

File Number:
HR11-D-H

RECEIVED OCT 28 2013

U.S. DEPARTMENT OF LABOR

OCT 21 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

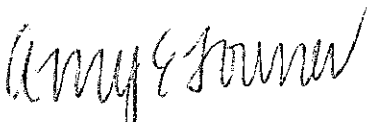
This is in reference to your workers' compensation claim. Pursuant to your request for a hearing, the case file was transferred to the Branch of Hearings and Review.

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,



Amy E. Towner
Hearing Representative

PAUL H FESLER
FELSER LAW FIRM P.C.
7 EAST CONGRESS STREET ST
SUITE 400
SAVANNAH, GA 31401

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 file number*

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

The issue is whether the Office appropriately denied the claim for compensation from
to

The claimant, born in was employed as a with the
in On he filed a CA1
Notice of Traumatic Injury form claiming that on he was pulling cable
to attach to a tree to unstuck a bulldozer and the cable stuck, causing him to fall and hit
his right shoulder on the tree. The claimant first sought medical attention on
and he was placed on restrictions.¹ He later stopped work completely on
By decision dated January 30, 2013, the Office accepted the claim
for right shoulder sprain.

The record reflected that the employing agency had offered the claimant a light duty
assignment effective based on restrictions provided by his treating
orthopedist, The claimant did not return to work. Effective
the claimant was removed from his employing agency for failure to follow
instructions and for unauthorized absences. On the claimant underwent
right shoulder arthroscopy with acromioplasty and distal clavicle excision.

On the Office received completed CA7 Claim for Compensation forms
claiming leave without pay from through

On the Office issued a development letter to the employing agency
requesting pay rate information. On the Office received another CA7
form claiming compensation from to No further
development was undertaken.

¹ Under claim 252510045, the claimant filed a CA1 Notice of Traumatic Injury form claiming that while on light duty he injured his left knee on November 7, 2012, kneeling on the floor to look at a leak on a tank. The Office denied this claim by decision dated January 3, 2013, which was upheld by Hearings and Review by decision dated July 22, 2013.

By decision dated May 31, 2013, the Office denied entitlement to compensation for the period from _____ to _____ for the reason that a light duty assignment was available, which he failed to accept. The record reflected the Office paid compensation for the prior period _____ through _____.

The claimant disagreed with the May 31, 2013 decision and by letter postmarked June 6, 2013, through his attorney, requested an oral hearing.

Based on my preliminary review of the evidence, the May 31, 2013 decision is not in posture for hearing and must be set aside for the reasons set forth below.

To afford due process, the FECA PM 2-1400-2 states that before preparing disallowance of benefits, the claims examiner must adequately develop the claim, and where necessary, advise the claimant of his or her burden of proof in establishing entitlement to benefits. The CE must notify the claimant in writing of the specific additional evidence which is needed before denying any claim. According to the Federal Employees' Compensation Act Procedure Manual 2-0800-3, OWCP has the obligation to aid in the process by giving detailed instructions for developing the required evidence. The claims examiner is responsible for notifying the claimant of unresolved issues which, if not satisfied, will lead to denial of the claim; notifying the agency of the disposition made of controverting evidence submitted by the agency; and notifying both claimant and agency of OWCP's decision in all denied cases and all cases where the claimant has not returned to work when the decision is made.

In this case, the Office denied entitlement to compensation for the period from _____ to _____ without conducting any development or notifying the claimant of the evidence needed to perfect his claim. He was not advised of the deficiencies in the evidence concerning this specific period or requested to submit additional documentation in support of the claim. As such, the Office did not afford him due process and the May 31, 2013 denial must be set aside.

On remand, the Office should carefully consider the evidence already on record and issue an appropriate development letter addressing the period from _____ to _____ which included an available temporary light duty assignment.² The claimant should be notified of the timeframe allowed in which to submit evidence to _____.


² 20 CFR §10 500(a) provides that: "Benefits are available only while the effects of a work-related condition continue. Compensation for wage loss due to disability is available only for any periods during which an employee's work-related medical condition prevents him or her from earning the wages earned before the work-related injury. An employee is not entitled to compensation for any wage loss claimed on Form CA-7 to the extent that evidence contemporaneous with the period claimed on the CA-7 establishes that the employee had medical work restrictions in place; that light duty within those restrictions was available; and that the employee was previously notified in writing that such duty was available."

support disability for this period. Following any additional development deemed necessary, a *de novo* decision should be issued.

Accordingly, the decision dated May 31, 2013 is hereby set aside and the case is remanded for further action as outlined above.

DATED: OCT 21 2013

WASHINGTON, D C.


AMY E. TOWNER
Hearing Representative
For
Director, Office of Workers'
Compensation Programs