

File Number:
HR10-D-H

RECEIVED DEC 29 2018

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 _____ 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
Division of Federal Employees' Compensation

PAUL H FELSER
ATTORNEY
FELSER LAW FIRM, P.C.
7393 HOOGSON 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 26, 2018

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 on

The issue for determination is whether the claimant injured his back in the performance of duty on .

The claimant is employed by the as an
On the claimant filed a claim for a traumatic
injury. It is claimed on form CA-1 that on the claimant felt a pinch in his
lower back when disembarking from a government pickup while using the grab bar. In a
statement received on the claimant stated he was getting back in the
government truck, grabbed the grab bar, turned around to make sure the contractor was
securing the cabinet and he turned the wrong way. As he got back in the truck he stated he
really messed up his neck and back.

An MRI of the cervical spine on showed posterior disk disease C5-6, C6-7
and some degree of foraminal encroachment at C6-7.

In a report dated , M.D., stated the claimant's pain began
after a lifting incident on . Cervical radiculopathy was diagnosed.

The claim was denied by decision dated on the basis that fact of injury was not
established.

A telephone hearing was held on . The claimant was not present at the
hearing. Attorney Paul Felser appeared on the claimant's behalf.

Mr. Felser stated the employing agency prepared form CA-1. They did not express any
objection to the incident and did not contest the incident. He further stated the case was
initially a short form closure and \$1500 would not have been paid without a good reason.
Therefore there must be good evidence that the incident was a work related event.

Mr. Felser indicated that Dr. stated in his report dated that the
claimant felt a pop in the back of his neck while lifting himself into his work truck which is
consistent with the statement provided by the claimant. Dr. also stated the injury
was a work accident and his pain began on . Mr. Felser noted this is the
date of the injury. He noted the claimant may not have read the CA-1 carefully and did not
notice the employer stated the injury occurred when he was getting in the truck.

He expressed his opinion that the elements of fact of injury and causal relationship were established but he also requested that the record be left open for the submission of additional evidence. If the medical evidence is deemed insufficient Mr. Felser asserted that a remand was in order as an uncontroverted inference of causal connection was made.

Copies of the hearing transcript were provided both to the employing agency and to Mr. Felser for review and comment. No comments were received. The record was also left open for the submission of additional medical evidence. Medical evidence was received.

In a report dated _____ Dr. _____ diagnosed chronic pain syndrome and cervical radiculopathy. The same diagnoses were provided in his report dated _____

In his report dated _____ Dr. _____ stated the claimant was injured at work on _____ when he got out of his truck and twisted the wrong way injuring his back. He then injured his neck when he turned his head after he lifted himself into the truck.

An employee seeking benefits under FECA has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, including the fact that the individual is an "employee of the United States" within the meaning of FECA and that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.¹ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.²

OWCP defines a traumatic injury as, "[A] condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain which is identifiable as to time and place of occurrence and member or function of the body affected."³ To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. First the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.⁴ Second, the employee must submit sufficient evidence, generally only in the form a medical evidence, to establish that the employment incident caused a personal injury.⁵

To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such a causal relationship.⁶ The opinion of the physician must be based on a complete

¹ *Haggerty*, 45 ECAB 383, 388 (1994)

² *Woodhams*, 41 ECAB 345 (1989)

³ 20 C.F.R. § 10.5(ee)

⁴ *Carlone*, 41 ECAB 354 (1989)

⁵ *J.Z.*, 58 ECAB 529 (2007)

⁶ J.D. Dockte Number 14-936 (issued August 8, 2014)

factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁷

Causal relationship has not been established if the physician does not explain the pathophysiological process by which the employment incident or exposure caused the claimant's medical condition.⁸

The mechanism of injury is unclear. The history of injury provided on form CA-1 is that the injury occurred when the claimant exited his truck. The claimant did not appear at the hearing. Mr. Felser asserted that the claimant may not have realized the employing agency provided the wrong history of injury when they prepared form CA-1. He correctly noted the employing agency did not challenge that an incident occurred. He also noted the history of injury provided by Dr. _____ was consistent with the history of injury provided by the claimant. At the hearing Mr. Felser indicated he would obtain clarification of how the injury occurred from the claimant. He then requested an extension for the claimant to review the transcript and comment. Comments from the claimant still were not received.

Medical evidence was submitted post hearing. In his report dated _____ Dr. _____ stated the claimant was injured at work on _____ when he got out of his truck and twisted the wrong way injuring his back. He then injured his neck when he turned his head after he lifted himself into the truck.

Dr. _____ did not previously state that two injuries occurred. This contradicts Mr. Felser's assertion that the history of injury provided on the form CA-1 was incorrect because the form was prepared by the employing agency and the claimant did not realize it. It is also inconsistent with the claimant's statement that he injured both his neck and back when he got into the vehicle. Had the employing agency challenged the claim the inconsistencies in the evidence would be sufficient to deny the claim. As the employing agency has not challenged that an incident occurred clarification of what occurred is necessary.

The decision dated _____ is vacated. On remand the Office should write to the claimant and his attorney and advise that different histories of injuries have been provided and request that a written statement from the claimant describing how his injury occurred on _____ be submitted. 30 days should be afforded to provide this information.

Any statement submitted by the claimant and any comments submitted by the employing agency should be considered. Then a determination should be made if the evidence establishes that a specific incident or incidents occurred on _____. If the factual

⁷ Mack, 43 ECAB 321 (1991)

⁸ T.D., Docket Number 15-793 (issued June 17, 2015)

aspect of the claim is established the medical evidence should be considered to determine if the medical evidence establishes that the claimant sustained an injury on

After this and any other development deemed necessary a de novo decision on the claim for a traumatic injury on should be issued.

The case is returned to the District Office for actions consistent with this decision.

Issued:
Washington, D.C.

Electronically Signed
Hearing Representative
for
Director, Office of Workers'
Compensation Programs

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ATTORNEY
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SAVANNAH, GA 31406