

File Number:  
HR11-D-H

RECEIVED AUG 05 2013

U.S. DEPARTMENT OF LABOR

AUG - 1 2013

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

Date of Injury: :  
Employee:

Dear Mr. : :

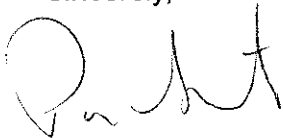
This is in reference to your workers' compensation claim. Pursuant to your request for a hearing, the case file was transferred to the Branch of Hearings and Review.

A preliminary review has been completed, 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,



Paula Strange  
Hearing Representative

PAUL FELSER  
ATTORNEY AT LAW  
PO 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 in  
Case No.

Merit consideration of the case file was completed in Washington, DC. Based on this review, the APRIL 30, 2013 decision of the District Office is vacated for the reasons set forth below.

The issue for consideration is whether the claimant had no further residuals or disability associated with his work injury.

The claimant, , born , was employed with the  
as an . He sustained an injury in the performance of  
his duties on . He filed a timely workers' compensation claim, and the  
District Office of Workers' Compensation Programs accepted the claim for HNP L4-5,  
hernia, and lumbosacral strain. The Office paid appropriate benefits to include wage loss  
compensation. The claimant also had a laminectomy at L4-L5 in November 1993.

The record reflects that the claimant was under the care of Dr. ,  
specialist in family medicine. Dr. averred that the claimant was permanently  
disabled as a result of his work injury.

At the request of the Office, Dr. , MD, examined the claimant on ,  
. In his report to the Office Dr. discussed the claimant's history and  
examination findings. He stated that upper and lower extremities showed no deformity  
and the claimant walked without difficulty. He stated that the claimant continues to have  
low back pain that seemed to be a modest residual of the work injury. He added,  
however, that the pain might be the aches and pains of daily living. He stated that the  
claimant was doing well and walked approximately 1 ½ miles daily. He stated that most of  
the claimant's complaints were subjective without objective findings. He also stated that  
there was nothing from a physical injury that would limit the claimant from working.

Dr. continued to treat the claimant periodically. The claimant also received  
physical therapy. The Office continued to pay compensation benefits.

On Dr. , MD, orthopedic surgeon, examined the claimant  
at the request of the Office. In his report to the Office Dr. discussed the claimant's  
history, medical records, and examination findings. He stated that the claimant presently

had lumbar pain with intermittent radiation. He diagnosed lumbar degenerative disc disease and spinal stenosis. He stated that the claimant had limitation of motion in the lumbar spine, depressed deep tendon reflexes, positive straight leg raising, and radiographic evidence of disc degeneration and facet osteoarthritis. Dr. commented that medical records following the injury document persistently increased symptoms of low back and lower extremity symptoms. He averred that the 1993 injury had aggravated the spinal stenosis and degenerative disc disease. He opined that the claimant could perform sedentary duties with restrictions.

Dr. , MD, internal medicine specialist, addressed the question of recurrent hernia, at the request of the Office. On Dr. stated that the claimant had no evidence of recurrent hernia.

Dr. continued to treat the claimant. He found that the claimant was permanently disabled as a result of the work injury. Physical therapy was provided, and continued to be prescribed. The claimant also had pain management.

The Office again arranged for the claimant to undergo a second opinion examination. On Dr. , MD, Board-certified orthopedic surgeon, examined the claimant. In his report to the Office Dr. discussed the claimant's history, medical records, and examination findings. He reported that EMG testing showed mild abnormalities consistent with spinal stenosis at the L4-L5 level. He opined that the claimant's current symptoms were due to preexisting degenerative joint disease. He declared that the claimant's work injury had resolved, as the claimant's "problem at this time is not a direct result of the injury of , but rather it is progression of his degenerative disk disease in his lumbar spine causing the spinal stenosis, this is his condition at this time."

On March 20, 2013 the Office issued a Notice of Proposed termination of all compensation benefits. The Office advised the claimant that it found that the effects of his work injury had resolved. It allowed 30 days for the submission of rebuttal evidence.

Submitted to the record was a dictation note from Dr. dated . The record reflects that Dr. DO, treats the claimant for neurological disorders. Dr. wrote that he had been seeing the claimant for a multitude of reasons. He added that the claimant had a disability from his work injury. He averred that the injury aggravated the claimant's disc disease. Dr. , MD, recommended re-exploration of L4-L5 with laminectomy, discectomy and fusion.

On April 30, 2013, the Office issued a final decision and terminated all benefits.

The claimant's attorney, Paul Felser, requested a hearing on behalf of the claimant. After reviewing the record, however, I find that the case is not in posture for a hearing because of an unresolved medical conflict.

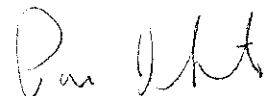
Section 8123 of the Act provides that if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.<sup>1</sup> When there exist opposing medical reports of virtually equal weight and rationale, and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background must be given special weight.<sup>2</sup>

I find that there is a conflict between Dr. \_\_\_\_\_ and the claimant's physicians. Dr. \_\_\_\_\_ avers that the claimant's current complaints and disability are due to the underlying degenerative condition, while Doctors \_\_\_\_\_ maintain that the injury aggravated those conditions. I observe parenthetically that Dr. \_\_\_\_\_ also found that the \_\_\_\_\_ injury aggravated the underlying condition. To resolve the conflict in medical opinion the Office should arrange for the claimant to undergo a referee examination in accordance with procedures.

On REMAND, the Office should refer the claimant, together with a Statement of Accepted Facts and all medical records, to an appropriate Board-certified specialist in accordance with procedures. The specialist should discuss the claimant's history, all medical records, particularly the opinions of Doctors \_\_\_\_\_, and the claimant's examination findings. He should ensure that his opinions on causality and work capability are fully justified by his reasoning. When the specialist's response is received, and after any other case development that should become necessary, the Office may issue a *de novo* decision.

Because the Office did not meet its burden of proof to terminate benefits, compensation benefits and coverage for medical care should be reinstated. The Office should obtain information regarding earnings or retirement benefits prior to paying wage loss compensation.

DATED: AUG - 1 2013  
WASHINGTON, DC



PAULA J. STRANGE  
Hearing Representative  
for  
Director, Office of Workers'  
Compensation Programs

<sup>1</sup> 5 U.S.C. 8123(a).

<sup>2</sup> *T.A.*, ECAB Docket No. 08-2141, issued February 13, 2009.