

File Number:
HR13-D-H

RECEIVED OCT 23 2014

U.S. DEPARTMENT OF LABOR

OCT 17 2014

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,



Sherri L. Doiron
Hearing Representative

PAUL H. FELSER
ATTORNEY AT LAW
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.

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; _____ in
Case No. _____

Merit consideration of the case file was completed in Washington, D.C. Based on this review, the decision of the District Office dated June 3, 2014 has been reversed for the reasons set forth below.

The issue for determination is whether the claimant established his medical conditions are causally related to the claimed factors of his federal employment.

The claimant, born _____ has been employed as a _____
the _____ in _____ since _____ On _____
the claimant timely filed a form CA-2, Notice of Occupational Disease, claiming the daily activities of his job caused, aggravated, and worsened his injury from the constant pivoting, standing, lateral movement, getting in and out of his mail vehicle, walking on uneven surfaces, and going up and down steps. The District Office assigned case _____ to this claim, and accepted the claim for an aggravation of hyper-pronation of the claimant's bilateral feet, and an aggravation of his degenerative arthritis of the right hip and bilateral knees. The claimant continued to work regular duty after he filed his claim.

The claimant has a history of a non-work related motor vehicle accident when he was fifteen years old that resulted in left foot drop, hip fracture, and knee and ankle problems. The claimant underwent non-work related left leg surgery in _____ and right knee surgery in _____. The claimant reinjured his right knee in a grocery store in _____. The claimant had non-work related ankle surgery in _____.

The District Office referred the claimant for a referee medical examination with _____ M.D., a Board-certified orthopedic surgeon. By report dated _____ Dr. _____ noted the identified conflict of opinion regarded causal relationship and a permanent impairment rating. Dr. _____ described the claimant's history and medical findings. He noted the claimant initiated his claim, because of his concern that he might not be capable of continuing to perform his mail carrier duties until retirement. Dr. _____ opined that the claimant's work-

related aggravation was evidence-based on a career of prolonged standing, walking, and exiting a vehicle; and the claimant's work capacity is steadily diminishing, because of the accumulation of his lower extremity orthopedic conditions and worsening of each joint condition. Dr. [redacted] opined therefore that the claimant did continue to suffer residuals of the work injury, and he opined the claimant suffered a permanent work-related aggravation of his hips, knees, and feet. Dr. [redacted] stated an analogy to illustrate the material changes as a result of a career of standing, walking, mounting and dismounting vehicles etc. was if one purchases a new car with normal body, normal suspension, and brand new tires, one could expect those tires might last 50,000 miles. He indicated this analogy could represent a mail carrier who has normal hips, knees, ankles, and feet, who may be expected to complete successfully his entire mail carrier career without difficulty. He stated conversely, if one purchased a vehicle that had been wrecked, resulting in permanent damage to the suspension, alignment, etc., a new set of tires on that vehicle might last only 20,000 miles. Dr. [redacted] explained in this analogy, the claimant suffered a non-industrial initial injury to his hips, knees, ankle, and feet. However, his occupation requiring standing, walking, mounting and dismounting vehicles, carrying mail, etc. aggravated those conditions resulting in his "wearing out" prematurely. He opined the claimant sustained permanent partial impairment of his lower extremities due to his work injury.

By decision dated February 1, 2006, in case [redacted] the District Office compensated the claimant with a schedule award for 52% permanent partial impairment of the right lower extremity, and 44% permanent partial impairment of the left lower extremity. The Office gave the weight of medical evidence in this issue to Dr. [redacted]. The period of the award was from December 10, 2004 to March 29, 2010.

The claimant stopped work on [redacted] and never returned. There is a gap in evidence of medical treatment for the work injury between [redacted] and [redacted].

[redacted] M.D. examined the claimant on [redacted]. He noted the claimant presented for an evaluation of his ankle, knee, and hip issues. He noted the claimant reports his ambulation has been difficult, and he now walks with a limp and has difficulty climbing stairs. He found the claimant had significant left foot drop, significant right gluteal atrophy, significant osteoarthritis of the knees and hips, and significant loss of arches with considerable pronation. Dr. [redacted] did not discuss the claimant's work abilities. By report dated [redacted] Dr. [redacted] provided an addendum stating the claimant's right hip and bilateral knee conditions had deteriorated over the last two months, and limit the claimant's ability to perform tasks pertinent to his job, including walking, standing, and bending; and will likely continue to limit his ability to do so.

By report dated _____ the claimant's attending physician, _____ M.D., a Board-certified orthopedic surgeon, opined that due to the claimant's progressive symptoms, there was no way he could continue to work as a mail carrier with standing, walking, any rotational activity, or getting in and out of vehicles. He opined there had been an increase in the claimant's impairment, and he was permanently unable to return to his former work.

On _____, the claimant inquired about the status of his claim under case _____. The District Office advised the claimant to file a form CA-2a, Notice of Recurrence. The claimant filed the CA-2a form on _____ claiming total disability from work beginning _____ due to a worsening of his accepted work injury.

By decision dated November 5, 2012, the District Office denied the recurrence claim in case _____. Specifically, the Office stated the claimant did not bridge the gap of medical evidence between _____ and _____. The Office found the claimant failed to establish that his work injury materially worsened. The Office found Dr. _____ September 5, 2012 impairment rating was insufficient to establish the recurrence claim.

The claimant disagreed with the November 5, 2012 decision, and requested a reconsideration. By decision dated November 22, 2013, the District Office denied modification of the November 5, 2012 decision. The Office noted Dr. _____ report dated _____ indicated the claimant had progressive symptoms of pain, some calf atrophy bilaterally, and his bone scan demonstrated significant increased uptake at the right hip and both knees, both ankles, and feet. The Office noted Dr. _____ opined that the claimant was unable to do any type of work involving standing, climbing, walking, stooping, etc., and that he had an increase in his impairment. The Office stated in the _____ report, Dr. _____ again noted the claimant had increasing atrophy in his left quadriceps and increased foot pronation and that his ambulation was significantly impaired and became progressively worse due to his work-related injuries, and the claimant had been unable to work since _____. The Office noted that on _____ Dr. _____ reported that the claimant had significant progressive problems with his hips, knees, and feet arising from a work-related injury, but that he continued to try to work despite his progressive degenerative symptoms that were accentuated by his injuries at work. The Office noted that Dr. _____ opined the claimant's progressive impairment and decreased function was directly due to his work-related injury, and that the claimant cannot do any of the activities of a _____. The Office noted Dr. _____ further stated that this is a worsening of his condition, and returning to this type of work would aggravate his condition.

However, the District Office determined in the November 22, 2013 decision that Dr. _____ opinion did not establish the claimant's ongoing problems resulted from his work injury, because it appeared work activities upon his return to work

full duty led to the additional symptoms, and clearly represents a new injury, and not a spontaneous recurrence. The Office advised the claimant to file a new compensation claim, if he wished to pursue disability benefits.

By decision dated December 4, 2013 in case _____ the District Office denied the compensation claim for total disability from _____ to _____. The Office did not discuss any medical evidence. The only explanation given for this decision was that the evidence of record failed to support disability for the period claimed.

On _____ the claimant filed a new CA-2 form, claiming the daily activities of his job caused, aggravated, and worsened his injury from the constant pivoting, standing, lateral movement, getting in and out of his mail vehicle, walking on uneven surfaces, and going up and down steps. He claimed these activities caused damage to his right and left ACL's (anterior cruciate ligaments); hyper-pronation of both feet and ankles; severe right hip weakness, and left drop foot. The employing agency did not challenge the claim, and noted the claimant stopped work on _____ and had never returned. The District Office assigned case _____ to this claim, which is the subject of the present claim under consideration.

In support of his claim in case _____ the claimant submitted several medical records from case _____ which included the reports from Drs. _____ and _____ noted above. The claimant also submitted reports from Dr. _____ dated _____ and _____

Dr. _____ continued to describe the claimant's test results and examination findings in the new reports. He noted the claim was accepted for aggravation of bilateral knee condition, as well as aggravation of degenerative arthritis of the right hip and pronation of his feet. Dr. _____ opined the physical nature of the claimant's employment contributed to his aggravation and worsening of his conditions, and significantly shortened his employment life. Dr. _____ opined to degree of medical certainty that the claimant can no longer perform his duties as a _____ and he has been unable to work as a _____ since _____. He stated the claimant's x-rays, bone scans, and MRI all confirm the significant nature of his impairment.

By decision dated June 3, 2014, the District Office denied the claim, finding that the claimant did not establish that his medical conditions were causally related to the work factors he claimed. Specifically, the Office stated since the issue of causal relationship involves aggravation of his preexisting conditions, so the claimant's physician had to provide rationalized medical opinion, which differentiated between the effects of the continued work-related activities, and his preexisting conditions; and what materially changed.

The claimant disagreed with the June 3, 2014 decision, and requested a hearing before an OWCP representative. The claimant submitted a statement from Dr. _____ dated _____ to support his claim.

In his _____ statement, Dr. _____ continued to reiterate his opinion that the claimant's regular work duties were causally related to the claimant's lower extremity conditions. He noted the claimant needed documentation that there is some causal relationship between working as a _____ which required embarking and disembarking from a vehicle multiple times a day, as well as prolonged standing and walking. Dr. _____ stated certainly with his ACL tear, drop foot, and posttraumatic degenerative symptoms, this was accelerated from significant loading and repetitive activities required with his employment as a postal worker. Dr. _____ stated had the claimant worked a sedentary-type job, he would almost certainly have been able to continue working, but there was an acceleration of his ambulatory symptoms and contributory progress of his arthritis due to his significant activities required with his employment as a postal worker.

Based upon the written evidence of record, I find that the case is not in posture for a hearing. The new evidence from Dr. _____ in conjunction with the prior medical evidence of record, establishes the claim.

The claimant has the burden to establish by medical evidence that the condition causing disability was related to his employment. The mere fact that a disabling disease develops or progresses during the period of government employment is not sufficient to entitle the employee to workmen's compensation benefits. The fact that work activities produced pain or discomfort revelatory of an underlying condition does not raise an inference of an employment relation.¹

The opinion of a physician supporting causal relationship must be based on a complete factual and medical background, supported by affirmative evidence, address the specific factual and medical evidence of record and provide medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.²

Dr. _____ was the claimant's physician when the District Office accepted his claim under case _____ and he is familiar with the claimant's history. Dr. _____ provided an accurate medical history and described the claimant's work duties. Dr. _____ described the claimant's objective diagnostic testing and examination findings in detail, and noted the claimant had an increase in his impairment, and he specifically noted the claimant's lower extremity atrophy increased since the original claim was accepted. Dr. _____ described the mechanism of injury from the claimant's work duties of standing, walking, and getting in and out of his _____. Dr. _____ provided a firm diagnosis for _____.

¹Wilbur D. Starks, 23 ECAB 85, 1971.

²Robert Broome, 55 ECAB (Docket No. 04-93, issued February 23, 2004).

the claimant's medical condition. Dr. _____ provided an unequivocal opinion that the claimant's continued regular duty job activities are causally related to the claimant's preexisting medical condition. The District Office previously accepted that the claimant's regular work duties aggravated his preexisting conditions of his right hip, bilateral knees and feet based upon Dr. _____ opinion back in _____ in case _____

Considering the claimant continued to work his regular work duties after his initial claim was accepted; and considering that Dr. _____ the referee examiner, opined that the claimant's work duties caused a permanent aggravation of the claimant's preexisting conditions of his lower extremities, I find that Dr. _____ explanation that the claimant's continuing to work regular duty accelerated the claimant's preexisting lower extremity condition, beyond what it would have if he had worked sedentary duty, is sufficient medical rationale to support the causal relationship of the present claim. There is no medical opinion to refute Dr. _____. Therefore, I find the claimant met his burden to establish his claim.

Upon return of the file, the District Office should accept the claim for an aggravation of hyper-pronation of the bilateral feet; and an aggravation of degenerative arthritis of the right hip and bilateral knees, and appropriate benefits should be authorized.

Pursuant to Office procedures, the Office has determined that cases should be combined where correct adjudication depends on cross-referencing between files.³ As cases _____ and _____ are extensively cross-referenced and involve the same injuries, the District Office should combine the claims.

Consistent with the above findings, the decision of the District Office dated June 3, 2014 is REVERSED, and the case file returned for further action as described above.

Date: OCT 17 2014
Washington, D.C.



Sherri Doiron
Hearing Representative
for
Director, Office of Workers'
Compensation Programs

³Thomas N. Rosa, docket No. 04-1346, issued October 29, 2004.