

File Number:
HR13-D-H

RECEIVED APR 15 2019

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 preliminary review was completed on the case. Based upon that review, it has been determined that the decision of the District Office should be reversed as outlined in the attached 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

Division of Federal Employees' Compensation

PAUL H FELSER
ATTORNEY
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, April 08, 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 the Case number*

*Merit consideration of the case file was completed in Washington D.C. Based on this review, the
decision of the District Office dated January 14, 2019 has been reversed for the reasons set forth
below.*

The issue for determination is whether the claimed disability has been established and whether
wage loss for compensation should be paid for dates to

is employed as a with the On
he filed a claim for Traumatic Injury indicating he sustained an injury or medical condition
on which occurred when cutting and clearing brush and trees from the water/canoe
trail. The claim was initially denied by decision dated June 26, 2018 and later accepted in a
reconsideration decision dated October 16, 2018. The claim was accepted for incomplete rotator
cuff tear or rupture of the left shoulder.

On the claimant underwent arthroscopic surgery completed by Dr.
He began physical therapy on

On the office received a Form CA-7 claiming disability compensation for
the period through The form indicated that he returned
to work on A form CA7a indicated that he was off work and returned on
and used 3 hours of wage loss for attending a medical appointment on
An additional form CA7 and CA7a claiming disability for the period
to indicated that he was off work recovering from the
surgery.

In a letters dated November 13, 2018 and November 29, 2018, the claimant was advised of
the deficiencies in the claim and allowed 30 days to arrange for supporting evidence. He was
requested to provide a copy of the operative report.

By decision dated January 14, 2019, the District Office denied the claim for compensation for
period through on the basis that medical evidence was
not provided to establish disability. 3 hours of wage loss was processed for attending physical
therapy on

The claimant disagreed with the decision and his attorney, Paul Fleser requested an oral
hearing by an OWCP representative.

Washington DC, April 08, 2019

In reviewing the file, it is noted that subsequent to the decision, a copy of the operative report was received. In addition, the file includes a letter dated from the employing agency which reported that the claimant had surgery on prior to the acceptance of his injury claim. In the interim he exhausted his sick and annual leave prior to returning to work on . They noted that the off work hours for thru were noted as recovery from surgery. They also advised that starting with he used 8 hours of LWOP (leave without pay) and it was previously submitted as 3 hours. In addition, on he claimed 4 hours of LWOP and received 4 hours coded for 061 Weather.¹ They advised that a total of 95 hours of LWOP was claimed.

While there are limited medical documents in file from the treating physician, the operative report was provided. In addition, a return to work statement dated indicated that the claimant was released to return to work with restrictions.

There is no evidence in file that indicates the claimant was released to return to work after the surgery² and/or that a job assignment was offered to the claimant to accommodate work restrictions prior his return on

20 CFR §10.500 provides the basic rules governing continuing receipt of compensation benefits and return to work.

"(a) Benefits are available only while the effects of a work-related condition continue. Compensation for wage loss due to disability is available only for any periods during which an employee's work-related medical condition prevents him or her from earning the wages earned before the work-related injury. For example, an employee is not entitled to compensation for any wage-loss claimed on a CA-7 to the extent that evidence contemporaneous with the period claimed on a CA-7 establishes that an employee had medical work restrictions in place; that light duty within those work restrictions was available; and that the employee was previously notified in writing that such duty was available. Similarly, an employee receiving continuing periodic payments for disability was not prevented from earning the wages earned before the work-related injury if the evidence establishes that the employing agency had offered, in accordance with OWCP procedures, a temporary light duty assignment within the employee's work restrictions. (The penalty provision of 5 U.S.C. 8106(c)(2) will not be imposed on such assignments under this paragraph.)³

In the present claim, the January 14, 2019 decision was correct based on the information of record at the time it was issued. However, subsequent to the decision the operative report was provided which supported that he had left shoulder arthroscopic surgery on

There is no evidence of his being released to return to work prior to the evaluation.

¹ He was compensated for off work due to Hurricane Michael.

² While there is no current authorization in file for the acceptance of the claim on reconsideration appeal.

³ FECA Part 2-0814 2c.

} surgery, a request was submitted prior to

When a case has been accepted, the claimant is entitled to compensation benefits for disability and medical treatment for the medical condition(s) found to be related to the employment.⁴ Sections 5 U.S.C. 8105 (total disability) and §8106 (partial disability) provide that compensation is payable for wage loss caused by a medical condition found to be related to the employment.⁵

Based on the above, I find that the decision of the District Office dated January 14, 2019 should be reversed. Upon return of the file, the District Office should compensate the claimant for disability claimed for that period.

Note: The Office should ensure that the surgery authorization request is appropriately adjudicated.

Consistent with the above findings, the decision of the District Office dated January 14, 2019 is REVERSED with modification, and the case file returned for further action as described above.

ISSUED:
WASHINGTON, D.C.

Electronically Signed

Betty W.
Hearing Representative
The Branch of Hearings and Review
for
Director, Office of Workers'
Compensation Programs

⁴ FECA Procedure Manual Part 2-0812 2

⁵ FECA Procedure Manual Part 2-0812 a.