Paul Felser.

Mr. Felser stated he had presented his arguments in a response to the proposed notice of termination. He argued that Dr. _____ report was "conclusory" and "based on cursory examinations of the Claimants, often times lacking in specific reviews of the relevant medical, specific reviews of the Statement of Accepted Facts, the histories of the case, and as with that past experience we found a number of those situations to be consistent with this claim." He stated there was a question as to whether Dr. _____ was provided with the complete history or accepted conditions.

He argued when the office received his preliminary response, "it raised sufficient concerns to write back to the doctor and ask if he had reviewed it, and my understanding is after the fact he writes back and says yeah, he did." He stated there was no explanation as to what was reviewed and how he drew his conclusions.

He also asked why Dr. _____ provided a diagnosis when he said there were no residuals. In addition, he argued that Dr. _____ had said the claimant had an element of psychological overlay. He stated that the claimant's attending physicians had agreed there is a psychological component and the Office failed to develop this issue.

He noted that the attending physicians continued to submit medical evidence to support disability and stated these reports, at least, established a conflict in the medical evidence.

Copies of prior medical reports were received.

A copy of the hearing transcript was sent to the Employing Agency for review and comment on January 20, 2011. There was no response.

I have carefully reviewed all the evidence of record and find the Office's termination of wage loss benefits must be REVERSED.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation.¹ In assessing medical evidence, the number of physicians supporting one position or another is not controlling. The weight of such evidence is determined by its reliability, its probative value and its convincing quality. The factors that comprise the evaluation of medical evidence include the opportunity for and the thoroughness of physical examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.²

The Office prepared a SOAF and referred the claimant for a second opinion examination as her attending physician continued to state she had work restrictions. The second opinion examiner stated, however, the claimant had no objective findings and no work restrictions. I find, however, that the report of Dr. _____, the second opinion examiner, lacks probative value as it was not based on a complete and accurate medical and factual history

The claimant had a prior employment-related injury in 2005 that was accepted for right lateral epicondylitis. ~~This injury was not described in the Statement of Accepted Facts, nor was the second opinion specialist advised that the office had accepted the right lateral epicondylitis.~~ The *FECA Procedure Manual*, Chapter 2-0809-11, *Requirements for SOAFS*, states, "Facts should be correctly stated. A medical opinion based on an accurate SOAF has enhanced probative value, whereas an opinion based on incorrect findings is of diminished or no value." The chapter continues, "Facts should be complete in all essentials. Omission of a critical fact diminishes the validity of a medical opinion or decision as much as an incorrect statement."

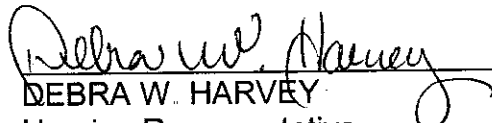
¹*Roberto Rodriguez*, 50 ECAB ____ (Docket No. 96-966, issued October 22, 1998).

²*Anna M Delaney*, 53 ECAB ____ (Docket No. 00-2090, issued February 22, 2002).

The SOAF provided to Dr. _____ was not complete and lacked the critical fact of the prior accepted work injury to the same part of the body as in the instant claim. Therefore, the Office's decision of August 26, 2011, is therefore REVERSED as the Office failed to meet its burden to terminate benefits. Wage loss benefits should be reinstated effective to the date of termination as indicated.

DATED: MAR 28 2012

WASHINGTON, D.C.


DEBRA W. HARVEY
Hearing Representative
For
Director, Office of Workers'
Compensation Programs