

File Number:  
Merit Review4-D-RECO

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U.S. DEPARTMENT OF LABOR

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

April 16, 2019

Date of Injury:  
Employee:

Dear

This concerns your compensation case and your request for reconsideration received on January 22, 2019

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 January 24, 2018. 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 separately mailed acceptance letter for a discussion of your rights and responsibilities.

Sincerely,

Division of Federal Employees' Compensation

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

*If you have a disability and are in need of communication assistance (such as alternate formats or sign language interpretation), accommodation(s) and/or modification(s), please contact OWCP.*

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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 01/24/2019.

**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:** You are employed by the \_\_\_\_\_ as a \_\_\_\_\_ in \_\_\_\_\_. On December 8, 2017, you filed an injury claim under the Federal Employees' Compensation Act (FECA) reporting you sustained multiple injuries when you were "attacked & beaten" by your \_\_\_\_\_ on \_\_\_\_\_. The employing agency challenged your claim stating, according to the police report and witnesses, you caused injury to yourself when you initiated the assault on \_\_\_\_\_. The employer added you knowingly violated the Zero Tolerance Policy, resulting in your removal.

In a letter dated December 19, 2017, the Office advised you of the deficiencies in your claim and afforded you 30 days to submit the required evidence. Both factual evidence, in the form of personal and witness statements, and medical evidence were required to establish your claim of injury. In a decision dated January 24, 2018, the claim was denied on the basis of Fact of Injury. The evidence did not support the assault incident occurred as you described.

You secured representation from Attorney, Paul H. Felser. By a letter received on January 22, 2019, reconsideration was requested through your attorney. A copy of the appeal request was forwarded to your employer for comment. After affording them an extension on their response, no formal response was received.

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

- \_\_\_\_\_ investigation report dated November 11, 2017 (includes interview memoranda of multiple witnesses)
- Statement by \_\_\_\_\_ dated February 24, 2018, amending statement provided to sheriff's office
- Handwritten personal statement received on January 22, 2019
- Your statement dated June 2, 2018, re emergency placement and Notice of Removal
- Reconsideration request, authored by Attorney Paul Felser, dated January 22, 2019
- \_\_\_\_\_ letters dated March 8th and 14th, 2019 (requests extension for appeal response)

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- Hospital emergency room records dated November 17, 2017
- M.D. report dated November 17, 2017
- Duty Status Report, Form CA-17, dated November, 2, 2017
- M.D> report dated December 11, 2017
- LPC, CEAP report dated December 28, 2017
- records dated January 9, 2018 through September 5, 2018

The statements on record include varying accounts of the \_\_\_\_\_ with respect to who initiated the assault – you or \_\_\_\_\_. While the January 24, 2018 decision concluded fact of injury was not established because the evidence did not support your version of events, the evidence of record (including multiple first and second hand witnesses) at least establishes an altercation between you and \_\_\_\_\_ did, in fact, occur on the morning of \_\_\_\_\_ on your employers' premises. Therefore, fact of injury is established.

The record does not show this altercation arose out of any personal or non-work related circumstance imported into the workplace. Furthermore, the evidence does not support you intended to cause injury to yourself or another.

**BASIS FOR DECISION:** The evidence is sufficient to vacate the decision dated January 24, 2019 because the record shows you were involved in an altercation with a coworker resulting in minor injuries. Medical records show you sustained a head contusion and a head abrasion as demonstrated by the medical evidence.

**CONCLUSION:** Therefore, the decision dated 01/24/2019 is vacated.

Your case is now accepted for ABRASION OF HEAD and CONTUSION OF HEAD.

Division of Federal Employees' Compensation