

File Number:  
HR10-D-H

U.S. DEPARTMENT OF LABOR

OFFICE OF WORKERS' COMP PROGRAMS  
PO BOX 8300 DISTRICT 50  
LONDON, KY 40742-8300  
Phone: (202) 693-0045

RECEIVED JAN 16 2018

Date of Injury:  
Employee:

Dear Ms.

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 11/21/2017. 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

Betty West-Brock  
Hearing Representative

PAUL FELSER  
FELSER LAW FIRM  
7393 HODGSON MEMORIAL DR  
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 11, 2018

U.S. DEPARTMENT OF LABOR  
Office of Workers' Compensation Programs

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DECISION OF THE HEARING REPRESENTATIVE

*In the matter of the claim for compensation under Title 5, U.S. Code 8101 et. seq. of  
Claimant; Employed by the  
Georgia; Case No. A telephone hearing was held on November 21, 2017.*

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The issue for determination is whether the claimant established that she sustained an injury or medical condition as claimed.

On [redacted] is employed as a [redacted] with the [redacted] she filed a claim for Occupational Disease indicating she sustained an injury or medical condition as a result of her employment. Specifically, she stated that the condition(s) claimed were as a result of her continued work as a [redacted] and specifically in block #13 of the CA-2 she stated "Working on leading edge on light duty due to a fall back in [redacted] Right arm/elbow had sharp pain throbbing going up toward my should [shoulder]/neck an down to numbness and tingling in right hand." Along with the claim, the office received a form SF50 and a position description.

The claimant has additional claims:

Traumatic injury claim [redacted] from date of injury [redacted] for a back condition. This claim was handled administratively for medical care up to \$1500.

Traumatic work injury claim [redacted] from date of injury [redacted] claimed a right elbow injury due to wiping down inside leading edge with chemical solvent. This claim was denied by decision dated July 07, 2016. A reconsideration appeal was requested and a decision dated December 15, 2016 denied modification of the July 07, 2016 decision. Subsequent reconsideration decisions dated March 02, 2017 denied modification of the December 15, 2016 decision. A decision dated May 01, 2017 denied the request for reconsideration dated April 12, 2017.

Traumatic injury claim number [redacted] from date of injury [redacted] was accepted for effusion of joint, right lower leg and later expanded on [redacted] for strain of unsp musc/tend at lower leg level, right leg and other specified enthesopathies of right lower limb, excluding foot. Wage loss compensation for period [redacted] and [redacted] was denied by decision dated November 03, 2015. The claimant stopped work under this claim and has not returned.

By letter dated April 13, 2017 the office advised the claimant of the deficiencies in the claim and provided an opportunity to submit additional evidence. 30 days was allowed to provide the additional evidence.

Washington DC, January 11, 2018.

In response the office received a challenge letter from the agency dated May 08, 2017 challenging the occupational injury as not being factual as she had not supplied any statement to the facts surrounding the claim. They challenged that she was not injured within the performance of duty because the Date of Injury claimed as \_\_\_\_\_ and she was out of work since \_\_\_\_\_ on a separate OWCP case file and lack of medical evidence to support the claimed injuries/conditions.

The office received a letter dated April 12, 2017 from the agency to the claimant's address, confirming her submission of a work related injury claim; incoming copies of what appears to be text messages (7 pages); and incoming statements of conversations that the claimant had with a coworker/ a person that she was asking to send information (12 pages).

On June 28, 2017, the District Office issued a decision denying the claim on the basis that the factual component of the third basic element, Fact of Injury, had not been met. Specifically the case was denied because the evidence was not sufficient to establish that the event(s) occurred as she described. The reason for this finding was that she did not submit a response to the to the April 11, 2017 letter concerning the events that surrounded the claim. They also noted that no medical evidence was received in her case.

The claimant disagreed with the decision and requested a hearing by an OWCP Representative. Accordingly a telephone hearing was scheduled and held on November 21, 2017. The claimant did not attend the hearing but was represented by her attorney, Paul Felser, at the hearing. Mr. Felser advised that claim \_\_\_\_\_ for date of injury \_\_\_\_\_ was intended to be an occupational disease claim rather than a traumatic injury claim. He discussed the claimant's statement dated May 12, 2017 which was received subsequent to the decision on November 21, 2017. Mr. Felser asked that the claim be held open for an additional 30 days to allow for submission of additional evidence. It was noted that she responded to the questions posed in the questionnaire issued by the Office on April 13, 2017. Had she appeared she would have been asked to elaborate on the development of her conditions. Mr. Felser indicated that he would ask her to provide a supplemental statement post-hearing.

The deficiencies in the medical evidence were discussed and the case was held open for 30 days to allow the claimant an opportunity to provide additional evidence to support the claim. A copy of the transcript was sent to the employing agency for review and comment. No comments were received. No supplemental statement was received from the claimant.

A review of the file was undertaken.

In reviewing the file it is noted that there are limited medical documents in file. A document dated \_\_\_\_\_ from Dr. \_\_\_\_\_ reported that she was seen for right elbow pain; cubital tunnel syndrome; ulnar neuropathy (handlebar palsy); carpal tunnel syndrome; and lateral epicondylitis. Examination findings were not reported. This report is of diminished probative value in establishing the claim as a factual and medical history was

not provided, examination and diagnostic findings were not discussed and a causal relationship opinion was not given.

The next medical document received is a [redacted] Admitting Form dated [redacted]. A diagnosis was listed as right cubital and carpal tunnel syndrome. This report is also of diminished probative value in establishing the claim as a factual and medical history was not provided, examination and diagnostic findings were not discussed and a causal relationship opinion was not given.

Subsequent to the decision, the office received examination notes for the [redacted] office visit with Dr. [redacted]. He reported a history that she was a [redacted]-year-old right-hand dominant female who presented for right greater than left bilateral elbow pain and hand numbness and tingling. He stated that she worked as a [redacted] for many years doing repetitive work. She notes for the past several months she's had increasing pain in the lateral aspect of the right elbow and pain over the medial aspect of the right elbow radiating down to the wrist and hand. She also has similar findings on the left side. However, there are not as severe. He stated that she did repetitive work for 16 years at [redacted] and she thinks this is the cause of her symptoms. He noted that she had an EMG which shows bilateral moderate cubital tunnel and bilateral mild carpal tunnel.

He discussed examination findings and recommended that she proceed with right ulnar nerve transposition and right carpal tunnel release. He did not offer an opinion regarding the cause of her diagnosed conditions.

An examination note dated [redacted] from [redacted] MD discussed examination findings for a diagnosis of cervical radiculopathy, cubital tunnel syndrome and cervical disc disease. A one page note dated [redacted] reported that she was being seen for a right shoulder problem and cervical problem. A Nerve Conduction Study report indicated that test was completed on [redacted]. These reports are of diminished probative value in establishing the claim as a factual and medical history was not provided, examination and diagnostic findings were not discussed and a causal relationship opinion was not given.

No additional medical was provided.

A review was also undertaken of file [redacted]. It is noted that documents discussed above were also included in this case file. A more detailed copy of the Nerve Conduction Study Report dated [redacted] was received. In addition, examination notes were provided by Dr. [redacted] dated [redacted] and [redacted]. A document dated [redacted] reported that she underwent right carpal tunnel release on [redacted]. This file is devoid of a rationalized medical opinion addressing the cause of the claimant's condition.

Based on review of the written evidence of record, I find that the decision of the District Office dated June 28, 2017 should be set aside and remanded for further development.

Generally, "fact of injury" consists of two components that must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident or exposure that is alleged to have occurred. The second component is whether the employment incident or exposure caused a person injury and generally can be established only by medical evidence.<sup>1</sup>

In the present claim, subsequent to the decision, the claimant provided a written response to the questions posed by the District Office. There is no indication that the statement was provided to the employing agency as directed by the Office. It is further noted that the claimant did not attend the hearing held on November 21, 2017 to provide further additional factual evidence. However, her attorney was advised that the development of her condition should be discussed. Yet, a supplemental statement was not provided. Of significance is the fact that the claimant has been off work continuously since [redacted] under claim [redacted]. It is unclear from reviewing the evidence of all the files exactly what dates she was off work and not exposed to work factors. There is some indication in file [redacted] that the claimant was off work for a period of time for [redacted] to [redacted]. In addition, the employing agency stated that she was off work since [redacted]. The inconsistencies in work status must be resolved to make an accurate determination concerning the factual component of fact of injury.

Furthermore, the issue of the work status must be resolved prior to making a determination concerning the remaining elements of performance of duty and causal relationship. Concerning performance of duty, the claimant must establish that she was performing work duties when she developed the condition claimed.

Concerning the medical elements of the claim, it is noted that Dr. [redacted] provided medical diagnoses of bilateral moderate cubital tunnel syndrome and bilateral mild carpal tunnel syndrome. While the diagnoses are sufficient to establish the medical component of fact of injury, he did not provide any opinion on the cause of her conditions. In addition, in reviewing the medical evidence of file [redacted], there is no indication that he was aware of her off work status from a different claim. He does not appear to have an accurate factual basis regarding the claim.

Upon return of the case file, the District Office should provide a copy of the claimant's statement dated [redacted] to the employing agency and allow them an opportunity to provide comments. In addition, the Office should request that the employing agency verify the exact dates that the claimant was off work. They should specifically clarify whether she returned to work after claiming disability [redacted] to [redacted]. If yes, they should advise of when she returned to work and when she stopped. A reasonable period of time should be allowed for the agency to respond.

Upon receipt of the agency response and following completion of any additional development the District Office deems necessary, the District Office should issue a *de novo* decision on the claim.

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<sup>1</sup>Elaine Pendleton, 40 ECAB 1143(1989).

Consistent with the above findings, the decision of the District Office dated June 28, 2017 is set aside and the case file is REMANDED for further action as described above.

ISSUED:  
Washington, D.C.

*Electronically Signed*

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Betty West-Brock  
Hearing Representative  
for  
Director, Office of Workers'  
Compensation Programs

PAUL FELSER  
FELSER LAW FIRM  
7393 HODGSON MEMORIAL DR  
SUITE 102  
SAVANNAH, GA 31406