

File Number:
HR13-D-H

RECEIVED MAY 31 2011

U.S. DEPARTMENT OF LABOR

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

MAY 25 2011

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 on the case. Based upon that review, 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,



Carol E. Adams
Hearing Representative

PAUL H FELSER, ESQ
FELSER LAW -FIRM, P C.
POST OFFICE 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 number

Merit consideration of the case file was completed in Washington, D.C. Based on this review, the decision of the District Office dated February 11, 2010 is reversed and remanded for the reasons set forth below.

The issue for determination is whether the claimant suffered an injury as the result of his federal employment.

The claimant is employed with the as a
level 5. The claimant filed a traumatic claim of injury for date of injury of
He alleged that he injured his right hand operating the tram and pallet-jack.

The Office determined there was insufficient medical and factual evidence to support the claim. Therefore, by development letter dated January 4, 2010, the claimant was advised of the information needed to perfect his claim.

Additional information was received; however, the Office determined it was insufficient.

By decision dated February 11, 2010, the Office denied the claim on the basis that the first component of fact of injury had not been established.

The claimant disagreed with the decision and, through his attorney Paul Felser, requested a hearing with an OWCP representative.

A preliminary review of the case has been conducted and I find, although the original decision was correct, that the claimant has submitted sufficient evidence to support his claim.

In a statement received March 12, 2010, the claimant stated his injury occurred while he was operating the pallet-jack on the dock moving pallets of mail from the dock to a designated area. He stated he had been operating the jack for about four hours before his wrist and hand started to hurt. He stated that after he worked six hours the pain became unbearable. He went home and was unable to rest. He noted the pain was in both his hands but was more severe in his right than his left.

The claimant answered "Yes" in response to the question as to whether he had ever experience similar symptoms or disability before the injury. He stated that he first experienced numbness and tingling in his fingertips that were rare to occasional in February 2009. He stated he had a test in August 2009 and his doctor advised him that he had carpal tunnel syndrome. Shortly thereafter, he began to notice that his symptoms appeared to always worsen after he had been

working and lessen on the days he was off. He noted that from the beginning of 2009 up until June or July 2009 his primary work task was as a _____ operating a tram and pallet-jack for the majority of the shift. He indicated since his symptoms worsened that he began to do more “ _____ ” and less operating of the tram and pallet-jack.

The claimant stated that in approximately October 2009 he started back operating the tram and pallet-jack, during most of his shift, loading and unloading mail. He noticed that his symptoms worsened so he went back to his doctor and his doctor referred him to a hand specialist. He stated he saw Dr. _____ in January 2010. He stated that his doctor informed him that his condition was caused by repetitive activities and usage of the hands and wrist from performing his job and it had worsened over time.

The claimant stated that he shared with the doctor the incident of December 2009 that occurred while operating the pallet-jack and the doctor advised him that his job activity had caused a worsening of his bilateral carpal tunnel syndrome.

The claimant then described the exact work activities that he believed caused his condition. He stated as a Power Equipment Operator he used a pallet-jack. He noted that operating the pallet-jack required continuous turning of the handles to operate the motion back and forth. He had to pull and squeeze the handles to stop movement of the pallet-jack and push buttons, using the thumbs to raise the lift up and down. He indicated that he had performed these tasks for 6 to 8 hours a day for years.

A review of the medical evidence was also conducted.

A nerve conduction study and electromyogram was conducted on April 21, 2009. The tests demonstrated that the claimant had distal medial neuropathy consistent with carpal tunnel syndrome on both sides. The right was found to be considerably worse than the left.

A medical report dated March 10, 2010 was received from Dr. _____. The doctor answered questions asked by the claimant’s employer. The doctor noted that the work-related diagnosis was very severe bilateral carpal tunnel syndrome for which the claimant would need surgery to recover.

In a letter dated November 17, 2010, Dr. _____ stated, regarding causation of the carpal tunnel, that

He [the claimant] like many other patients assumes that any problem that occurs in the hand, i.e., tingling, numbness, and pain, is attached to a particular traumatic event. In reading the response provided by the post office for denying his claim, the post office also leaves very little room for problems in the hand other than a specific event occurring on a specific date. It turns out that carpal tunnel syndrome does not usually occur in that way. So, to hold him to a standard forcing him to pick an event as the cause of his problem is asking him to diagnose himself. He has no idea specifically as to why or how he developed carpal tunnel syndrome, and the burden should not be on him to explain

how he developed carpal tunnel syndrome. What he does know and stated is the fact that the type of work that he does aggravates symptoms which started off as occasional and sometimes "rare." He indicated that certain activities in particular are worse than others as far as increasing his pain and numbness. The exact cause of carpal tunnel syndrome is rarely known, even though certain activities can aggravate and sometimes worsen the symptoms.

Whether he has carpal tunnel syndrome or not is not in question. The only objective test for carpal tunnel Syndrome is an EMG and nerve conduction study, a test that he has had, which showed very advanced carpal tunnel syndrome.

In my experience, his presentation is not any different from the hundreds of I have seen with carpal tunnel syndrome deemed compensable.

Dr. performed a right carpal tunnel release on November 18, 2010.

In the Federal Employees Compensation Act (FECA) Part 2-0806-3a(2) procedure manual it states, "The CE may accept a basic OD case if the file contains a statement describing the employment-related exposure and a medical report which both defines the medical condition and relates it to the claimed exposure. An affirmative opinion on causal relationship, without rationale, will be sufficient to accept most cases."

It is obvious, from the claimant's statement received on March 12, 2010, that the claimant is describing an occupational injury and not a traumatic injury. The claimant's statement is sufficient to support an occupational claim for fact of injury. The medical evidence is also sufficient to support causal relationship.

In the (FECA) Procedure Manual Part 2-0800-4b, it states "A case which is created and entered into the data base may nonetheless lack appropriate forms. If either Form CA-1, CA-2 or CA-2a is incorrectly submitted, the CE must obtain the appropriate notice of injury or disease. Submission of an incorrect form is a technical error. It is improper to deny a case on the basis that the claimant failed to submit the correct form. The CE must obtain the appropriate notice of injury or disease if it does not already appear in file."

On return of the case file, the Office should ask the claimant to file an occupational claim and notate the claim form with the instant case number. Then, once the claim is received, it should be added to the instant case record and the case changed to an occupational case.

The Office should also issue an appropriate acceptance letter to accept bilateral carpal tunnel syndrome as work-related.

In accordance with the above findings, the decision of the Office dated February 11, 2010 is **reversed** and **remanded** for the Office to obtain a CA-2 claim form and for issuance of acceptance of the claim letter for bilateral carpal tunnel injury.

Date: MAY 25 2011

Washington, D.C.

A handwritten signature in cursive script that reads "Carol E. Adams". The signature is written in black ink and is positioned above the typed name.

Carol E. Adams
Hearing Representative
For
Director, Office of Workers'
Compensation Programs