

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

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 11/07/2018. 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 Cleveland 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 9 CLE
LONDON, KY 40742-8300

Sincerely,

Division of Federal Employees' Compensation

PAUL FELSER
ATTORNEY AT LAW
FELSER LAW FIRM PC
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.

Washington DC, January 04, 2019

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; Employed by
Case No. An oral hearing was held by telephone on 11/07/2018.

The issue is whether Mr. _____ suffered a traumatic injury in the course of his employment on April 19, 2018.

_____ born _____ is employed by the _____ as a _____. On April 19, 2018, he was involved in a motor vehicle accident when his _____ struck a stopped vehicle. Mr. _____ filed form CA-721-a, claiming injury. On April 27 and June 12, 2018, the office requested additional information in support of the claim. On July 6, 2018, the Office denied the claim, finding that Mr. _____ was not within the coverage of the Act.

Mr. _____ disagreed with this decision and requested a hearing, which was held on June 6, 2018. He is represented by Paul Felser. At hearing, Mr. Felser argued that Mr. _____ was an employee _____ a fulltime employee attached to _____ under direct supervision and control of them on a daily basis." He noted that documentation would be submitted to confirm this. He argued that, at the time of the accident, he was conducting _____

Review of the file shows that a May 9, 2012 memorandum of understanding between the _____ office and the _____ was signed to outline "the use of _____ designations by certain employees of the _____ Specifically, it was noted that the employees would be designated to enforce _____ but not _____ and that any injury occurring during activities covered by the agreement would be covered by the Act.

A March 27, 2017 letter from _____ names Mr. _____ a member of the _____ unit. A November 20, 2017 form further documented this designation.

April 20, 2018 hospital records from _____ note "Motor Vehicle crash minor...head injury...neck pain." A May 17, 2018 note from Dr. _____ indicates "at approximately 35 mph he ran into the back of another vehicle the airbag did not inflate...concussion...cervical strain, with radiculopathy." There was no discussion of causation. June 11, 2018 MRI of the cervical spine was read to show mild degenerative disc disease at C6-7 with mild left foraminal narrowing and small annular fissure. Following this MRI, on June 12, 2018, _____ FNP indicated an assessment of "unremarkable" MRI and "neck pain."

A July 23, 2018 memorandum "to supervisor and file" noted that "the CE should obtain a copy of the agreement between the local and Federal Agencies" It does not appear that any such action was taken.

Per the DFEC Procedure Manual Chapter 4-200-10,

10. Details Under the Intergovernmental Personnel Act. Non-Federal law enforcement officers are sometimes detailed to Federal law enforcement agencies (such as the Drug Enforcement Agency) on a long-term basis to assist with the enforcement of Federal laws. These assignments are often made under the provisions of the Intergovernmental Personnel Act (IPA) of 1970, P.L. 91-648, 5 U.S.C. 3371 et seq., issued January 5, 1971. The IPA is not, however, always cited in the agreement between the local law enforcement agency and the Federal agency.

a. To determine whether the claimant may be considered a civil employee of the United States, and thus entitled to coverage under section 8101 instead of 8191, the CE should obtain a copy of the agreement between the local and Federal agencies. The following questions must be considered to determine the civil employee status:

- (1) How long has the claimant been assigned to the Federal agency?
- (2) How much of the claimant's time is spent working with the Federal agency, as opposed to the local agency?
- (3) Who pays the claimant's salary? If paid by the local agency, are they reimbursed by the Federal agency?
- (4) Was the claimant issued a Federal agency identification card?
- (5) Who is the claimant's immediate superior, and is this individual a Federal employee?

b. Determination of Coverage.

- (1) If not found to be an employee under section 8101, the claimant may be instructed to file a claim under section 8191, if appropriate.
- (2) If found to be an employee under section 8101, the claimant should be instructed to use Forms CA-1, CA-2, or CA-5 to claim benefits, and the case should be handled in the office with geographical jurisdiction.
- (3) If the claimant is entitled to benefits for the same injury or death under both section 8101 of the FECA and a state or local government, sections 3373(d)(1) and 3374(d) of the IPA require that an election of benefits be made within one year after the injury or death. This election is irrevocable

In the instant case, the Office correctly recognized following its decision that Mr. may be afforded coverage under the Intergovernmental Personnel Act, and the interagency agreement provided would argue that fact. That said, I must find, as the Office did, that further development of this issue, per the July 23, 2018 memorandum, must be undertaken, to ascertain if this is the case. Given this, the Office's July 6, 2018 decision is set aside and the case is **REMANDED** for that development.

That development should include writing to Mr. Gilbert to further develop his post-hearing statement. Specifically, he should be asked if at the time of the incident at issue he was actively engaged in the surveillance of the target who was committing a federal crime at that time. The Office should also provide Mr. Gilbert's 12/11/18 statement to Lt. William Gary and ask that he comment regarding whether he can confirm that Mr. Gilbert was actively engaged in surveillance for the prevention of a federal crime opposed to being on route to the perimeter of the target's house in order to perform surveillance.

After that and any other development as proves necessary, a de novo decision must be issued as to whether Mr. Gilbert is a civil employee and whether an injury has been proven under the Act, taking specific note of PM 4-0200.7c, wherein it must be shown that

The officer was engaged on that occasion in the lawful prevention of, or lawful attempt to prevent, the commission of a crime against the United States.

The prevention must be an active engagement on the part of the officer. It is not sufficient to argue that all law enforcement officers are engaged in crime prevention while on active duty. The crime being prevented must be specific, and the threat of the crime must be actual and imminent.

Issued:
Washington, D.C.

Hearing Representative
for
Director, Office of Workers'
Compensation Programs

