

File Number:  
HR11 ROR-H-OT

RECEIVED MAY 12 2014

U.S. DEPARTMENT OF LABOR

MAY - 7 2014

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

Date of Injury:  
Employee:

Dear Ms.

This is in reference to your workers' compensation claim. Pursuant to your request for a review of the written record, 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 review of the written record 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,



Karen S. Hunt  
Hearing Representative

PAUL H FELSER  
FELSER LAW FIRM, P.C.  
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

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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 file number*

*Merit consideration of the case file was completed. Based on this review, the decision of the district office dated December 10, 2013, is set aside for the reasons set forth below.*

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The issue is whether the claimant sustained compensable disability from to , due to her accepted employment injury of

The Department of Treasury employed the claimant, as a representative in . The claimant timely filed a claim for an injury in the performance of duty on that was accepted by the Office for sprains of the neck, left wrist and knee and cervical herniated disc or discs. The claimant returned to light duties on . The claimant stopped work in , related to a psychiatric condition although it appears she did return to work. The claimant was terminated from her employment on

The Office indicated in correspondence that the claim was accepted for conditions including herniated discs C2 to C6. A review of the medical evidence shows that the attending physician never diagnosed a herniated disc. A cervical spine MRI of July 19, 2011, showed a small protrusion at C2-3 only.

The medical evidence also shows that the attending physician kept the claimant on light duty for the accepted conditions despite her requests to be placed on total disability.

On October 9, 2013, the claimant filed form CA-7 claiming wage-loss compensation for total disability from July 29, 2012, to April 14, 2013. The employer indicated the claim was for intermittent time loss. No CA-7a or breakdown of the claimant's pay status during the claimed period signed by the employer was received.

By letter dated November 5, 2013, the Office advised the claimant regarding the evidence necessary to establish her claim for wage-loss compensation and afforded her 30 days to provide additional documentation. The Office noted that attending physician M.D., had consistently provided work restrictions since 2011 and that he specifically noted that the claimant may have other restrictions and may be off work completely from her doctors at the Veterans Administration.

The Office telephoned the employer to clarify whether the claim was for intermittent wage loss. The employer indicated the wage loss was not intermittent, although that is not entirely consistent with documentation in the case record. The claimant, for instance, continued to submit Family Medical Leave Act documentation in January, 2013, indicating she may miss intermittent time from work. A February 20, 2013, letter from the employing establishment regarding potential removal noted AWOL dates in 2013.

By decision dated December 10, 2013, the Office found the evidence of record was insufficient to demonstrate the claimant was entitled to wage-loss compensation for total disability during the claimed period. The Office, however, indicated it had authorized payments for medical and physical therapy appointments during that period for 184 hours. There is no documentation in the case record of the time the claimant actually lost from work during that period, given that the evidence establishes she returned to work subsequent to her psychiatric hospitalization in [redacted] and no documentation of the dates and hours for which the Office paid compensation.

The Office continued to receive documentation of the claimant's medical treatment.

The claimant disagreed with the Office decision and by letter postmarked January 9, 2014, she requested a review of the written record.

I have reviewed the evidence of record and find that the decision of the district office dated December 10, 2013, must be set aside as the evidence requires further development.

Under FECA, the term disability means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.<sup>1</sup> Disability is not synonymous with physical impairment, which may or may not result in incapacity to earn wages. An employee who has a physical impairment causally related to a federal employment injury, but who nevertheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability as the term is used in FECA.<sup>2</sup>

As noted, there is indication in the case record that the Office accepted the claim for herniated cervical discs C2 to C6. As noted, an MRI demonstrated only a small protrusion at C2-3 and the attending physician did not diagnose a herniated disc. The MRI noted an osteophyte and spur formation complex at C2-6 but there is no rationalized medical opinion establishing that that condition was caused or contributed to by the work incident of [redacted]

The Office correctly determined that the medical evidence does not establish that the claimant was totally disabled at any time during the claimed period causally related to [redacted]

<sup>1</sup> *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

<sup>2</sup> *Cheryl L. Decavitch*, 50 ECAB 397, 401 (1999).


the accepted work injuries. Dr. consistently released the claimant to light duties which were accommodated by the employer. The evidence establishes that the claimant had periods of total disability due to conditions not accepted as injury-related. As noted, the case record is not clear as to when the claimant stopped work completely, if she did, prior to the AWOL dates cited beginning in . . . . . While the claimant may have been entitled to compensation for time lost from work for medical treatment, there does not appear to be a basis for the Office's payment of 184 hours of compensation during the period. The time lost from work does appear to be intermittent and there is no CA-7a or confirmation of the claimant's pay status signed by the employer. The several CA-7as completed by the claimant do not establish entitlement to anywhere close to 184 hours. As noted, the Office did not document the dates and hours for which it paid compensation or explain how it arrived at the determination that the claimant should be compensated for 184 hours during the period J . . . . . to

On remand, the Office should clarify the dates and hours for which it paid wage loss compensation during the period July 29, 2012, to April 15, 2013. The Office should direct a written request to the employing establishment for a report of the claimant's pay status during all dates within the period claimed or a statement attesting to the inclusive dates of the claimant's work stoppages after July 29, 2012. The Office should then review the evidence to determine whether the claimant was entitled to wage-loss compensation for medical treatment for any dates or periods claimed as the evidence clearly establishes that the claimant was not totally disabled due to the work injuries. The Office should issue a new decision as appropriate. The Office should pay compensation for any documented time lost from work due to medical treatment for the accepted conditions. If the Office has paid compensation to which the claimant was not entitled, it should initiate a preliminary overpayment finding if appropriate. The Office should also clarify the what conditions should properly have been accepted as injury-related, given that there is no evidence establishing that the claimant has herniated discs at all levels from C2 to C6.

Accordingly, the decision of the district office dated December 10, 2013, is set aside and the case is remanded for actions as outlined above.

DATED: MAY - 7 2014

WASHINGTON, D.C.

  
 KAREN S. HUNT  
 Hearing Representative  
 For  
 Director, Office of Workers'  
 Compensation Programs