

File Number:
HR10-D-H

RECEIVED SEP 27 2013

U.S. DEPARTMENT OF LABOR

SEP 23 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 hearing was held on 07/11/2013. 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,



Karen S. Hunt
Hearing Representative

PAUL H FELSER, ESQ.
FELSER LAW FIRM, P C.
PO 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
, claimant, employed by the , case
file number . The hearing was held on July 11, 2013.*

The issue is whether the claimant is entitled to wage-loss compensation for total disability from December 23 to January 26, 2013, causally related to his accepted employment-related injury of

The employed the claimant, , as an aviation machinist in . The claimant filed a claim for an injury in the performance of duty on , that was accepted by the Office for multiple contusions, abrasions, temporary aggravation of anxiety. The claimant stopped work on the date of injury and did not return.

On January 12, 2013, the claimant filed a Form CA-7 claiming wage-loss compensation for total disability for the period December 23, 2012, to January 12, 2013. On January 19, 2013, the he filed a Form CA-7 claiming wage-loss compensation for the period January 13 to 19, 2013, and on January 26, 2013, he filed a Form CA-7 claiming wage-loss compensation for the period January 20 to 26, 2013. The claimant did not submit the Forms through the employing establishment. On each of the Forms CA-7 the claimant indicated he had worked teaching drums and he provided a list of the lessons and amount of payment he received for the pertinent time periods.

An Office email of January 23, 2013, to the employing establishment requested the current pay rate of the claimant's date of injury job and noted the claimant was removed from the periodic roll because he was working and would be paid pursuant to a loss of wage-earning capacity on considering his actual earnings.

By letter dated January 24, 2013, the Office advised the claimant that it could not pay compensation for the period December 23, 2012, to January 12, 2013, until it had verified his earnings. The Office requested that the claimant provide complete names, addresses, and telephone numbers of his students to verify earnings.

By letters dated January 29, 2013, the Office advised the claimant: it could not create the claim for compensation for the period December 23, 2012, to January 12, 2013, until it was resubmitted through the employing establishment; and, it could not pay compensation for the periods December 23, 2012, and ongoing until his earnings had been verified.

By letter dated February 7, 2013, the Office advised the claimant that it could not create a compensation claim for the period January 13 to 26, 2013, because it was not submitted through the employing agency.

By decision dated March 1, 2013, the Office denied wage-loss compensation for the period beginning December 23, 2012, for the reason that the claimant did not provide information necessary to verify his actual earnings.

The claimant disagreed with the Office decision and by letter postmarked March 21, 2013, his attorney, Paul Felser, requested an oral hearing before an Office representative.

On May 13, 2013, the Office received a letter from the claimant providing the full names, addresses, and contact information for his students as requested in the Office's letters of January 24 and 29, 2013.

The telephonic hearing was held on July 11, 2013. The claimant's attorney, Paul Felser, appeared on his behalf. Two employing establishment representatives observed the hearing. The hearing transcript is of record. The employing establishment did not submit comments.

Mr. Felser argued that the Office improperly removed, and effectively terminated, the claimant's wage-loss compensation on the periodic roll after he completed an EN-1032 on November 1, 2012, noting his self-employment earnings. The claimant received no notice of the termination. Mr. Felser contended it was incorrect for the Office to require the claimant to submit Forms CA-7 to claim further wage-loss compensation. Mr. Felser noted that the claimant submitted additional information subsequent to the March 1, 2013, decision, including his earnings and contact information for his students. Mr. Felser noted the claimant's work teaching drumming lessons was random and sporadic, and would not be an appropriate basis for a wage-earning capacity determination or for establishing a pay rate.

The Office received an August 26, 2013, brief from Mr. Felser, reiterating the arguments raised at the hearing.

I have reviewed the evidence and testimony of record and find that the decision of the district office dated March 1, 2013, must be set aside as the claimant has provided additional evidence for verification of his self-employment earnings.

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 Every injury does not necessarily cause disability for employment. Whether a particular injury

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

causes an employee disability for employment is a medical issue which must be resolved by competent medical evidence.²

The term disability is defined as the incapacity because of an employment injury to earn the wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity.³

The Office's Procedure Manual provides:

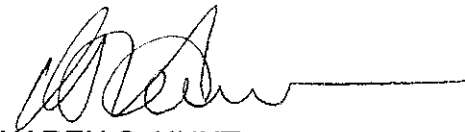
"Where the injured employee has earnings of a sporadic or intermittent nature, the CE should obtain actual earnings for each pay period and compensate the injured employee on the daily roll using the Shadrick formula."⁴

The Office denied the claims for wage-loss compensation beginning December 23, 2013, for the reason that it could not verify the claimant's earnings as reported. The claimant has now submitted the requested information including the names and contact information for his students. On remand, the Office should review the new information, complete any necessary further development, and issue a new decision regarding the claimant's entitlement to compensation for the periods claimed.

Accordingly, the decision of the district office dated March 1, 2013, is set aside and the case is returned for actions as noted above.

DATED: SEP 23 2013

WASHINGTON, D.C.



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

² *Debra A. Kirk-Littleton*, 41 ECAB ____ (Docket No 89-1935 issued May 3, 1990)

³ 20 C.F.R. § 10.5(f); see e.g., *Cheryl L. Decavitch*, 50 ECAB 397 (1999) (where appellant had an injury but no loss of wage-earning capacity).

⁴ DFEC Procedure Manual, 2-0815-b(3).