

File Number:
HR13-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.

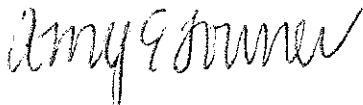
This is in reference to your workers' compensation claim. Pursuant to your request for a hearing, the case file was transferred to the Branch of Hearings and Review.

A preliminary review was completed on the case. Based upon that review, it has been determined that the decision of the District Office should be reversed as outlined in the attached decision.

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 FELSER
7 EAST CONGRESS 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 May 13, 2013, is reversed for the reasons set forth below.*

The issue is whether the claimant was temporarily totally disabled from _____ to
as a result of the _____ work injury.

The claimant, born _____ was employed as an _____ with the
at _____ On _____
he filed a CA1 Notice of Traumatic Injury form claiming that he sustained an injury to his
lower back/legs on October 5, 2012, when he was carrying chairs up stairs and
twisted/pulled his back. The claimant returned to modified work on _____ and
came under the medical care of _____ M.D., and _____ M.D.

The Office initially accepted the claim for sprain of back, lumbar region. The claimant was
treated conservatively and a lumbar MRI was performed on _____ which
showed multilevel degeneration in the lumbar spine, with mild subluxations at L4-5 and L5-
S1. The claimant underwent epidural injections on _____ and
and _____ In a _____ report, Dr. _____ requested that the claim
be expanded for additional lumbar conditions

On _____ the Office received a CA7 Claim for Compensation form claiming leave
without pay from _____ to _____ On _____ the Office issued
a development letter to the claimant advising that the medical evidence was insufficient to
establish that disability was caused by the accepted work injury.

By decision dated _____ the Office expanded the claim for aggravations of the
following: thoracic or lumbosacral neuritis or radiculitis, displacement of lumbar
intervertebral disc without myelopathy, degeneration of lumbar or lumbosacral
intervertebral disc, and acquired spondylolisthesis.

By decision dated _____ the Office denied compensation for wage loss from _____ to _____ for the reason that the medical evidence failed to support disability from work. The claimant disagreed with the _____ decision and by letter postmarked _____ through his attorney, requested an oral hearing.

Post denial, a new _____ narrative medical report was received from Dr. _____ in which he gave the history of injury and the claimant's ongoing symptoms, despite conservative treatment. Dr. _____ indicated that the claimant had been placed on sedentary restrictions following the injury in order to maintain his work in some capacity while his physicians tried to address his condition. Dr. _____ explained that in treating the claimant since _____ he found that due to the nature of his condition the claimant was taken off work as conservative treatment had not successfully provided him with adequate sustained relief and that working in a sedentary position had caused increased pain and discomfort. Dr. _____ described the claimant's current findings and advised surgery had been recommended. In a new _____ report, Dr. _____ reiterated that he took the claimant out of work as early as _____ due to lack of improvement in his condition, which was only aggravated by sedentary work. He advised it was his medical opinion that he remain out of work.

The record reflected that the Office began paying the claimant compensation for temporary total disability beginning _____ and continuing _____. He remains out of work on the periodic roll and Dr. _____ has continued to report 0% improvement, pending surgical intervention.

Based on my preliminary review of the evidence of record, the _____ decision should be reversed for the reasons set forth below.

A claimant seeking compensation under the FECA has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, including that any specific condition or disability for work for which compensation is claimed is causally related to the employment injury.¹ Monetary compensation benefits are payable to an employee who has sustained wage loss due to disability for employment resulting from the employment injury.² Whether a particular employment injury causes disability for employment and the duration of that disability are medical issues which must be proved by a preponderance of reliable, probative, and substantial medical evidence.³

In the instant case, the Office accepted the _____ traumatic injury claim for lumbar strain and for aggravations of several underlying lumbar conditions. The claimant was placed on restrictions following the injury but stopped work completely as of _____. Post denial, new medical evidence was submitted from the claimant's treating orthopedic surgeon, Dr. _____ who advised he had medically taken the claimant out of work prior to _____ due to the lack of improvement in his lumbar symptoms with _____

¹ *Jacquelyn L. Oliver*, 48 ECAB ____ (Docket No. 94-2519, issued December 18, 1996)

² *Debra A. Kirk-Littleton*, 41 ECAB ____ 703 (1990).


³ *Fereidoon Kharabi*, 52 ECAB ____ 291 (2001)

conservative treatment and the fact that sedentary work was only aggravating his condition. The Office paid compensation for temporary total disability as of [redacted] and continuing based on this new medical evidence. Given that it also covered the denied period from [redacted] to [redacted] and Dr. [redacted] an appropriate specialist, explained why he medically disabled the claimant from all work due to this work injury, the claimant would also be entitled to compensation for wage loss for that first two week period. Dr. [redacted] medical opinion is sufficiently well-reasoned and he was the treating physician contemporaneous to the claimant's work stoppage on [redacted]

Accordingly, the May 13, 2013 decision is hereby reversed, and the case is returned to the district office for payment of compensation for wage loss from [redacted] to [redacted]

DATED: OCT 21 2013

WASHINGTON, D.C.


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