

RECEIVED AUG 22 2011

U.S. DEPARTMENT OF LABOR

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

August 19, 2011

Date of Injury:  
Employee:

Dear Mr. \_\_\_\_\_ :

This concerns your compensation case and your request for reconsideration received 07/18/2011.

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 factors of Mrs. \_\_\_\_\_ federal employment contributed to her condition. The reasons for this decision are outlined in the enclosure.

Therefore, the decision dated 07/12/2010 is vacated and your claim is accepted.

Since Mrs. \_\_\_\_\_ passed away, OWCP cannot approve a Disability claim. You may have the assist you with the enclosed form CA-5 to initiate a Death claim. Please refer to the instructions attached to the form CA-5 and submit all of the information with the completed form. Please ensure that all documents have case number \_\_\_\_\_ shown in the upper right hand corner.

Sincerely,

  
Stephanie Fenton  
Senior Claims Examiner

✓ PAUL H FELSER ATTORNEY AT LAW  
POST OFFICE BOX 10267  
SAVANNAH, GA 31412

Employee:

Claim Number

### NOTICE OF DECISION

ISSUE: The issue for determination is whether the 07/12/2010 decision should be reopened under 5 U.S.C. 8128 and vacated.

REQUIREMENTS FOR ENTITLEMENT: Section 8128 of the Federal Employees Compensation Act states,

(a) The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. The Secretary, in accordance with the facts found on review, may--

- (1) end, decrease, or increase the compensation previously awarded; or
- (2) award compensation previously refused or discontinued.

(b) The action of the Secretary or his designee in allowing or denying a payment under this subchapter is--

- (1) final and conclusive for all purposes and with respect to all questions of law and fact; and
- (2) not subject to review by another official of the United States or by a court by mandamus or otherwise.

#### BACKGROUND:

On 01/07/2010, initiated a claim for cancer due to asbestos exposure. The initial claim was denied on 07/12/2010.

Mrs. lost her battle with cancer on 09/07/2010.

On 07/11/2011, attorney Paul Felser, representing widower, requested reconsideration of the denial and submitted medical evidence and a new medical report from Ms. oncologist, M.D.

#### DISCUSSION OF EVIDENCE:

Dr. wrote that diagnostic clarification was obtained via specialists at the and Mrs. Faulk suffered from epithelial mesothelioma. Dr. stated that the only known cause of mesothelioma is asbestos exposure and that the only exposure Mrs. had was at the

The medical evidence, including the new report from the oncologist, was reviewed by an OWCP District Medical Advisor on 07/22/2011. The DMA reviewed all background medical and a Statement of Accepted Facts and wrote that he concurred with the oncologist that asbestos-related mesothelioma contributed to Ms. Faulk's illness and death.

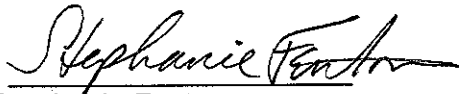
#### BASIS FOR DECISION:

In order for a claim to be accepted under the Federal Employees' Compensation Act (FECA), the claim must meet 5 basic elements. The claim must:

- (1) Be Timely Filed.
- (2) Be made by a Federal Civil Employee.

- (3) Establish Fact of Injury, which has both a factual and medical component. Factually, the injury, accident or employment factor alleged must have actually occurred. Medically, a medical condition must be diagnosed in connection with the injury or event.
- (4) Establish Performance of Duty. The injury and/or medical condition must have arisen during the course of employment and within the scope of compensable work factors.
- (5) Establish Causal Relationship, which means the medical evidence establishes that the diagnosed condition is causally related to the injury or event

CONCLUSION: The medical evidence establishes that a medical condition was caused by employment factors. The decision of 07/12/2010 is hereby VACATED, and the claim is accepted mesothelioma.



Stephanie Fenton  
Senior Claims Examiner  
Date 08/19/2011