

File Number:
HR11-D-H

RECEIVED MAR 08 2013

U.S. DEPARTMENT OF LABOR

MAR - 5 2013

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

Date of Injury:
Employee:

Dear :

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,



Marilyn Pfreut
Hearing Representative

PAUL H FELSER
P O BOX 10267
SAVANNAH, GA 31412

If you have a disability (a substantially limiting physical or mental impairment), please contact our office/claims examiner for information about the kinds of help available, such as communication assistance (alternate formats or sign language interpretation), accommodations and modifications.

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 _____, Case No. _____.

Merit consideration of the case file was completed on MARCH 4, 2013 in Washington D.C. Based upon this review the decision of the District Office dated DECEMBER 17, 2012 is set aside for the reasons set forth below.

The claimant, born _____, was employed by the _____ as a _____.

The claimant filed notice of occupational disease on _____ claiming his bilateral knee pain was related to continuous walking on brick floors eight hours per day in the performance of his work duties. The claimant had previously undergone surgery for his knee condition. The Office initially accepted that the claimant's work duties caused aggravation of his bilateral knee osteoarthritis. On May 25, 2006 the accepted condition was expanded to include bilateral knee chondromalacia. The accepted condition was further expanded on July 7, 2010 to include aggravation of lumbar spinal stenosis at L3-4-5. At some point the Office also accepted bilateral exostosis, bilateral knee traumatic arthropathy, tear of the lateral meniscus of both knees, and recurrent left knee dislocation. The claimant underwent left knee surgery to excise a large loose body on July 13, 2005, left total knee arthroplasty on June 16, 2006, right knee arthroscopy with partial medial and lateral meniscectomy and debridement chondroplasty on October 3, 2006, revision of left total knee arthroplasty on August 27, 2007, left knee arthroscopy with debridement and lateral retinacular release on April 1, 2012, and placement of an x-stop device at L3, L4, L5 on October 28, 2010. All of these surgical procedures were authorized by the Office as being related to the accepted work related conditions. The claimant stopped work as a result of his work injuries and compensation for wage loss was paid.

The claimant was treated for his bilateral knee condition by Dr. _____, an orthopedic surgeon. Dr. _____ performed the initial surgeries as well as follow up care. The claimant also received treatment for his bilateral knee condition from other physicians including Dr. _____ and Dr. _____ who performed surgeries on his knees. The claimant received treatment for his lumbar symptoms from Dr. _____ and Dr. _____. Dr. _____ and Dr. _____ continued to provide intermittent treatment for the claimant's continued lumbar and leg pain. The reports submitted to the Office discussed his complaints, noted findings on examination,

summarized the treatment provided, and concluded that the claimant was totally disabled as a result of his conditions. On August 9, 2012 Dr. noted that the claimant continued to have low back pain which had improved since his last examination with axial pain radiating into the left leg. He discussed his findings and diagnosed displacement of lumbar intervertebral disc, spinal stenosis lumbar region without neurogenic claudication, chronic pain syndrome, and long term use of narcotic drugs.

Dr. , a board-certified orthopedic specialist acting as a second opinion for the Office, examined the claimant on August 21, 2012, indicated that he had reviewed the statement of accepted facts and the claimant had a work related occupational injury to his knees, briefly discussed the claimant's prior treatment to include surgical procedures, summarized his findings on examination, and concluded that the claimant's accepted conditions had resolved and his present condition was due to a natural history of his pre-existing condition.

The claimant underwent a lumbar MRI on September 13, 2012 which found marked diffuse degenerative changes. Medical reports from Dr. discussed the results of this MRI test and recommended lumbar decompression and fusion.

On October 4, 2012 the Office advised the claimant that they proposed to terminate his entitlement to continued medical and compensation benefits finding that the weight of medical evidence rested with Dr. and supported his condition was no longer work related. The claimant was allowed thirty days to provide evidence or argument germane to this proposal. The claimant responded discussing his disagreement with the proposed action and summarizing his treatment and condition.

The Office also received a medical report from Dr. dated November 1, 2012 which opined that the claimant's medical condition continued to be directly related to the accepted work injuries. He concluded that the claimant was totally disabled due to his chronic knee problems and lumbar pathology, and on medication which only minimally controlled his pain.

Dr. also provided a report dated November 4, 2012 discussing the claimant's bilateral knee and lumbar conditions. He discussed his findings on examination initially as well as subsequent treatment and opined that while the primary knee joint condition had improved the claimant had increasingly significant knee pain from his spinal stenosis. He discussed the treatment provided for the claimant's spinal condition, noted that this provided no long term relief, and indicated that Dr. had recently concluded that decompression and fusion would improve the claimant's condition. He opined that the claimant had impairment of the left knee relative to what he had before his injury and noted that the claimant's right knee is becoming more arthritic and would likely required replacement as well. Dr. discussed Dr. opinion that the claimant's condition had resolved and was now due to his pre-existing condition, and opined that he had seen nothing to indicate there was pre-existing osteoarthritis in

either knee nor pre-existing spinal stenosis at the time of the injury. He opined that the claimant's condition continued to be a progression and consequence of the initial injury.

Other medical information was received by the Office as well discussing the claimant's condition and treatment.

On December 7, 2012 the Office finalized the proposed termination finding that the weight of medical evidence rested with Dr. [redacted] and supported that the claimant's condition was no longer related to his accepted work related conditions. The claimant disagreed with this decision and requested an oral hearing before an OWCP representative.

Following this decision additional medical information and evidence was received by the Office.

After careful consideration, I find that this case is not in posture for a hearing.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. After it has been determined that an employee had disability causally related to his or her employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.¹

In this case, the Office accepted that the claimant's work duties caused aggravation of bilateral knee osteoarthritis, bilateral exostosis, bilateral chondromalacia, bilateral knee traumatic arthropathy, bilateral lateral meniscus tears, recurrent left knee dislocation and aggravation of lumbar stenosis at L3, 4, 5. Further the Office authorized left knee surgery to excise a large loose body on July 13, 2005, left total knee arthroplasty on June 16, 2006, right knee arthroscopy with partial medial and lateral meniscectomy and debridement chondroplasty on October 3, 2006, revision of left total knee arthroplasty on August 27, 2007, left knee arthroscopy with debridement and lateral retinacular release on April 1, 2012, and placement of an x-stop device at L3, L4, L5 on October 28, 2010. The claimant stopped work as a result of his condition and was placed on the periodic roll receiving regular payment for wage loss. The claimant continued to receive regular treatment for his lumbar and leg symptoms.

The Office referred the claimant for a second opinion evaluation with Dr. [redacted], a board-certified orthopedic specialist. Dr. [redacted] examined the claimant but did not specifically discuss a mechanism of injury. He noted that he reviewed the statement of accepted facts but this document also did not list a mechanism of injury. Review the statement of accepted facts shows that not only does this not list the mechanism of injury, but also the conditions listed as accepted by the Office are not consistent with the acceptance letters sent to the claimant advising him case was accepted. The statement of accepted facts indicates that the Office accepted that the claimant's

¹ Charles E. Minniss, 40 ECAB 798 (1989)

bilateral knee osteoarthritis and lumbar spinal stenosis were accepted as work related when in fact the Office accepted aggravations of these conditions in the letters sent him. Further, while Dr. [redacted] opined that the claimant's accepted conditions had resolved and his current conditions were related to his pre-existing degenerative conditions, he did not discuss how he arrived at his conclusions. A medical opinion consisting solely of a conclusory statement regarding disability, without supporting rationale, is of little probative value.² When the Office develops the medical evidence by referring the case to an Office referral physician, the Office has the obligation to seek clarification from its physician upon receiving a report that does not adequately address the issues that the Office sought to develop.³ Consequently, I find that the Office must request a supplemental report from Dr. [redacted] clarifying how he arrived at his conclusions.

Consistent with the above findings, the decision of the District Office dated December 12, 2012 is set aside and the file remanded for further development. Upon receipt of the file, the Office should update the statement of accepted facts to reflect the specific mechanism of injury by noting the claimant's knee condition was aggravated by continuous walking eight hours a day on brick floors in the performance of his duties. Further this should clarify the accepted conditions noting that the Office accepted aggravation of lateral knee osteoarthritis and aggravation of lumbar stenosis in addition to the other accepted conditions. Finally the statement of accepted facts should reflect that the claimant had knee surgery prior to filing the claim in 2005, list when this surgery occurred if possible and what type of surgery was performed. Further the statement of accepted facts should note that the Office authorized each of the surgical procedures subsequent to July 13, 2005 finding that they were necessitated by the aggravation resulting from the claimant's work duties. Once these changes have been made to the statement of accepted facts, this new amended document, along with all of the medical evidence of file including the new evidence received subsequent to Dr. [redacted] evaluation should be sent to him for review. Dr. [redacted] should be requested to specifically list the mechanism of the initial injury in his report and summarize the medical information reviewed. Further he should be advised that any residuals from the accepted conditions or authorized surgeries would be considered work related residuals. Dr. [redacted] should then be requested to offer an opinion on whether this information changed his opinion that the claimant no longer has residuals of the work related conditions with surgeries. He should be reminded that for his opinion to be of probative value he must discuss how he arrives at each conclusion based on the prior medical treatment / reports, his findings on examination, and his expertise as a board certified specialist with contemporaneous medical knowledge. Once this report is received, it should be thoroughly reviewed to determine if it carries the weight of medical opinion, and if necessary, further development undertaken. When all action necessary is completed the Office should issue a de novo decision on whether the claimant continues to have residuals of the accepted work related conditions with subsequent multiple surgeries, if appropriate.

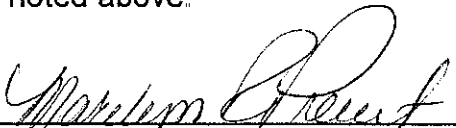
² Marilyn D. Polk, 44 ECAB 673 (1993)

³ William N. Saathoff, 8 ECAB 769 (1956)

Since the Office did not meet their burden in terminating compensation and medical benefits at the time of their decision of December 17, 2012, these should be reinstated retroactively to the date that they were terminated once a completed form CA1032 is received showing that the claimant has not returned to work or began receiving other dual benefits.

Consistent with the above findings, the decision of December 7, 2012 is set aside and the file **remanded** for action as noted above.

Dated: MAR - 5 2013
Washington, D.C.


Marilyn R. Preuit
Hearing Representative
for
Director, Office of
Workers' Compensation Programs