

File Number:

HR14-D-H

RECEIVED SEP 28 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.

Your case file has been returned to the District Office at:

US DEPARTMENT OF LABOR
OFFICE OF WORKERS' COMP PROGRAMS
PO BOX 8300 DISTRICT 9 CLE
LONDON, KY 40742-8300

If you disagree with the decision attached to this letter, you have the right to submit new evidence to the Office of Workers' Compensation Programs and request reconsideration of the case or, if you have no additional evidence to present to the Office of Workers' Compensation Programs, you may appeal the decision to the Employees' Compensation Appeals Board.

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, September 25, 2019

File Number:
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RECONSIDERATION: If you have additional evidence, not previously considered, which you believe is pertinent, you may request, in writing, the OWCP reconsider this decision. Such a request must be received within one year of the date of the attached decision, clearly state the grounds upon which reconsideration is being requested, and be accompanied by relevant evidence not previously submitted, such as medical reports or affidavits, or a legal argument not previously made. Your request for reconsideration and the new evidence you are submitting should be sent to the

US DEPARTMENT OF LABOR
OFFICE OF WORKERS' COMP PROGRAMS
PO BOX 8300 DISTRICT 9 CLE
LONDON, KY 40742-8300

In order to ensure that you receive an independent evaluation of the evidence, your case will be reconsidered by persons other than those who made this determination.

APPEALS: If you believe that all available evidence has been submitted, you have the right to appeal to the Employees' Compensation Appeals Board (ECAB) (20 C.F.R. 10.625). The ECAB will review only the evidence received prior to the date of this decision (20 C.F.R. Part 501). Effective November 19, 2008, ECAB has changed its Rules of Procedure on the time limit to appeal and has eliminated its practice of allowing one year to file an appeal. **Request for review by the ECAB must be made within 180 calendar days from the date of this decision.** More information on the new Rules is available at www.dol.gov/ecab.

To expedite the processing of your ECAB appeal, you may include a completed copy of the AB 1 form used by ECAB to docket appeals available on the Department of Labor Web Site at www.dol.gov/ecab. You must mail your request to:

**Employees' Compensation Appeals Board
200 Constitution Avenue NW, Room S-5220
Washington, DC 20210**

Washington DC, September 25, 2019

A copy of the hearing transcript was sent to the employing agency for review and comment. No comments were received.

Based upon the written evidence of record, I find that the decision of the District Office should be affirmed in regard to the claim denial under Section 8191 and reversed and remanded as a traumatic claim under 8101. The claim should be created under 8101 and accepted for a cervical strain and concussion.

The claimant has now filed a CA-1, Federal Employee's Notice of a Traumatic Injury Claim and I find he does meet the criteria for establishing coverage as a civil employee under the FECA.

The case contains the interagency agreement and the claimant meets the necessary criteria establishing coverage as a civil employee. The claimant's supervisor with provided a statement dated which explained the claimant was assigned to the Border Enforcement Task Force and was under his direct supervision.

The medical evidence includes the hospital records documenting the claimant was treated following the collision and included a medical narrative report dated signed by M.D., which provides a history of the injury and diagnosis cervical strain and concussion as a result of the accident.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.²

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.³ An award of compensation may not be based on surmise, conjecture, speculation or the claimant's belief of causal relationship.⁴ The claimant must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship.⁵ The mere manifestation of a condition during a period of employment does not raise an inference of causal relationship between the condition and the employment.⁶

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether "fact of injury" has been established. 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

¹ 5 U.S.C. 8101 et seq.

² *Elaine Pendleton*, 40 ECAB 1143 (1989)

³ *Victor J. Woodhams*, 41 ECAB 345 (1989)

⁴ *William Nimitz, Jr.*, 30 ECAB 567 (1970); *Miriam L. Jackson Gholikely*, 5 ECAB 537 (1953)

⁵ *Mary J. Briggs*, 37 ECAB 578, 581 (1986); *Joseph T. Gulla*, 36 ECAB 516 (1985)

⁶ *Edward E. Olson*, 35 ECAB 1099, 1103 (1984)

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.⁷

I find the claimant has submitted sufficient evidence to establish the essential elements of the claim in accordance with FECA procedures.

Upon return of the case record, the Office is directed to create a new injury claim and accept the above noted conditions and pay the appropriate benefits. The claim should also be considered timely for COP purposes based on the timely submission of the CA-721 claim form.

Consistent with the above findings, the decision of the District Office dated [redacted] is hereby **affirmed** and the case file **remanded** and **reversed** for the above noted actions and acceptance of the diagnosed cervical strain and concussion.

Issued
Washington, D.C.

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

⁷ *Elaine Pendleton*, 40 ECAB 1143(1989)