

File Number: |  
HR20-D-H

RECEIVED DEC 20 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 Review of the Written Record, the case file was transferred to the Branch of Hearings and Review.

The review was completed on As a result of such review, 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 Philadelphia 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 3 PHI  
LONDON, KY 40742-8300

Sincerely,

Division of Federal Employees' Compensation

FELSER LAW FIRM, P.C.  
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, December 17, 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 No. Examination  
of the written record having been completed in Washington D.C. Based on this review, the  
decision of the District Office is **REMANDED** for the reason set forth below.

---

The issue for determination is whether the claimant sustained an injury as alleged.

The claimant, born , was employed as a police corporal by the Department of the Navy. The claimant filed timely notice of a traumatic injury claim on claiming he was injured on while in the performance of his job duties.

The Office requested the claimant provide additional medical and factual evidence by letter dated . By letter dated the employer advised it appeared the claim should have been filed as an occupational disease claim due to the nature of the injury and enclosed copies of the treatment notes.

By decision dated , the Office rejected the claim finding the factual evidence was not sufficient to establish the claimant sustained an injury as alleged. The basis of the decision was a lack of a response to the questions posed in the development letter concerning the injury and establishing the incident occurred as alleged.

The claimant disagreed with the decision and requested a written review of the record by an OWCP representative. The claimant submitted copies of ongoing medical records and he obtained legal representation by attorney Paul Felser. Mr. Felser submitted a copy of the claimant position description and advised by letter dated additional supporting medical evidence and a factual response would be forthcoming.

A copy of the request letter was sent to the employing agency for review and comment. By letter dated the employer advised the claimant had been terminated during his probationary period and based on the evidence they had received it did not appear the claimant had responded to the development letter and that it appeared the claim should remain denied.

The claimant's response to the development letter was received on along with ongoing medical records.

Based upon the written evidence of record, I find that the decision of the District Office should be vacated and remanded for further development. The case should be converted on an occupational disease claim and developed accordingly.

The claimant has now provided a response to the development letter concerning the development of his left ankle condition and he appears to be claiming an occupational injury. He stated he did not sustain any intervening injuries to his left ankle and did not have prior problems with his left ankle.

By letter dated \_\_\_\_\_ the claimant also submitted a response addressed to his attorney regarding the employer's response. By letter dated \_\_\_\_\_ Attorney Felser provided a letter summarizing the evidence and their legal argument. He argued the medical records did support the claimant had sustained the left ankle conditions as a result of his employment duties. He enclosed a medical narrative report of \_\_\_\_\_ from Dr. \_\_\_\_\_ in the submission. He also argued that in the very least a second opinion was necessary.

Upon return of the case file the claimant's factual responses should be referred to the employer for review and comment in accordance with FECA procedure. The claim should be converted to an occupational disease based on the case records.

One of the essential elements of a claim is that the claimant specify the factors of his employment which he believes have caused an injury.<sup>1</sup>

Proceedings under the Federal Employees' Compensation Act are not adversary in nature, nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence so that justice is done.<sup>2</sup>

After obtaining the agency response along with any other development deemed necessary the Office is directed to issue a *de novo* decision.

The medical evidence includes a narrative report dated \_\_\_\_\_ from \_\_\_\_\_ D.P.M., which provides a detailed history of the claimed work factors, a discussion of the examination findings, a definitive diagnosis and an affirmative medical opinion supporting causation of the condition to the claimed employment factors.

On receipt and review of the employer's response and any other development the Office deems necessary the Office is directed to issue a *de novo* decision.

<sup>1</sup> Gary A. King, 30 ECAB 253, 1978

<sup>2</sup> William J. Cantrell, 34 ECAB 1233, (1983)

Accordingly, the decision of the Office, dated \_\_\_\_\_, is vacated and the case file is **remanded** to the District Office for further development and a *de novo* decision.

Issued  
Washington, D.C.

Hearing Representative  
Branch of Hearings & Review  
For  
Director, Office of  
Workers' Compensation Programs