File Number:
Merit Review4-D-RECO

RECEIVED OCT 1 1 2013

U S DEPARTMENT OF LABOR

OFFICE OF WORKERS' COMP PROGRAMS
PO BOX 8300 DISTRICT 6 JAC
LONDON, KY 40742-8300
Phone: (904) 366-0100

October 9, 2013

Date of Injury:
Employee:

Dear Mr. :

This concerns your compensation case and your request for reconsideration received on 07/12/2012.

We have evaluated the evidence submitted and have reviewed the merits of your case under 5 U.S.C. 8128. You have provided sufficient evidence to warrant modification of the decision 05/24/2013. Based on the information received, the decision is now vacated.

The reasons for this decision are outlined in the enclosed Notice of Decision.

Please see the enclosed acceptance letter for a discussion of your rights and responsibilities.

Sincerely,

Betsy Cardona
Senior Claims Examiner

Cc:

PAUL H FELSER
FELSER LAW FIRM, P C.
POST OFFICE 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.

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NOTICE OF DECISION
Claimant Name:
Case Number:

ISSUE: The issue for determination is whether the evidence presented is of sufficient probative value to vacate the decision dated 05/24/2013.

REQUIREMENTS FOR ENTITLEMENT: In accordance with the regulations set forth in 20 CFR § 10.609, if an application for reconsideration is accompanied by new and relevant evidence or by an arguable case for error, OWCP will conduct a merit review of the case to determine whether the prior decision should be modified. If sufficient evidence exists to overturn the prior decision, it should be vacated.

BACKGROUND: On you filed a claim for Traumatic Injury indicating you sustained an injury or medical condition on as a result of your employment. Specifically you claimed that on you were involved in a physical altercation with another co-worker who you claimed struck you repeatedly on the face/head area. You claimed that this caused pain in your head, reduced neck rotation and pain in your neck.

On 05/24/2013 a formal decision was issued in your case finding that you failed to support that your injury occurred in the performance of your duties.

You disagreed with the 05/24/2013 decision and requested reconsideration by letter/appeal request form received on 07/12/2012.

DISCUSSION OF EVIDENCE: The evidence reviewed in support of your reconsideration request includes:

- Investigation Memorandum from the US Postal Inspection Service dated and letter dated
- Incident Report
- Mr. Statement to the dated
- Letter addressed to you from dated 05/22/13 concerning medical bills
- Report/List of medical visits for period 03/21/13 to 04/11/13
- Unsigned reconsideration request letter dated 06/10/2013
- Copies of weekly summary daily hours reports dated 06/12/13
- Letter from Mr. Paul H. Felser dated 07/04/13 requesting a copy of your file
- Your typed letters dated 07/10/2013, 07/23/13, 08/22/13 and 08/24/13 requesting reconsideration
- Your typed statement of 01/30/2013

As new evidence was submitted pertinent to the denial issue a merit review was granted. You employer was advised of your request for reconsideration by letter dated 07/25/13. A copy of the statements you submitted was provided for their comments. As of this date no comments have been received.

On 08/27/13 I conducted a telephone conference with you to obtain further details on the events that occurred on and clarify the fact of injury. You explained you were working on the north dock on first class mail and that passed slowly by stating something to the effect that his luck just ran out and kept walking. You stated that you had previously already

had verbal altercation with this employee which culminated in a meeting with your supervisor a couple weeks prior. You added that was sitting in a chair while you were working. You indicated that you made a statement towards your superior saying " , you got come employees sitting down". You added that you were in a bent down position unloading a BMC when you felt Mr. stuck you in the left side of your head. You claimed that he struck you several times and when you got up your nose was bleeding and walked away to look for your supervisor. You claimed that you did not strike Mr. back

The record reflects that you have no personal relationship outside the workplace with Mr. . The employer has not controverted the claim.

BASIS FOR DECISION: In determining whether an assault arises out of employment, The Office has relied on Larson's treatise on workers' compensation law. Larson states:

> "Assaults arise out of the employment either if the risk of assault is increased because of the nature or setting of the work or if the reason for the assault was a quarrel having its origin in the work.... Assaults for private reasons do not arise out of the employment unless, by facilitating an assault which would not otherwise be made, the employment becomes a contributing factor" [1]

It is clear from the record that you were performing your assigned duties and an altercation arose with Mr. concerning work issues. There is no evidence that this was a personal dispute arising outside the employment that was carried into the workplace or that you and your coworker had any relationship outside of work Moreover, at the time of the altercation, you were in a place you were reasonably expected to be working and were engaged in an activity incidental to your employment. The fact that you possibly were the "initiator" in the altercation that followed the dispute would not preclude recovery or act as a bar to your claim [2]

As the altercation arose in the performance of duty under *Cutler*, [3] I find that the altercation arose within the performance of duty.

The medical evidence of record also supports that you sustained a contusion to your face. However, the conditions of headache and neck pain cannot be approved as these are not considered definitive diagnosis but rather a description of symptoms

CONCLUSION: Therefore, the decision dated 05/24/2013 is vacated. Your case is now approved for contusion of the face.

Betsy Cardona
Senior Claims Examiner

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1 A. Larson, *The Law of Workers' Compensation* § 8 00 (2000).
2 *Eric J Kike*, 43 ECAB 638, 641 (1992)
3 Lillian Cutler _28 ECAB 125 (1976).

File Number:
CA-1008 TI-D-ACC

RECEIVED OCT 1 1 2013

U.S. DEPARTMENT OF LABOR

OFFICE OF WORKERS' COMP PROGRAMS
PO BOX 8300 DISTRICT 6 JAC
LONDON, KY 40742-8300
Phone: (904) 366-0100

October 9, 2013

Date of Injury:
Employee:

Dear Mr. :

This is to notify you that your claim for a traumatic injury on has been accepted for the following condition(s):

Diagnosed condition(s)	ICD-9 code(s)
CONTUSION FACE, SCALP AND NECK EXCEPT EYE(S)	920

Please advise all medical providers who are treating you for this injury of the accepted ICD-9 code(s). Accurate coding facilitates timely bill processing.

If the current accepted condition(s) need to be revised or additional complications related to the current accepted condition(s) need to be added, your physician should explain in writing, with medical rationale, the relationship between any additional condition and the work injury or the current accepted condition(s) noted above

You are not entitled to continuation of pay (COP) for this injury. A separate formal decision will be issued that fully addresses this matter. If your injury results in lost time from work, you may claim compensation using Form CA-7.

Please refer to the attachment entitled "Now That Your Claim Has Been Accepted" for important information pertaining to how to contact us, medical authorizations, payment of bills, and returning to work.

Sincerely,

Betsy Cardona
Senior Claims Examiner

Enclosure: NOW THAT YOUR CLAIM HAS BEEN ACCEPTED

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.

File Number:
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Cc:

PAUL H FELSER
FELSER LAW FIRM, P.C.
POST OFFICE BOX 10267
SAVANNAH, GA 31412

NOTICE TO EMPLOYING AGENCY:

If Form CA-7 claiming compensation for wage loss is filed, you are reminded that 20 C F.R §10 111(c) requires the submission of a CA-7 within 5 working days Please fully complete any form submitted and provide contact information to avoid delay of payment.

File Number:
CA-1008 TI-D-ACC

NOW THAT YOUR CLAIM HAS BEEN ACCEPTED

CONTACT INFORMATION

General Information - Information can be obtained on the Department of Labor website at http://www.dol.gov under the Office of Workers' Compensation, Division of Federal Employees' Compensation You may directly access the Division of Federal Employees' Compensation portion of the web site at http://www.dol.gov/owcp/dfec/index.htm.

Claimant Query System (CQS) – You can view your case and compensation claim status, billing updates (including reimbursements), coverage limitations, and other information online at http://owcp.dol.acs-inc.com.

Medical Authorizations and Billing Inquiries – All medical providers should contact our medical authorization and bill processing contractor (ACS) for all authorizations and billing questions Automated information is available 24 hours per day at 1-866-335-8319 or online at http://owcp.dol.acs-inc.com. The medical authorization fax line is 1-800-215-4901. If you, your doctor, or other medical providers require direct contact with a customer service representative, you may call 1-850-558-1818, Monday – Friday, 8am – 8pm EST (this is a toll call).

Compensation Payments - Automated information regarding compensation payments is available 24 hours per day by phoning 1-866-OWCP IVR (1-866-692-7487).

Questions about your claim - If you have any questions regarding your FECA claim, you may contact the Office at the phone number and address listed on the front page of this letter If you write to us, please put your case file number on each page

Forms - Most of the billing and claim forms described below are available at: http://www.dol.gov/owcp/dfec/regs/compliance/forms.htm.

Change of Address - If your contact information changes (i.e mailing address or telephone number), notify us promptly in writing over your signature. We cannot accept these changes over the telephone.

Submission of Information - You can submit requested information or other documentation pertaining to your FECA case to the address at the top of this letter, OR you can electronically upload documents into your case using the Employees' Compensation Operations and Management Portal (ECOMP). You can access ECOMP from any internet browser at: https://www.ecomp.dol.gov/ When you access the website, choose the "Upload Document" option. You will be asked to provide your case number, last name, date of birth and date of injury to upload a document ECOMP will then provide you with a Tracking Number so that you can verify when OWCP has received your document For more detailed information about this document submission feature, visit the ECOMP website and click "Help "

Attorneys and Authorized Representatives - You do not need the services of an attorney or representative to claim benefits under the FECA. However, you may obtain such services if you wish to do so, at your own expense Before we can release information to, or discuss your case with, any representative, including a family member, we will need a statement signed by you, stating that you designated someone to represent you in your OWCP claim The contact information for that party is also required.

File Number:
CA-1008 TI-D-ACC

MEDICAL AUTHORIZATIONS AND EXPENSES

General Information - This acceptance letter (first page) describes the medical condition(s) OWCP accepts as work-related, and only treatment for those conditions should be billed to the Office Your case file number must appear on all bills.

Authorizations – OWCP must approve in advance any surgery or procedure other than emergency surgery (that is, a procedure which must be performed right away to preserve life or the function of an organ or body part). You (or your medical provider) should contact OWCP for authorization at least 30 days before the intended date of the procedure. We will advise you of the information needed to determine whether OWCP can authorize the requested procedure

Fee Schedule - You are not responsible for charges over the maximum allowed in the OWCP fee schedule Our regulations provide that by submitting a bill and/or accepting payment, the provider signifies that the service for which reimbursement is sought was performed as described and was necessary In addition, the provider thereby agrees to comply with all regulations concerning the rendering of treatment and/or the process for seeking reimbursement for medical services, including the limitation imposed on the amount to be paid for such services. If a provider's bill is reduced by OWCP in accordance with its fee schedule, the provider is not allowed to charge you for the remainder of the bill. [20 C.F.R. §10.801 (d)]

Time Limitations - Bills and travel vouchers must be received within the calendar year following the year in which the medical service was rendered or the claim was accepted, whichever occurs later

Providers – All medical providers must be enrolled with our Central Bill processing contractor (ACS) so that services can be authorized and medical bills can be processed. You may use the Provider Search function at http://owcp.dol.acs-inc.com to find medical providers who accept FECA cases Note, however, that this tool only lists those physicians who opted to be included in the look-up, which means it may not capture every physician in a particular area who will accept FECA cases.

Physicians and Other Medical Providers (Except for Hospitals and Pharmacies) - Bills for your accepted condition must be submitted on the standard American Medical Association (AMA) billing form HCFA-1500, also known as OWCP-1500, to the address noted in the letterhead Providers must itemize services for each date separately; use AMA (not state) CPT codes to describe the services performed; and provide their tax identification number (EIN) and ACS provider number. The provider must sign the form (a signature stamp may also be used)

Hospitals - These bills must be submitted on Form UB-04, also known as OWCP-04. These bills must be fully itemized, and the admission and discharge medical summaries should also be sent

Pharmacies -These bills should be submitted electronically by your pharmacy via Point of Sale. If this is not available, bills must be submitted on the Universal Claim Form or equivalent. The pharmacy should include the following items: the case file number, the nine-digit tax ID number, the NDC number, the prescription number, the quantity of medication prescribed, the name of the prescribing physician, and the date of purchase. Pharmacies must complete the following fields: 403-D3 (Fill Number), 405-D5 (Days Supply), 408-D8 (Dispense as Written), 415-DF (Number of Refills Authorized) and 442-E7 (Quantity Dispensed). Your physician's clinical notes or reports should show that the medications prescribed were needed to treat your work-related injury. Pharmacies can obtain decisions on coverage of medications by calling 1-866-335-8319.

Medication (Schedule II Narcotics) - Please note that there is a limitation as to the day's supply of any Schedule II narcotic medication. The "days supply" limitation of Schedule II is limited to only a 30-day supply per each prescription fill. You will be limited to only four (4) refills within a 90-day period; claimants with an accepted cancer condition will not be affected by this limitation on refills.

Chiropractors - We will only pay for chiropractic treatment consisting of manual manipulation of the spine to correct an accepted work-related spinal subluxation demonstrated by x-ray, or if a medical doctor has prescribed physical therapy to be administered by a chiropractor

Reimbursements - If you have paid authorized medical expenses, you may request reimbursement by attaching Form CA-915, or a similar form, on the same required billing forms (such as HCFA-1500 or UB-04) specified above. In all cases, the medical provider's tax identification number (EIN) and proof of payment (cancelled check or receipt) must be provided If electronic banking information is on file then your reimbursement will be paid via EFT. If a health benefits carrier has paid medical bills for your accepted condition, the carrier may submit a completed NALC-200 form with appropriate supporting documentation (HCFA-1500 or UB-04) to OWCP for consideration. Reimbursements are limited to the fee schedule amount.

Reimbursement for Medical-Related Travel - Travel expenses should be submitted on form OWCP-957, Medical Travel Refund Request Travel expenses that exceed $75 must be submitted with an accompanying receipt to support the charges claimed and will be subjected to prior approval As with reimbursement for medical expenses, these claims will be paid via EFT if there is electronic banking information on file for you.

COMPENSATION PAYMENTS

Claims for Compensation - Any claim for lost wages must be submitted through your employing agency on Form CA-7. Your employing agency will complete its portion of this form and forward it to our Office. In cases of intermittent wage loss, Form CA-7a is also needed. Medical documentation substantiating that the lost time is due to the accepted work-related condition(s) is required prior to payment. You must report any employment or employment activities on this form.

> Note - On December 22nd, 2010, the Treasury Department issued a regulation that requires that all Federal payments be made electronically. Specifically, the regulation requires that all individuals receiving recurring Federal government payments must receive payments by Electronic Fund Transfer (EFT) Therefore, if you submit a form CA-7, you must submit Form SF-1199A (Direct Deposit Sign-Up Form) with your claim If you have any questions pertaining to this requirement, please consult Treasury's web site at: http://www.fms.treas.gov/eft.

Claims for Leave Buy-Back - Reinstatement of leave is subject to the approval of your employing agency Prior to using your personal leave to cover injury-related absences from work, you are urged to review the instructions for Form CA-7b. To claim a leave buy-back, you must file Form CA-7b through your employing agency, along with Form CA-7 and Form CA-7a.

Schedule Award - The FECA provides for the payment of schedule awards when the injury causes a permanent impairment involving total or partial loss, or loss of use, of certain organs or members of the body. The spine and brain are not included unless the condition causes permanent impairment to the extremities. All impairment ratings are evaluated in accordance with the Sixth Edition of the American Medical Association (AMA) Guides to the Evaluation of Permanent Impairment. A schedule award may be claimed using Form CA-7 after maximum medical improvement has been reached.

When Your Injury is Caused by a Third Party – If your injury was caused by a third party, you may be required to seek damages from the third party, and you must reimburse the government from your recovery in accordance with the statutory formula See 5 U.S.C. 8131, 8132; 20 CFR §10 705-719.

Penalty - Any person who knowingly makes any false statement, misrepresentation, concealment of fact, or any other act of fraud to obtain compensation, or who knowingly accepts compensation to which he or she is not entitled, is subject to criminal prosecution.

RETURNING TO WORK

Responsibilities –

- You are expected to return to work (including light duty or part-time work, if available) as soon as you are able, and it is your responsibility to advise your agency once your physician finds you capable of returning to work in some capacity. Full compensation is payable only while you are unable to perform the duties of your regular job because of your accepted employment-related condition.
- Once you return to work, or obtain new employment, notify this office immediately
- If you receive a compensation check which includes payment for a period you have worked, return it to us immediately to prevent an overpayment of compensation. Checks may be returned to the following address: US Department of Treasury, 13000 Townsend Road, Philadelphia, PA 19154.
- If you receive compensation via Electronic Funds Transfer (EFT), a notification of the date and amount of payment will appear on the statement from your financial institution. You are expected to monitor your EFT deposits carefully, at least every 2 weeks If you have worked for any portion of the period for which a deposit was made, advise OWCP immediately so that the overpayment can be collected.

Job Offers - You are legally obligated to accept work which is within your medical restrictions. OWCP may terminate your benefits if you refuse suitable employment without good cause

Nurse Intervention and Vocational Rehabilitation – OWCP may assign a registered nurse or a vocational rehabilitation counselor to contact you to facilitate your recovery and return to work Under the FECA, you are required to cooperate with vocational rehabilitation efforts.