

File Number:
HR10-D-H

RECEIVED JUN 15 2010

U.S. DEPARTMENT OF LABOR

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

JUN 10 2010

Date of injury:
Employee:

Dear Ms. :

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 03/29/2010. 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.

Your case file has been returned to the Seattle 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 14 SEA
LONDON, KY 40742-8300

Sincerely,



Carol E. Adams
Hearing Representative

UNITED STATES POSTAL SERVICE
PORTLAND PERFORMANCE CLUSTER
INJURY COMPENSATION OFFICE
PO BOX 2379
PORTLAND, OR 97208

PAUL H FELSER, ESQ
FELSER LAW FIRM, PC
7 EAST CONGRESS ST, SUITE 400
SAVANNAH, GA 31401

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 United States Postal Service; Case number

The issue for determination is whether the claimant has established that a psychological evaluation and team conference should be authorized for her accepted conditions.

was employed by the United States Postal Service. On August 30, 2007, she filed a traumatic claim of injury alleging that on August 23, 2007, she injured her lower back, sacroiliac and her right leg when she bent over into a hamper and pulled on a parcel that was jammed. Her claim was accepted for bilateral sprain of sacroiliac ligament.

On October 6, 2009, the Office received a request for psychological evaluation and team conference for the dates November 1, 2009, to November 30, 2009. The Office determined there was insufficient evidence to support that the evaluation and conference were needed as a result of the accepted work condition. Therefore, by letter dated October 6, 2009, the claimant was advised of the deficiencies of her claim and provided 30 days to submit evidence.

An additional medical report was received from Dr. David Ushman dated October 13, 2009; however, the Office determined it was insufficient to support that the psychological condition was due to her work injury. Therefore, by decision dated November 10, 2009, the request for authorization for a psychological evaluation and team conference was denied.

The claimant disagreed with the decision and requested a hearing before an OWCP representative.

A hearing was held on March 29, 2010, at which the claimant was represented by Attorney Paul Felser. He argued that the claimant's physical condition had caused an aggravation of her pre-existing emotional condition. He stated the claimant had filed a separate emotional claim which contained evidence to support that the claimant had a pre-existing emotional condition. He contended that there was sufficient evidence to support a *prima facie* case.

The employing agency was sent a copy of the transcript and provided 20 days to submit comment or evidence. No additional information was received, and all time allotted for this purpose has now past.

A review of the record shows that the emotional claim under case number _____ has been combined with the instant case. The claim was denied on the basis of causal relationship by hearing decision on November 7, 2008, and on reconsideration by decision dated April 19, 2010. The details of the decisions are incorporated by reference.

Dr. David Ushman in a report dated October 13, 2009, stated the following:

It is my medical opinion that _____ requires a Psychiatric evaluation as part of her Pain Management evaluation. _____ has broken down and started crying several times in my office while discussing her pain issues. She is obviously extremely depressed at the alterations in her activities of daily living that the chronic pain has caused. Managing her emotional status will be an integral part of allowing her to deal with the chronic pain in all its manifestations.

Further Dr. Ushman in his report dated October 27, 2009, stated the following:

The second issue regards what has become a chronic right sacroiliac strain. The date of injury on this was 08/23/2007. This was initially accepted as a work-related acute strain although it was as I recall denied at first. The patient has since retired from the US Postal Service. She continues to have pain in the right side of her low back, occasionally radiating down the right lateral thigh. She has been seen on three occasions by Dr. Ezra Rabie who has performed injections for her. The injections have been into the right L4-5 disk space as well as the right sacroiliac joint. Initially she got some more relief from the sacroiliac injections although she did not get any relief from the lumbar epidural steroid injections. The first sacroiliac injection seemed to provide her with decent relief, the second provided her with less relief, and this third injection provided her with only relief for a matter of a day or two. She has indicated that she does not wish to have any further injections. She is on a long-term opioid contract with me for management of this chronic pain. Currently, she is using Percocet 120 pills per 28 days. Last visit I recommended a pain management evaluation and wrote an outside referral for this. Apparently this was kicked back because we had requested a mental health evaluation as part of this. She contacted me and I wrote a note for her explaining my rationale for including a mental health evaluation and the chronic pain management evaluation that she needs. Clearly her mental health problems and depression have worsened and continued to exacerbate her chronic pain and interfere with her ability to deal with it.

Ultimately I printed out a copy of the letter that I had written in which I justified the inclusion of the mental health evaluation. I signed it and gave it to the patient and hopefully she will be able to submit that to OWCP and get her chronic pain evaluation scheduled and completed.

After review of the evidence on record, I find there is sufficient evidence to warrant further development. The Office procedure manual provides when psychological factors affect a medical condition and the attending physician indicates that such a component is present and where such a *prima facie* case is established, the Office should refer the claimant to a Board-certified psychiatrist for evaluation and opinion concerning causal relationship.¹ Therefore, the decision of the Office is set aside and the case remanded.

Upon remand the claimant should be referred to a second opinion psychiatric examination. A copy of all the medical records in the instant case and case number _____ should be sent to the doctor along with a Statement of Accepted Facts. The doctor should be asked to provide a reasoned opinion as to whether the claimant's depression is caused, aggravated or accelerated by

¹ FECA Procedure Manual 2-0805-7.

the accepted condition in the instant case. The doctor should also be asked if the psychological testing and evaluation, recommended by the pain management program, is warranted to properly evaluate and provide pain treatment for the accepted conditions.

After completion of the aforementioned development and any other development the Office deems necessary, a new decision should be issued.

In accordance with the above findings, the decision of the Office dated November 10, 2009, is set aside and the case **remanded**.

Date: **JUN 10 2010**

Washington, D.C.



Carol E. Adams

Hearing Representative

for

Director, Office of Workers'

Compensation Programs