

File Number:
HR30-D-H

RECEIVED JAN 19 2016

U.S. DEPARTMENT OF LABOR

JAN 14 2016

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 hearing was held on 11/12/2015. As a result of such hearing, it has been determined that the decision issued by the district office should be vacated and the case **remanded** to the district office for further action as explained in the enclosed copy of the Hearing Representative's Decision.

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:

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, ESQ
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
employed by the case file number
The hearing was held on November 12, 2015.*

The issue is whether the Office met its burden of proof to terminate wage-loss compensation and medical benefits.

The _____ employed the claimant, _____ as a _____ in _____. The claimant sustained a back injury in the performance of duty on _____ while lifting a metal storage cabinet. He timely filed a claim that was eventually accepted by the Office for lumbar radiculopathy and lumbar spondylosis. The claim was subsequently allowed for permanent aggravation of lumbar degenerative disc disease at L4-5. The claimant stopped work in _____.

The medical evidence indicated pre-existing lumbar degenerative disc disease. The Office development letters did not request that the claimant provide information and medical records related to any back injuries prior to _____. An _____ report by attending orthopaedic specialist _____ stated he did not have any information on any prior treatment of the claimant's back or any prior injuries to his lumbar spine. The claim was accepted on reconsideration despite a lack of medical rationale supporting a causal relationship between the diagnosed conditions and the _____, work incident. In an April 12, 2007, hearing on the claim, the claimant testified he had prior low back problems related to a work injury 24 to 25 years prior, but he had no problems in the three to four years prior to the _____ work incident.

A September 29, 2008, second opinion report by _____ M.D., was based on a statement of accepted facts (SOAF) which did not note any prior back injuries or pre-existing conditions. Dr. _____ stated the claimant denied any previous problems with his back except for occasional muscle spasms. Dr. _____ noted over-exaggeration of physical findings following non-anatomic guidelines. Dr. _____ opined the claimant had continuing residuals of the work injury noting he was "psychologically wrapped up" in his back pain without explaining the medical connection between the work incident and the diagnosed lumbar radiculopathy and spondylosis. He noted the claimant's overlying complaints masked any objective findings that might be present. Dr. _____ indicated the claimant was totally disabled due to the medication he took and due to his psychological condition. The Office did not request additional clarification or explanation from Dr. _____.

The claimant was again referred for a second opinion examination by M.D., a Board-certified orthopaedic surgeon, on [redacted]. A revised SOAF did not note any prior back injuries or pre-existing conditions and Dr. [redacted] did not make note of any prior back injuries. Dr. [redacted] opined that the claimant continued to have disabling residuals of the work injury and indicated that although he had existing lumbar disc disease and degenerative arthritis at the time of the injury the exacerbation had become permanent in nature. Although Dr. [redacted] did not provide a medical explanation of how the work incident caused such permanent aggravation, the Office subsequently expanded its acceptance of the claim to include the diagnosis of permanent aggravation of lumbar degenerative disc disease at L4-5.

The claimant began to treat with [redacted] M.D., a pain management specialist, in 2012. Dr. [redacted] reports do not give a history of any back injuries or treatment prior to the 2006 work incident. Dr. [redacted] gave a history that the claimant stated he was hurt at work in 2006 on base, but did not describe the mechanism of injury. Dr. [redacted] additionally diagnosed cervical spinal stenosis, degeneration of cervical intervertebral disc, and intervertebral cervical disc disorder with myelopathy. Dr. [redacted] has continued to treat the claimant and to provide updated reports that do not reflect a history of the mechanism of the work incident, provide minimal physical examination findings, and which do not provide a medical explanation of the connection between the claimant's current conditions and the [redacted] work incident.

The claimant was referred for a second opinion examination to determine the extent of remaining injury-related disability and was examined by Board-certified orthopaedic surgeon, [redacted] on [redacted]. Dr. [redacted] gave a history of the [redacted] work incident and noted that the claimant stated he had no previous history of any injury to his back of a job-related or non-job-related nature. The claimant denied any prior work injuries other than a right wrist injury about 30 years prior for which he elected not to have any type of surgical intervention. Dr. [redacted] noted the claimant's course of treatment for the work injury and the claimant's current complaints. Dr. [redacted] provided physical examination and x-ray findings and diagnosed significant degenerative disc disease at L4-5 and to a lesser extent at L5-S1. Dr. [redacted] then stated he did not dictate the remainder in front of the claimant as he wanted to investigate the claim further in lieu of the claimant's answers to his questions. Dr. [redacted] noted the claimant categorically denied any previous history of injury to his back other than he may have sustained a strain to the back, but nothing major. Dr. [redacted] stated he did not confront the claimant with the fact that he previously saw the claimant in his office. Dr. [redacted] then noted he had initially evaluated the claimant for an independent medical examination on [redacted] and treated him until [redacted]. During that time Dr. [redacted] had extensive review of previous treatments of the claimant and the fact was revealed that in final settlement under the State Board of Workers Compensation, under Judge [redacted] Dr. [redacted] noted there were several interesting factors in reference to Claim [redacted] case of [redacted] accident date [redacted] dated [redacted] under the State Board of Workers Compensation, Georgia. He noted that in that particular section #3, Judge [redacted] found that the claimant had a bad back for twelve to fourteen years prior to the [redacted].

injury, and found the claimant had suffered injuries to his lower back following the employment of no fewer than five previous employers. The judge further found the claimant sought to conceal the full extent of his history from the employer and from his treating physician and from counsel by either failing to tell them of his history or deliberately denying it. Judge _____ found the claimant was not a credible witness. Dr. _____ stated his interest was piqued by the small wire fragment over the right iliac crest identified in the claimant's x-rays. He noted he had not destroyed any x-rays since he had been in practice since _____ and he was able to pull up x-rays taken of the claimant's lumbar spine on _____. The lumbar spine films clearly showed that in _____ the claimant had degenerative disc disease of a significant nature at the L4-5 level. Dr. _____ opined that the claimant had pre-existing disease process and that the claimant had been less than honest in his response to questions of previous examiners and his treating physicians. He noted that with the inconsistencies in the claimant's physical examination and the fact that the claimant had a prior problem with his back, it was his opinion that the claimant probably sustained a lumbar strain with the _____ work injury. The claimant had significant pre-existing injury to the lower back and based on the diagnostic tests and previous films from _____ that the claimant had credible evidence of pre-existing disease which he had utilized in curtailing his work activities with previous employers. Dr. _____ opined the accepted conditions had resolved or returned to baseline, noting an EMG shortly after the work incident already showed significant injury to the S1 nerve root and that the fact such injury appeared in only two months spoke to the fact it was a pre-existing condition. Dr. _____ noted subjective complaints greatly outweighed objective findings. Dr. _____ further opined there was an issue of drug dependence based on the claimant's use of strong narcotics and the claimant was attempting to manipulate the system because he had refused back surgeries because it could not enable him the further use of narcotics. Dr. _____ felt the injury-related limitations would have resolved within twelve months of the initial injury and noted he had never seen a more clear-cut case of manipulative behavior in the use of pre-existing disease processes for material gain. Dr. _____ did not provide a copy of the _____ compensation decision by _____ or reports of the _____ lumbar x-rays referenced and on which his opinion was based in part.

The Office requested a supplemental report from Dr. _____ regarding whether the work incident caused a material worsening of the claimant's pre-existing lumbar spine condition and if he believed there was a temporary aggravation of symptoms, to explain why he believed the condition had returned to baseline.

Dr. _____ responded on _____. He stated he agreed to a temporary aggravation that would not have prolonged beyond three months, maximum. Dr. _____ explained that his conclusion was based on the degree of the injury as described from the initial lifting episode as well as the inconsistencies in the claimant's clinical examination indicating a trend toward symptom magnification. He noted that the claimant had engaged in symptomatic treatment prior to the injury and he continued to complain of pain and discomfort and he would certainly expect him to complain of extended pain and discomfort after the _____ work injury. Dr. _____ also thought the fact that the claimant attempted to mislead him and the previous examiners as to the

existence of prior injuries was also of clinical and factual significance. The Office did not request that Dr. _____ provide a copy of the decision or 1993 lumbar x-ray report.

By letter dated _____ the Office advised the claimant that it proposed to terminate his wage-loss compensation and medical benefits for the reason that the weight of the medical evidence, represented by the opinion of Dr. _____ established that his injury-related conditions and disability had ceased. The Office afforded the claimant 30 days to provide evidence and/or argument to the contrary.

The Office received an April 3, 2015, report by _____ an orthopaedic specialist from whom the claimant sought additional examination and opinion. Dr. _____ noted he reviewed information including notes from the Nexus Pain Center of _____ radiology reports, an _____ MRI, second opinion evaluations from two physicians in _____ and, office notes from _____ by Dr. _____ Dr. _____ related a history of the _____ work incident. He also noted that the claimant injured his low back on another on-the-job injury "about 30 years ago" and that he stayed in bed for about three weeks then his symptoms improved. Since then the claimant had off and on episodes of back strains and sprains "but he has continued to work." Dr. _____ noted the claimant's course of treatment and current complaints. He provided physical examination and x-ray findings and diagnosed severe degenerative disc disease at L4-5 with neuropathy of the S1 nerve root on the left and chronic low back pain syndrome. Dr. _____ noted apparent x-rays prior to the injury that showed degenerative disc disease and noted that the most recent MRI findings. Dr. _____ did not doubt that the claimant had an exacerbation of his symptoms after the _____ injury but thought the symptoms from the injury would have resolved within a few months. He felt that the subjective symptoms were much greater than either the physical findings or radiographs or MRI. Dr. _____ noted he could not medically correlate the claimant's symptoms with either the physical or MRI findings. He indicated the claimant was not employable due to his current state of symptoms and narcotic use and opined that the claimant's current condition was not medically secondary to the _____ injury. Dr. _____ recommended no other therapy or treatment other than possibly a detoxification trial.

By decision dated April 14, 2015, the Office made the proposed termination of benefits final effective that date.

The claimant disagreed with the Office decision and by letter dated April 22, 2015, his then attorney, Alan Shapiro, requested a telephone hearing.

The Office subsequently received a notice of representation by attorney Paul Felser, who requested an oral hearing.

The Office continued to receive documentation of continuing treatment that did not provide a complete and accurate history or explanation of the medical connection

