

File Number:
HR11-D-H

U.S. DEPARTMENT OF LABOR

DEC - 7 2012

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

RECEIVED DEC 10 2012

Date of Injury:
Employee:

Dear Ms. :

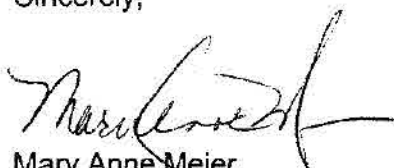
This is in reference to your workers' compensation claim. Pursuant to your request for a hearing, the case file was transferred to the Branch of Hearings and Review.

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*.

Since the enclosed order provides for the reinstatement of compensation for wage loss, you must forward a completed CA7 to the District Office cited below, through your employing agency.

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: PO Box 8300, District 06; London, KY 40742-8300.

Sincerely,



Mary Anne Meier,
Hearing Representative
Branch of Hearings and Review

PAUL FELSER, ESQUIRE
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 the _____, Case No. _____.

Preliminary review of the record was completed in Washington, DC. Based on this review, the decision of the District Office dated July 25, 2012 has been SET ASIDE AND REMANDED for the reasons set forth below.

The issue for determination is whether the claimant continues with residuals of the accepted work injury.

The claimant was employed by the _____ at the _____ in _____ as a _____ when she filed timely a claim for a traumatic injury that occurred on _____.

After appropriate development, the District Office accepted this claim for concussion, cervical strain and cervical facet joint syndrome. The claimant stopped work on the date of injury and did not return.

In accordance with case management procedures, the District Office arranged a second opinion examination with Dr. _____ on February 23, 2009. Dr. _____, a Board certified neurologist, opined that the claimant had subjective complaints but no significant objective findings on examination.

The claimant was referred for a second opinion on September 19, 2011 with Board certified neurologist, Dr. _____, who opined that the claimant's 1995 injury was not the cause of her current conditions of fibromyalgia, vascular headaches, or depression.

Based upon the opinion of Dr. _____, the District Office issued a Proposal to Terminate benefits on June 11, 2012, and a final decision was issued on July 25, 2012.

The claimant disagreed with that decision and requested an oral hearing; however, following a preliminary review, I find that the Office decision of July 25, 2012 should be *set aside and remanded* for further review of the factual evidence.

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits.¹

After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.²

The Office's burden of proof to terminate benefits includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.³

The physician must provide an opinion on whether the employment incident described caused or contributed to claimant's diagnosed medical condition and support that opinion with medical reasoning to demonstrate that the conclusion reached is sound, logical and rational.⁴

Where the Office referred appellant to a second opinion physician and the report did not adequately address the relevant issues, the Office should secure a report on the relevant issues.⁵

In the instant case, the District Office referred the claimant for a second opinion examination with Dr. _____ on September 19, 2011; however, his report consisted of brief notes regarding his physical examination, and no indication that he reviewed the medical evidence and/or Statement of Accepted Facts. Additionally, he then addressed his narrative letter to Dr. _____, the claimant's attending physician, thanking him for the referral of this patient. Although Dr. _____ noted that the claimant had fibromyalgia, migraine headaches and anxiety with depression, he also wrote, "It is hard to believe the concussion she suffered 25 plus years ago contributed to her symptomatology especially as it did not result in any contusions or abnormal CT findings or neurological findings at that time."

On February 13, 2012, the District Office requested a supplemental report from Dr. _____, specifically requesting that he respond to the questions they previously asked, and to arrange a Functional Capacity Examination to determine the claimant's work capabilities. Dr. _____ responded by again stating that the claimant had fibromyalgia, vascular headaches and depression, and noted that her head injury should not be continuing to cause those conditions. The contractor then noted "Dr. _____ has answered this questionnaire to the best of his ability. This is all he is going to do!"

¹ Miguel A. Muniz, 54 ECAB 58, (2002)

² David W. Pickett, 54 ECAB 1950, (2002).

³ Daniel F. O'Donnell, Jr., 54 ECAB 1468, (2003).

⁴ John W. Montoya, 54 ECAB 2249, (2003).

⁵ Robert Kirby, 51 ECAB 2428, (2000).

I find Dr. report to be insufficiently rationalized to be of any probative value regarding the question of continued residuals. Dr. opinion is speculative, and there is no evidence that he based his opinion on an accurate medical and factual history, as he did not mention that he reviewed any medical records or the SOAF. His initial report indicated that the claimant presented at the request of her attending physician for an initial evaluation of headaches, neck and arm pains.

A medical opinion not fortified by medical rationale is of little probative value.⁶

The Board has stated that when the Office selects a physician for an opinion on causal relationship, it has an obligation to secure, if necessary, clarification of the physician's report and to have a proper evaluation made.⁷

Since the District Office has already requested a supplemental report, and Dr. office has indicated he cannot provide any additional information, further development of the medical evidence is required.

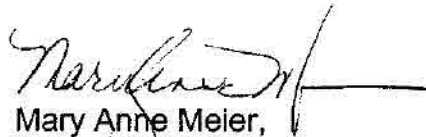
Therefore, upon receipt of this file, the District Office should refer the claimant, as well as the Statement of Accepted Facts and all relevant medical evidence, to a Board-certified neurologist for a second opinion examination to determine whether the claimant continues with residuals of the accepted work injury. Following this, and any further development deemed necessary, the District Office should issue a *de novo* decision on the issue of continued residuals and disability.

As the Office did not meet its burden of proof to terminate compensation benefits, the claimant may submit a CA-7, Claim for Compensation form, for reinstatement of benefits while further development of the medical evidence is undertaken.

Consistent with the above findings, the July 25, 2012 District Office decision is *set aside and remanded* for further development.

The file is returned for further processing as noted.

Dated: DEC - 7 2012
Washington, DC


Mary Anne Meier,
Hearing Representative
For
Director,
Office of Workers'
Compensation Programs

⁶ Caroline Thomas, 51 ECAB 2353, (2000).

⁷ Steven P. Anderson, 51 ECAB 726, (2000).