

File Number:  
HR11-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

AUG 24 2010

Date of Injury:  
Employee:

RECEIVED AUG 27 2010

Dear Ms. \_\_\_\_\_ :

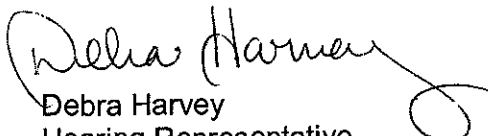
This is in reference to your workers' compensation claim. Pursuant to your request for a hearing, the case file was transferred to the Branch of Hearings and Review.

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

Sincerely,

  
Debra Harvey  
Hearing Representative

PAUL H FELSER  
ATTORNEY AT LAW  
7 EAST CONGRESS ST  
SUITE 400  
SAVANNAH, GA 31401

U.S. DEPARTMENT OF LABOR  
Office of Workers' Compensation Programs

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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.*

*Merit review was completed in Washington, D.C. Based on this review, the decision of  
the District Office dated July 10, 2009, is hereby set aside for the reasons set forth below.*

The issue is whether the claimed medical condition is causally related to factors of employment.

The claimant, date of birth, , is employed by the in  
, as a . She filed the Form CA-2, Notice of  
Occupational Disease, on , for a torn rotator cuff, tendonitis, herniated discs  
in the neck, and arthritis. She attributed this to reaching and stretching her arm to deliver  
mail to boxes. She stopped working on May 27, 2009, and underwent surgery on May  
28, 2009.

Medical reports were received from that provided diagnoses of  
cervical spondylosis and radiculopathy. Dr. provided a letter dated May  
21, 2009, that stated the claimant was suffering from right shoulder and arm pain as well  
as left arm and elbow pain. "Her pain is worsened by repetitive arm movements while  
she is at work delivering mail. She has had an MRI of her cervical spine that showed  
cervical spondylosis with myelopathy and an MRI of her right shoulder which showed a  
possible small focal tear of her supraspinatus tendon." She was referred to a spine  
surgeon for an orthopedic evaluation. A May 22, 2009, work notice from  
and provided a diagnosis of shoulder arthralgia.  
This notice stated the claimant's job duties "contributes to her symptoms."

On June 5, 2009, the District Office wrote the claimant and requested additional medical  
and factual evidence to support the claim.

A statement from the claimant was received in which she stated she believed her  
condition could have been contributed to by sorting, casing, delivering and lifting mail  
and parcels. She stated she could hear "clicking" sounds in the arm and developed pain.  
She stated she also would lose feeling in her arm when she would be delivering or  
picking up mail. She has arm pain when lifting trays and has to sit down until the pain  
gets better. She stated she has been performing these duties for 13 years, six days per  
week, and from five to eight hours per day.

She stated the pain began about two years ago but she continued to work; the pain kept getting worse until it got "unbearable" and she went to a physician. She was told she had a torn rotator cuff, bone spurs, tendonitis, arthritis, and herniated discs in her neck. She was treated with anti-inflammatory medications which helped for a while. She finally was referred to a spine specialist and surgery was performed.

Medical reports were also received. A January 5, 2009, report from Dr. [redacted] was received. Dr. [redacted] presented a history stating the claimant had joint pain in the right shoulder radiating down to the right humerus. "The timing was intermittent and while at work delivering mail. It is aggravated by repetitive arm movements." The diagnoses were myalgia, pain in limb, osteopenia, pain in shoulder joint, cervical spondylosis with myelopathy.

Dr. [redacted] submitted an undated medical report stating the right shoulder arthralgia and rotator cuff impingement syndrome signs were persistent and progressive. He stated surgery was indicated and recommended arthroscopy.

A June 29, 2009, report from Dr. [redacted] stated the claimant had right shoulder pain that radiates down to the humerus with associated right upper arm pain and right arm weakness. "She states that her pain is worsened by the repetitive arm movements that she does when she is delivering mail. She also has left arm and left elbow pain." The physician stated the claimant had an MRI of the right shoulder and cervical spine that showed the supraspinatus and infraspinatus tendonopathy and findings "suspicious for a possible small focal tear of the supraspinatus tendon and cervical spondylosis with a myelopathy at C5-6 respectively. . . The abnormal MRI findings of her shoulder and c-spine were likely contributing to Ms. [redacted] symptoms and that repetitive arms movements could continue to worsen the pain."

On July 10, 2009, the District Office denied the claim, finding none of the medical reports established a causal relationship between a diagnosed medical condition and employment factors. The claimant disagreed with this decision and, through his attorney, requested an oral hearing before an OWCP Hearing Representative.

After the denial notice was issued, a statement was received from the [redacted] Ms. [redacted] stated she "can only assume that her statement is correct." She stated she did "not know of any conflicting information that could lend any doubt to her statement. Her mail count showed a daily average of 1, 047 letters, 233 flats, 28 parcels, 135 box holder, 3 dismounts at 125 feet, 4.06 minutes for loading, and 101 letters/flats collected. Her route was evaluated at 7.64 hours per day. She works five days per week the first week of the pay period and six days the second week of the pay period.

Also received was a report of a January 15, 2009, MRI of the right shoulder. The MRI showed tendonopathy and a possible small tear. An MRI of the cervical spine also performed on January 15, 2009, showed disc bulges at C4-5 and C5-6, along with some thoracic spine bulges.

A December 15, 2009, letter was received from Dr. [redacted]. The physician stated the claimant was diagnosed with pre-existing cervical radiculitis, right shoulder pain, and a right rotator cuff tear. The doctor stated the claimant's job duties has permanently aggravated the pre-existing conditions and stated, "The job duties that aggravated, exacerbated and or accelerated these conditions are use of affected extremities for mail sorting, posting and delivering and above shoulder/reaching extremity movements at work. The physician stated the claimant could work modified duty with restrictions of avoiding frequent overhead arm movements no more than two hours in an eight hour shift, five days per week and no lifting, pushing, or pulling over 20 pounds in weight.

The requested hearing was held on November 19, 2009. By decision dated January 27, 2010, the Hearing Representative set aside the Office's decision and remanded the case for further medical development. She stated Dr. [redacted] December 15, 2009, report was insufficient to establish causal relationship but a *prima facie* claim had been established. The Office was to prepare a Statement of Accepted Facts and write Dr. [redacted], the orthopedic specialist. Dr. [redacted] was to supply the operative report and provide a reasoned medical report that explained the connection between the claimant's right shoulder, arm, and cervical spine conditions and the accepted employment exposure. He was to provide a reasoned explanation as to whether any employment-related aggravation would be temporary or permanent. The Office was then to issue a new decision upon receipt of this report.

The Office prepared a Statement of Accepted Facts and wrote Dr. [redacted] on February 8, 2010. The claimant was asked, among other questions, "Does the claimant suffer from and [sic] conditions that are caused by her federal employment as a [redacted]? Are any of the injuries pre-existing? If yes, which ones?" He was also asked, "The injured worker is expected to return to some type of modified work when no longer totally disabled because of the accepted condition. Could you please provide reasoned explanation as to whether any employment-related aggravation is temporary or permanent? (Definitions attached)"

An unsigned, hand-written response was received on March 11, 2010. The diagnosis given was status post right rotator cuff tear. The question posed about the condition being caused by employment was answered, "N/A." The claimant was released to work on December 30, 2009, with no restrictions.

The Office wrote back to Dr. [redacted] on March 29, 2010, for clarification and a copy of the operative report.

An April 21, 2010, report from Dr. \_\_\_\_\_, was received. Dr. Wagner discussed an impairment rating but failed to discuss causal relationship.

The District Office denied the claim on May 26, 2010, stating, "Per the instructions stated in the Hearings & Review decision of January 7, 2010, your attending physician, Dr. \_\_\_\_\_, was asked if your alleged shoulder injury was due to factors of your employment. The response provided denoted that it was undetermined if your condition was caused by factors of your employment. Dr. \_\_\_\_\_ further opined that you were not disabled as a result of your alleged injury, you have reached maximum medical improvement, and you were released from his medical care." The Office denied the claim, finding fact of an injury was not established. The claimant disagreed with this decision and requested another oral hearing before an OWCP Hearing Representative.

After careful review of the case, I find that it is not in posture for a hearing. The prior Hearing Representative determined that a *prima facie* claim had been established and instructed the Office to prepare a Statement of Accepted Facts (SOAF) and ask the physician if the diagnosed conditions were causally related to employment factors by direct causation, aggravation, acceleration and/or precipitation. The Office did prepare a SOAF but it was not prepared according to procedure. The SOAF states, "The claimant's primary care physician is Dr. \_\_\_\_\_ (an internal medicine specialist) diagnosed the claimant with cervical radiculitis, pain in shoulder joint, and right rotator cuff tear, although there were no electrodiagnostic tests supporting the diagnosed radiculitis. Dr. \_\_\_\_\_ opined that the claimant suffered a work-related aggravation of her pre-existing condition and a permanent worsening of the same. Dr. \_\_\_\_\_ did not specify the nature of the causal relationship between each condition and the accepted employment exposure, nor did he provide an explanation of the medical connection between the diagnosed conditions and the accepted employment exposure." The *FECA Procedure Manual, 2-0809-7, Exclusions from SOAFs*, states in subparagraph c, that medical opinions should not be included in the SOAF. In addition, the Office wrote that, "The claim was originally denied by the District Office on 07/10/2009. Upon request for Appeal through the Hearings and Review Board, the claim was returned to the District Office for further development and clarification of if/how the claimed conditions are causally related to the claimant's federal duties." Subparagraph h of the *Procedure Manual* chapter cited above states, "Histories of appeals, remands, and administrative actions of the OWCP, such as requests for investigations, do not help to resolve medical issues and may actually prejudice the outcome of a claim."

It is the Office's responsibility to provide a complete and proper frame of reference for a physician by preparing a statement of accepted facts.<sup>1</sup> In securing a medical specialist's opinion, Office procedures note that a statement of accepted facts and questions are to be prepared by the claims examiner for use by the physician. The claims examiner is required to correctly set forth the relevant facts of the case, including the employee's date of injury, age, job held when injured, the mechanism of injury and any conditions claimed or accepted by the Office. The procedures note that not all information contained

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<sup>1</sup> *Donald E. Ewals*, 51 ECAB \_\_\_\_ (Docket No. 98-2180, issued April 3, 2000).

in a case record may bear on the issues to be resolved and cautions the claims examiner from including material which is inappropriate or prejudicial to the claim.<sup>2</sup> The SOAF in this case was not a proper frame of reference upon which a medical opinion could be based since it contained items that should have been excluded from the SOAF.

The Office wrote Dr. \_\_\_\_\_ but an unsigned reply to the Office's letter was received.<sup>3</sup> This report has no probative value as the Board has ruled that unsigned notes of medical treatment, lacking proper identification, could not be considered as probative evidence in support of appellant's claim.<sup>4</sup> In addition, this report provided no rationale for the medical opinion. The Office wrote back to the physician for a supplemental report but he did not respond. The Office then denied the claim, finding fact of an injury had not been supported. However, the prior Hearing Representative had determined that a *prima facie* claim had been established for causal relationship so the issue remained whether the claimed conditions were causally related to employment factors.

Proceedings under the FECA are not adversarial in nature nor is the Office a disinterested arbiter. The Office shares responsibility in the development of the evidence to see that justice is done.<sup>5</sup> In a similar case the Employees Compensation Appeals Board stated, "Appellant, an electrician, injured his right knee in 1984 for which he underwent arthroscopic examination. In a prior appeal, the Board remanded the case to the Office as the medical evidence from appellant's treating physician raised the issue of whether appellant's claimed recurrence of disability was a natural consequence of the employment injury. On remand, the Office sought clarification of the physician's opinion; however, the doctor's office advised that he would not submit any supplemental medical report. Thereafter, the Office denied appellant's claim. The Board found that the Office failed to conduct further development of the medical evidence and remanded the case for referral of appellant to an orthopedic surgeon for an opinion on the medical issues raised."<sup>6</sup>

In this case, the Office should prepare a new SOAF as directed in Chapter 2-0809 of the *Procedure Manual*. The Office should then refer the claimant, along with the new SOAF and the medical file, to an orthopedic specialist for a second opinion examination. The physician should be asked to provide a history of the injury, including whether there were any pre-existing conditions of the right shoulder, arm, and/or cervical spine. The physician should provide the findings on physical examination, firm diagnosis(es), and a reasoned opinion as to whether any of the diagnosed conditions were causally related to employment factors by direct causation, aggravation, acceleration, or precipitation. The Office's definitions of these terms should be provided to the physician. If an aggravation is diagnosed, the physician should be asked if the aggravation is temporary and permanent, and, if temporary, if it has ceased or the expected date of cessation. He should be asked if the claimant can perform full duty or if there are work restrictions. The physician should provide reasoning for all opinions. After the medical report has

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<sup>2</sup> *Brenda C. McQuiston* 54 ECAB \_\_\_\_ (Docket No. 0301725, issued September 22, 2003).

<sup>3</sup> An OWCP-5, Work Restrictions Form was received, that was signed by Dr. Drakeford. However, this form provided no rationale for the questions posed.

<sup>4</sup> *Merton J. Sills*, 39 ECAB \_\_\_\_ (1988).

<sup>5</sup> *Jimmy A. Hammons*, 51 ECAB \_\_\_\_ (Docket No. 98-1259, issued December 8, 1999).

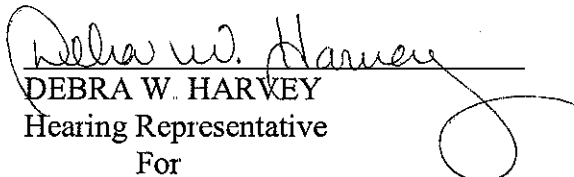
<sup>6</sup> *Dennis J. Lasanen*, 43 ECAB \_\_\_\_ (1992) [Docket No. 91-1427, issued February 28].

been received, and after completion of any additional development the Office deems necessary, a *de novo* decision on causal relationship should be issued.

Therefore, the decision of the District Office dated May 26, 2010, is hereby SET ASIDE and the file is REMANDED for action as described above.

DATED: **AUG 24 2010**

WASHINGTON, D.C.

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