

File Number:
reconvacate-D-

U.S. DEPARTMENT OF LABOR

OFFICE OF WORKERS' COMP PROGRAMS
PO BOX 8300 DISTRICT 6 JAC
LONDON, KY 40742-8300
Phone: (904) 357-4777

February 18, 2011

Date of Injury:
Employee:

RECEIVED FEB 23 2011

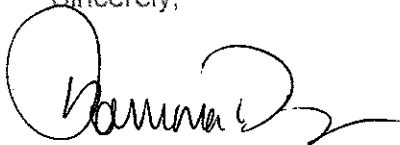
Dear :

This concerns your compensation case and your request for reconsideration received 08/31/2010.

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 prior decision should be vacated. The reasons for this decision are outlined in the enclosure.

Therefore, the decision dated 09/01/2009 is vacated and your case is accepted for Aggravation of lumbar and cervical degenerative disc disease.

Sincerely,



Ramona Brown
Senior Claims Examiner

PAUL FELSER
P. O. BOX 10267
SAVANNAH, GA 31412

NOTICE OF DECISION

ISSUE: The issue in this case is whether you have submitted sufficient evidence with your request for reconsideration to warrant modification of the office's decision denying your claim.

REQUIREMENTS FOR ENTITLEMENT: 20 C F R § 10.605 through 10.609 outline the procedure for application and the Office's handling of requests for reconsideration. A claimant may obtain review of the merits of his or her claim by written request to the Office and by showing that the Office erroneously applied or interpreted a point of law, by advancing a point of law or fact not previously considered by the Office, or by submitting relevant and pertinent evidence not previously considered by the Office. When an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without reviewing the merits of the claim.

In your case, you provided new evidence for review.

BACKGROUND: While employed as a Distribution Window Clerk with the _____ in _____, you filed a timely notice of traumatic injury, CA-1 form, for an injury to your back while in the performance of your federal duties. You stated that on _____, you fell when attempting to sit down in your chair. After proper development your claim was denied per formal decision dated September 01, 2009, on the basis that the medical evidence on file failed to support you sustained an injury that was caused, aggravated or accelerated by factors of your federal employment.

You disagreed with the September 01, 2009 decision and through your attorney requested reconsideration per letters dated August 31, 2010, and December 29, 2010.

As per the requirement 20 C F R §10.609(a), by letter dated January 07, 2011 your application for reconsideration was provided to your employer for review and comments. Your employer advised your office that after clarification of timeliness they had no comment and waived further review or comment, and your case is now in posture for a decision on your reconsideration request.

DISCUSSION OF EVIDENCE: Along with the reconsideration request and since the last merit decision on file we have received the following documents:

- Treatment notes from _____ dated July 23, 2009
- Duty Status report dated August 06, 2009
- Procedure note from Dr. _____ dated August 12, 2009
- Treatment notes from Dr. _____, dated August 06, 2009
- Authorization request dated September 10, 2009 and October 14, 2009
- Therapy prescription dated July 29, 2009, office notes dated July 27, 2009 and work note dated February 18, 2010 from Dr. _____
- Therapy report dated July 28, 2009, August 24, 2009, from _____
- Therapy treatments request dated August 25, 2009
- Treatment notes from Dr. _____ dated September 10, 2009, November 02, 2009, June 24, 2010 and August 05, 2010 and Letter dated June 24, 2010 and August 05, 2010
- Correspondence from your attorney dated October 08, 2009, October 26, 2009, October 30, 2009, January 21, 2010, March 09, 2010, April 30, 2010, June 30, 2010
- EMG and Nerve conduction study report dated October 27, 2009
- Procedure note from Dr. _____, dated November 09, 2009, December 18, 2009, April 30, 2010, May 24, 2010 and August 12, 2010
- Letter from OPM concerning your application for disability retirement

- Correspondence from your insurance carrier, dated March 09, 2010, May 13, 2010 and July 09, 2010
- Progress notes from _____ dated January 21, 2010, April 16, May 14, 2010 and June 16, 2010
- Treatment notes from Dr _____, dated January 21, 2010, February 18, 2010, April 16, 2010 and May 14, 2010
- Diagnostic report dated July 23, 2009
- Procedure instructions dated November 09, 2009, April 30, 2010
- Correspondence from your attorney dated November 06, 2009, July 21, 2010, September 27, 2010, August 31, 2010, and December 29, 2010
- Letter from Dr _____, dated May 10, 2010 and treatment note dated March 30, 2010

The medical evidence as stated above has been reviewed and supports you sustained an injury as claimed to your back

Treatment notes dated 07/23/2009, from the emergency department at _____ provide a history of the injury, note previous medical history as, "2 artificial knees, 4 herniated disk, 3 compression neck, burn, stab injury, asthma, pericarditis" ordered a CT of the neck and MRI of the lumbar spine. Per cervical report it was noted there was no evidence of acute injury and multi level degenerative disc disease was identified. Lumbar report found multi level broad based disc protrusions and no evidence of fracture. You were given a final impression of lumbar pain

Dr _____ states in his notes dated July 27, 2009, that you have a contusion and possible strain and that you have known-pre-existing disc problems. States MRI shows no acute changes, and Dr _____ gives no firm diagnosis

The treatment notes listed above from Dr _____ provide a history of the injury and note that you have a medical history of pre-existing back conditions. However, he notes that prior to the injury you did have on and off lower back pain but not neck pain. The absence of pain however, does not equal the absence of a condition. However the evidence does support that the recent injury did in fact cause an aggravation. As stated previously the medical evidence supports you have a prior condition of degenerative disc disease of the lumbar and cervical spine. Dr _____ provides a well rationalized medical opinion that the fall occurring on July 23, 2009, aggravated these pre-existing conditions.

The reports from Dr _____ provide evidence of a pre-existing back condition and he provides a diagnosis of HNP L3-4 left and Left L3 radiculopathy. However he does not provide an opinion to support whether the diagnoses are pre-existing or the result of the recent injury

The rest of the medical as stated above from various doctors was reviewed and provides evidence of treatment consistent with the diagnosis given by Dr _____ of aggravation of degenerative disc disease at the lumbar and cervical levels. You have been treated conservatively with therapy, injections and medications per the treatment and progress notes.

It is well documented throughout your file that you have rather extensive pre-existing degenerative disc disease at multiple levels of your spine. So the question here for resolve by your many medical providers is how did the fall change the nature of your pre-existing condition and if it in fact did what is the medical evidence that supports this.

Your attorney's letters argue that the medical evidence supports at least a worsening of your conditions, as evidenced; he states by the medical documentation. Your attorney also argues that you have met your burden of proof by the medical documentation that has been submitted and requests reconsideration of the denial and that the prior decision be reversed

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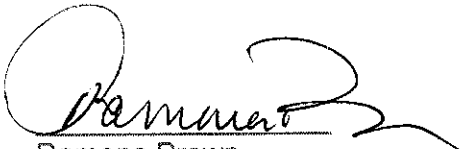
The non medical evidence as listed has no bearing on the issue for resolve in this case which is medical in nature and therefore will not be commented on

BASIS FOR DECISION: Beyond the above-mentioned documents, I have reviewed your case file in its entirety. The recently submitted medical evidence supports your history of the injury and the information presented does serve to substantiate that causal relationship has been established.

Your employer has controverted this claim stating you did not sustain a work related injury because had pre-existing back conditions. However, the evidence of file supports that factors of your federal employment aggravated your pre-existing condition; therefore you have sustained a work injury.

Since you have provided the office with clarifying evidence in support of your claim for the above noted condition, linked to the alleged work factors; the following conclusion is reached.

CONCLUSION: The decision denying your claim is vacated. Your claim has been accepted for compensable work related condition of Aggravation of lumbar and cervical degenerative disc disease

A handwritten signature in black ink, appearing to read "Ramona Brown", with a large, stylized flourish extending to the right.

Ramona Brown
Senior Claims Examiner
February 18, 2011