

File Number:
HR10-D-H

RECEIVED FEB 01 2018

U.S. DEPARTMENT OF LABOR

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 11/14/2017. 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 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,

Electronically Signed

Rashawnda Snell
Hearing Representative

PAUL FELSER
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.

Washington DC, January 26, 2018

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 HARRIS, Claimant; Employed by United States Postal Service, Rome, Georgia. Case No. An oral hearing was held via telephone on November 14, 2017.

The issue for consideration is whether the claimant sustained an injury or condition causally related to the employment on

On February 9, 2017, a traumatic injury claim, CA1, was filed on behalf of the claimant, born claiming that he was injured when he struck a rock in the course of his duties on . The noted that the claimant was in the performance of duty, that there was no willful misconduct involved, that he agreed with the account of the claimed incident and that the claimant sought medical treatment at on the incident date. It was noted, however, that the agency was challenging the claim as there was no medical documentation submitted with a medical diagnosis or physician's opinion to support an injury due to the work event. A copy of the claimant's job description and various medical records were received including Dr. undated report, the hospital records and a intake report.

Following development of the record evidence, the District Office denied the claim in a March 30, 2017 decision explaining that there was not sufficient medical evidence establishing a causal relationship of the diagnosed head injury and the accepted work event. The claimant disagreed with the decision and through his attorney requested a hearing with an OWCP Representative.

Dr. report, Dr. attending physician's report (CA20), Dr. medical statement, hospital records and multiple diagnostic studies were received.¹ The agency advised that the claimant returned to work on

A telephone hearing was held on November 14, 2017, where Paul Felser presented argument as the attorney of record. Attorney Felser argued that the seizure was not in question nor being claimed as arising out of the employment but rather that the accident caused the diagnosed sinus fracture, which caused the diagnosed pneumocephalus, which resulted in an infection that caused a brain abscess for which the claimant underwent a craniotomy. He argued that the seizure caused a sequence of events that should be considered compensable conditions and the resulting medical conditions, the sinus fracture, head injury and resulting infection with related surgery, outlined in the medical records should be accepted. The issue of whether the claim should be addressed as an idiopathic claim was discussed. The attorney explained that Dr. made a diagnosis of biceps tendinitis, right shoulder due to the claimant holding

The agency did not submit comments following the hearing.

To determine whether a Federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a fact of injury has been established. First, the employee must submit

¹ The records were duplicates of medical records previously received.

sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.² Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.³ The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.⁴ Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion 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 established incident of employment factor(s).⁵ An award of compensation may not be based on the claimant's belief of causal relationship. Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by the employment or incidents is sufficient to establish a causal relationship.⁶

The Office denied the claim explaining that there was not sufficient medical evidence establishing a diagnosis or injury causally related to the accepted work event. The record reflects that the claimant was initially treated at the accident scene. The EMS responders noted that the claimant reported a history of seizures but did not recall losing consciousness before or after the accident but requested to be taken to the hospital. The claimant was seen at the ER and the ER records indicate that the claimant presented to the ER with seizures following a MVA. The claimant underwent a CT scan, which demonstrated no evidence of acute intracranial injury but indicated a focus of pneumocephalus seen in the right frontal cortex of uncertain etiology. It was noted that such was a potential source of infection. CT Scans of the face, chest, abdomen, pelvis, thoracic, cervical and lumbar spine showed no abnormalities or acute injury. At the time of his exam, Dr. _____ noted the diagnosis as recurrent seizure secondary to noncompliance, closed head injury, pneumocephalus, however, there was no discussion how the work accident resulted in the diagnosed conditions. The hospital records show that a _____ head CT scan, when compared to the scan on _____ showed persistent pneumocephalus in the right frontal lobe. It was noted that there was no evidence of traumatic intracranial injury, however, it was stated that the claimant was at risk for forintracranial infection and was recommended for a brain MRI and possible sinus surgery due to mucosal thickening in the paranasal sinuses.

In his undated report, Dr. _____ cited the _____ MVA as the history of injury noting that the cuts and bruises were healing but the CT showed a skull fracture with air leak into cranial cavity. Dr. _____ provided a diagnosis of seizure disorder with epilepsy but marked that he did not believe that the conditions were caused or aggravated by the employment. The claimant was referred for an evaluation of the diagnosed brain lesion and in his _____ report, Dr. _____ noted the claimant was being seen for abnormal CT scan findings and possible brain abscess. He noted that the claimant had a history of seizures and had one [in _____] while driving causing a MVA. He noted that the claimant displayed occasional confusion and altered. Dr. _____ provided diagnoses of brain lesion and sinus fracture. The claimant underwent a brain MRI study on _____. In the _____ discharge summary report, Dr. _____ explained that the claimant has a history of seizure disorder, the last resulting in the MVA at which time he sustained an injury with fracture of his

² Linda S. Jackson, 49 ECAB 486 (1998); John J. Carlone, 41 ECAB 354 (1989).

³ *Id.*

⁴ Lourdes Harris, 45 ECAB 545 (1994).

⁵ John W. Montoya, 54 ECAB 306 (2003).

⁶ Dennis M. Mascarenas, 49 ECAB 215 (1997).

sinus bone and had persistent pneumocephalus in the right frontal lobe. He stated that claimant was treated conservatively but upon a hospital admission, diagnostic testing showed a probable brain abscess. Dr. [redacted] stated that the etiology was presumed to be the injury of frontal sinus bone though not shown on CT or MRI. In his [redacted] report, Dr. C. [redacted] noted that the claimant, with a history of seizure disorder, was involved in a MVA following a seizure causing him to sustain a sinus bone fracture and develop persistent pneumocephalus in the right frontal lobe with resulting headaches. It was noted that the claimant, during his ([redacted]) neurology follow-up evaluation, was recommended for and underwent a CT scan that demonstrated a probable brain abscess for which he was recommended for hospital admission. Dr. [redacted] provided an impression of probable brain abscess, history of recent brain trauma with pneumocephalus and history of seizures.

Dr. [redacted] provided a similar discussion in his [redacted] report, stating that the claimant had previously stopped his seizure medication and subsequently had a seizure, which caused him to have the [redacted] car accident. The claimant was then admitted for pneumocephalus with possible sinus cavity fracture. Dr. [redacted] noted that a [redacted] head CT demonstrated a mass that was consistent with a brain abscess for which he was advised to go to the ER. The claimant underwent brain abscess aspiration under Dr. [redacted] care on [redacted]. In a [redacted] report, Dr. [redacted] confirming the nurse practitioner's assessment, noted the MVA following a seizure, the ER admission and diagnosed sinus bone fracture and persistent pneumocephalus in the right frontal lobe for which he underwent treatment in the ER and by a neurosurgeon. It was noted that the claimant was subsequently diagnosed with a probable brain abscess upon testing and underwent right frontal brain abscess aspiration on [redacted] however, a culture showed heavy growth of Haemophilus influenza, for which he was treated. In a [redacted] treatment report, Dr. [redacted] provided a diagnosis of right frontal brain abscess as a result of the [redacted] MVA stating that the claimant sustained a traumatic brain injury. He found that the claimant was totally disabled from [redacted] to [redacted]. In his [redacted] report, Dr. [redacted] provided a diagnosis of chronic sinusitis noting the history of injury as skull fracture and brain abscess.

The examining physicians have provided a detailed account of the claimant's condition explaining that the claimant was involved in a [redacted] MVA following a seizure and was treated for a fracture of the frontal lobe and subsequently treated for a brain abscess in [redacted] and underwent aspiration surgery on [redacted] after which he underwent treatment for Haemophilus influenza. The examining physicians have not, however, provided a thorough discussion explaining how the diagnosed conditions including the abscess and resulting treatment in [redacted] were causally related to the accepted [redacted] MVA. The Employees' Compensation Appeals Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.⁷

While I do not find that causal relationship is established in the reports of the examining physicians, I do find that the physicians' treatment reports together imply a relationship of the claimant's MVA and the diagnosed sinus fracture and subsequent brain abscess with surgery, sufficient to require further development of the medical evidence on the part of the Office. The treatment reports address the MVA, the claimant's history of seizures, the development of the claimant's condition, and treatment suggesting that the claimant's work accident caused the condition for which he underwent treatment and the surgeries. Given the lack of contrary medical discussion, the reports of Drs. [redacted] and [redacted] represent an uncontroverted inference of causal relationship that is unchallenged in the record. Although the examining physicians' reports are insufficient to discharge the claimant's burden of proving by the weight of the reliable, substantive and probative evidence that the claimed conditions are causally related to the employment, the treatment reports constitute

⁷ C.B., Docket No. 09-2027 (issued May 12, 2010); S.E., Docket No. 08-2214 (issued May 6, 2009).

sufficient evidence in support of the claim to require further development of the record by the Office.⁸ While the medical evidence submitted does not have detailed rationale to support an opinion of causal relationship, it is sufficient to require further development.⁹ The Federal Employees' Compensation Act is not adversarial and the District Office is not a disinterested arbiter. When an uncontroverted inference of causal relationship is raised, the Office has a duty to further investigate the issue.

It is noted that the attorney argued that there was medical evidence addressing a diagnosis of right shoulder tendonitis as a result of the accident. There is not sufficient discussion from Dr.

Dr. _____ or other examining physician regarding the diagnosis and the accepted work accident to consider a work-related right shoulder injury.

Upon return of the case record, the Office should prepare a Statement of Accepted Facts (SOAF) outlining the accepted work events and request that the District Medical Advisor (DMA) review the medical records and provide a medical opinion explaining whether the evidence and the physicians' discussion of the claimant's condition of sinus bone fracture with resulting surgery, subsequent brain abscess diagnosis with resulting surgery, and the infection following the _____ surgery are consistent with the work injury. The DMA should provide a rationalized discussion addressing any conclusion in support of or ruling out causal relationship explaining if the physicians' discussion is sufficient to establish that the diagnosed conditions were a result of the accepted work accident. Following any additional development considered necessary, the Office should issue a *de novo* decision regarding the claim for a work related injury and any entitlement to benefits, if applicable, under the Act.

Consistent with the above, the District Office's March 30, 2017 decision is set aside and the case is **remanded** for further medical development.

Issued:

Washington, D.C.

Electronically Signed
 Rashawnda L. Snell
 Hearing Representative
 for
 Director, Office of
 Workers' Compensation Programs

⁸ *Horace Langhorne*, 29 ECAB 820(1978).

⁹ *William J. Cantrell*, 34 ECAB 1233, (1983).

PAUL FELSER
7393 HODGSON MEMORIAL DRIVE
SUITE 102
SAVANNAH, GA 31406