

RECEIVED MAY 25 2017

U.S. DEPARTMENT OF LABOR

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

May 22, 2017

Date of Injury:  
Employee:

Dear

This concerns your compensation case and your request for reconsideration received on 05/09/2017.

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 dated 05/13/2016. 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,

Senior Claims Examiner

PAUL H FELSER  
ESQ  
FELSER LAW FIRM, P.C.  
QUEENSBOROUGH BANK BUILDING  
7393 HODGSON MEMORIAL DRIVE  
SUITE 102  
SAVANNAH, GA 31406

***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:  
Merit Review4-D-RECO

**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 05/13/2016.

**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 \_\_\_\_\_ while employed as a \_\_\_\_\_ with \_\_\_\_\_ you were involved in a motor vehicle collision while on duty. You filed a Form CA-1 notice of Traumatic Injury and Claim for Compensation indicating that "carrier suffered muscle spasms in her neck and back." You submitted no supporting documentation with your claim. By letter dated 12/05/2014 you were advised of the deficiencies of your claim and instructed to provide additional evidence including a physician's narrative report which included:

1. Dates of examination and treatment.
2. History and date of injury given by you to the physician.
3. Detailed description of findings.
4. Results of all x-ray and laboratory tests.
5. Diagnosis and clinical course of treatment followed.
6. The physician's opinion supported by a medical explanation as to how the reported work incident caused or aggravated a medical condition.

You were provided 30 days in which to submit the needed evidence and informed that decision would be made at the end of that period based upon the evidence of record. In response to that letter we received only a Form CA-17 dated 12/01/2014.

On 01/12/2015 a formal decision was issued finding that fact of injury had not been established because a physician's diagnosis of a medical condition associated with the motor vehicle collision had not been submitted.

You disagreed with that decision and, via letter from your attorney, Paul Felser, dated 02/05/2015 you requested an oral hearing. In support of that request you submitted additional evidence including:

- AnMed Emergency Department notes dated \_\_\_\_\_
- Office notes dated 11/11/2014 and 03/27/2015 signed by Dr. \_\_\_\_\_
- A report of an MRI of the cervical spine dated 11/14/2014;
- A request for authorization of ACDF surgery at C5-6 dated 01/20/2015;
- A report of an MRI of the lumbar spine dated 06/25/2015;
- A report of an CT of the cervical spine dated 08/07/2015;
- A report of an MRI of the cervical spine dated 09/29/2015;

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- Treatment notes dated 01/20/2015, 05/11/2015, 05/15/2015, 06/02/2015, 08/03/2015, 08/11/2015, 09/14/2015, and 10/29/2015, signed by Dr.
- CA-17 forms dated 01/20/2015 08/27/2015, 09/14/2015, signed by Dr.
- CA-17 forms dated 11/11/2014, 12/01/2014 signed by Dr.
- A statement from \_\_\_\_\_ the driver of the other vehicle involved in the collision;
- Deposition given by Dr. \_\_\_\_\_ on 08/01/2016.

The hearing was conducted on 03/15/2016. Subsequently, on 05/13/2016 the Hearing Representative issued a decision affirming the 01/12/2015 decision with modification, finding that the evidence of record was sufficient to establish Fact of injury, but remained insufficient to establish a Causal Relationship between your diagnosed medical conditions and the work injury of

You again disagreed with the decision and requested reconsideration via letter from your attorney, Paul Felser, dated 05/09/2017.

**DISCUSSION OF EVIDENCE:** In support of your request you submitted:

- Treatment notes of Dr. \_\_\_\_\_ dated 07/23/2014, 09/24/2014, 12/17/2014, 11/23/2015, 12/22/2015, 01/15/2016, 01/17/2016, 02/02/2016;
- Laboratory reports dated 08/11/2014, 11/29/2014, 10/20/2015, 11/23/2015 01/09/2016, 01/18/2016;
- A report of an x-ray of the lumbar spine dated 10/01/2004;
- A report of an x-ray of the sacrum and coccyx dated 10/01/2004;
- A report of a total body bone scan dated 10/26/2004;
- AnMed Emergency Department records dated 08/06/2013;
- A report of an x-ray of the lumbar & thoracic spine dated 08/05/2013;
- Office notes dated 12/03/2013, 08/08/2014, 11/25/2014, 12/01/2014 signed by Dr. \_\_\_\_\_
- Operative report dated 11/14/2014;
- Mammography reports dated 01/02/2014 and 03/05/2015;
- Office notes dated 01/22/2014 and 02/17/2014 signed by Dr. \_\_\_\_\_
- A work excuse notes signed by Dr. \_\_\_\_\_ dated 05/09/2014 and 12/01/2014;
- A letter from Dr. \_\_\_\_\_ dated 10/04/2014;
- A report of a thyroid ultrasonograph dated 01/23/2015;
- A report of an MRI of the cervical spine dated 11/18/2014;
- A report of radiological imaging of the thyroid dated 02/02/2015;
- Thyroid biopsy procedure report dated 02/05/2015;
- Office notes dated 02/18/2015 signed by Dr. \_\_\_\_\_
- Operative report dated 03/09/2015;
- Surgical pathology reports dated 11/14/2014 and 03/09/2015;
- AnMed discharge summary dated 03/10/2015;
- A report of an x-ray of the lumbar spine dated 06/25/2015;

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- Deposition of Dr. [redacted] dated 08/01/2016;
- A letter from your attorney, Mr. Felser, dated 05/09/2017.

At the time of the 05/13/2016 decision it was established that you filed a timely claim; that you are a civil employee of the United States, that the factual and medical evidence supports that the injury occurred as you described, and that the injury was received in the performance of duty. As the only remaining basic element to be established is Causal Relationship, and because causal relation is a medical question which can only be resolved by the submission of medical opinion evidence the medical evidence of record was thoroughly reviewed.

Of particular note was the 08/01/2017 deposition of Dr. [redacted]. In that deposition, Dr. [redacted] noted his review of the medical evidence of record, including notes concerning your condition prior to the date of injury. Dr. [redacted] was asked to comment upon an x-ray report an from 10/01/2004 which showed normal appearing vertebral bodies with some minor developmental changes at T12-L1 disc and very minor degenerative changes. Asked whether that had anything to do with his understanding the injuries that you received in the accident on [redacted] Dr. [redacted] replied "no" and explained that this finding was some "two to three levels below her—the C5-6 level." He stated that this preexisting condition had "little relevance" to the [redacted] injury because "based on my interpretation of the imaging and the imaging-- the interpretation of the radiologist; that she had a paracentral disc protrusion, and it would appear to be T2-3, but it was not compressing or not compromising the neural elements."

Dr. [redacted] also noted that the 10/01/2004x-ray showed "developmental changes at T-12" and explained that this condition was also irrelevant to the [redacted] injury.

Dr. [redacted] also acknowledged an 08/05/2013note from [redacted] medical indicating you were treated on that date for back pain. Asked whether there was any indication that you were being treated for anything to do with your neck Dr. [redacted] replied "No."

Asked whether there is "any indication from the patient herself or from any other source that was made available to you that she even knew she had any underlying stenosis problem or knew that she had any underlying problem in her neck or her head prior to this [redacted] accident?" Dr. [redacted] replied "There's no indication that she had any knowledge of a preexisting condition."

Asked to address the nature of the accident Dr. [redacted] stated that "I think being hit by a motorcycle is sufficient to cause an injury to her neck, as she described, and as we see in the MRI finding." Dr. [redacted] elaborated, saying "So it is the — in the end, it's momentum that causes a lot of injuries. And momentum is mass times velocity squared, so in that equation, the velocity is much more important than the mass. And it's possible that a -- you know, a motorcycle going without an opportunity to brake at a high velocity can have the same momentum as a lower speed -- or a motor vehicle — a heavier vehicle going at a slower speed."

Dr. [redacted] stated that "I feel it's more likely that not that this motor vehicle accident with the motorcycle, as described, is the cause of her neck pain and subsequent symptoms."

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Dr. [redacted] was then asked about MRI studies performed on the date of injury. He stated that "So it says, 'There is moderate to severe congenital and acquired spinal stenosis due to a combination of factors, including the bony hypertrophic changes and a left paracentral disc herniation, which-- the combination of which narrows the canal to 6,4 millimeters and causes marked encroachment of the left lateral recess and left neural foramen. The spinal cord is flattened.'" He stated that "I think the best way to say it is that this was a condition that predisposed her to becoming symptomatic when she had a -- an acute disc herniation at this level."

Dr. [redacted] also stated that "It is more likely than not that this motor vehicle accident caused her C5-6 disc herniation." He went on to say that "There is no record of any preexisting signs or symptoms" and "I think the best way to say it is that this was a condition that predisposed her to becoming symptomatic when she had a -- an acute disc herniation at this level."

**BASIS FOR DECISION:** The Employees' Compensation Appeals Board (ECAB) has held that:

*The medical evidence required to establish a causal relationship, generally, is rationalized medical evidence. Rationalized medical evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.*  
47 ECAB \_\_\_\_ (Docket No. 94-514, issued November 9, 1995)

In his deposition of 08/01/2016 Dr. [redacted] opined that the [redacted] motor vehicle collision was responsible for your herniated disc at C5-5. His opinion was based on a complete factual and medical background, was of reasonable medical certainty and supported by medical rationale. Therefore, I find that the evidence is sufficient to vacate the decision dated 05/13/2016.

**CONCLUSION:** Therefore, the decision dated 05/13/2016 is vacated.

Senior Claims Examiner

May 22, 2017

File Number:  
CA-1008 TI-D-ACC

U.S. DEPARTMENT OF LABOR

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

May 22, 2017

Date of Injury:  
Employee:

Dear

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

<u>Diagnosed condition(s)</u>	<u>ICD-10 code(s)</u>
OTHER CERVICAL DISC DISPLACEMENT AT C5-C6 LEVEL	M50222

**Please advise all medical providers who are treating you for this injury of the accepted ICD-10 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.

If your injury results in lost time from work, you may be eligible to receive continuation of pay (COP) until you recover or return to light duty, up to a maximum of 45 calendar days; however, you may be subject to the three-day waiting period mandated by the Postal Accountability and Enhancement Act (Public Law 109-435). If wage loss continues after your entitlement to COP expires, you may claim compensation using Form CA-7.

The evidence in your case file at this time indicates that you may not have returned to work in a full-time capacity. OWCP is not a retirement program and our primary goals are your medical recovery and return to full-duty employment. We strive for an active team approach where OWCP, the employing agency, and the medical providers work collaboratively with you to facilitate medical recovery and sustainable return to work. Your case is currently being evaluated to determine what steps we can take to help you achieve these goals.

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.

***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:  
CA-1008 TI-D-ACC

Sincerely,

Senior Claims Examiner

Enclosure: NOW THAT YOUR CLAIM HAS BEEN ACCEPTED

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QUEENSBOROUGH BANK BUILDING  
7393 HODGSON MEMORIAL DRIVE  
SUITE 102  
SAVANNAH, GA 31406

**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.

Please send a copy of the position description (including physical requirements) for the job held on date of injury.

Please submit an update regarding this employee's work status.

It is noted that you challenged this claim because the severity of the motor vehicle accident was not sufficient to cause the injury described. The evidence, however, supports that this employee is a Federal employee who sustained a traumatic injury in the performance of duty; therefore, the case has been accepted.