

File Number:
HR10-D-H

U.S. DEPARTMENT OF LABOR

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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 Cleveland District Office. You may contact that office by writing to our Central Mail Room at the following address:

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Sincerely,

Division of Federal Employees' Compensation

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 30, 2020

File Number
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PAUL H FELSER
ATTORNEY AT LAW
FELSER LAW FIRM
QUEENSBOROUGH BANK BUILDING
7393 HODGSON MEMORIAL DRIVE SUITE
102
SAVANNAH, GA 31406

Washington DC, April 30, 2020

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*

The issue for determination is whether the claim should be expanded to include additional medical conditions and whether the evidence establishes entitlement to a schedule award.

The claimant date of birth was employed as a by the
On the claimant filed a claim of occupational
disease, claiming lumbar conditions due to her employment. The office accepted the claim
for exacerbation and permanent aggravation of lumbar disc disease, and cervical herniated
disc. The claimant underwent cervical surgery in She retired from the postal service
in Her claim file was subsequently retired to the Federal Records Center.

In the claimant's attorney, Paul Felser requested a copy of the case file. The claim
was then retrieved from the Federal Records Center.

A medical report dated was received on from
MD. He indicated the claimant was there for a physical examination and
impairment rating. Dr. opined the claimant had ongoing lumbar and cervical
conditions due to her employment. He indicated she had bilateral hip arthritis that likely was
not work related. He opined a combined whole person impairment of 42 percent, including
the cervical and lumbar conditions as well as her hip conditions. Mr. Felser provided a letter
dated requesting that the claim be expanded consistent with the report.
However the office advised the report was not signed and it was unclear what basis there
was for expansion.

A impairment report was then received from Dr. in which he
provided impairment ratings for the cervical and lumbar conditions, bilateral carpal tunnel
syndrome and bilateral hip and knee osteoarthritis. Dr. indicated he believed the
carpal tunnel syndrome was due to employment. He provided no reasoning to explain the
basis of that opinion or how it would be related to the accepted claim. He advised the hip
and knee osteoarthritis were not work related.

On the office received a CA7 form on which the claimant requested a
schedule award.

By addendum report dated [redacted], Dr. [redacted] opined he believed the claimant's carpal tunnel syndrome was work related due to the nature of her work and EMG evidence of the condition in [redacted].

The office ultimately referred the claim to second opinion and referee evaluations. The referee physician, [redacted] MD indicated the claimant did not have evidence of adhesive capsulitis but did have bilateral carpal tunnel syndrome and bilateral knee and hip osteoarthritis. He indicated he didn't believe her conditions were work related but were the result of a disease process. He indicated he was unable to document a work injury.

On [redacted] the office denied expansion of the claim to include bilateral adhesive capsulitis, bilateral carpal tunnel syndrome, bilateral hip arthritis and bilateral knee arthritis. By separate decision of the same date, the office denied the requested schedule award.

The claimant disagreed with the decision and requested an oral hearing before an OWCP representative.

By hearing decision dated [redacted] the claim was remanded for additional medical development. In so doing the hearing representative noted reports from [redacted] MD opining work related conditions of the lumbar and cervical spine as well as arthritis in the shoulders, hips, and knees, carpal tunnel syndrome and epicondylitis. She also noted the attorney's argument that Dr. [redacted] asserted there was no work relationship because there was no traumatic injury. The office was to obtain a supplemental report from the referee physician.

After determining that Dr. [redacted] was no longer available, the office referred the claim to a new referee physician, [redacted] DO. He opined cervical and lumbar conditions were work related but stated the carpal tunnel syndrome, shoulder, hip and knee conditions were not. He opined a 15 percent whole person impairment based on the neck condition. Through request for clarification he ultimately opined 0 percent impairment. The District Medical Advisor, [redacted] MD, opined a zero percent impairment of the upper and lower extremities. In so doing he noted that impairment for the spine was not compensable and there was no evidence of upper and lower extremity impairment due to the accepted conditions.

On [redacted], the office denied expansion of the claim. On [redacted] the office denied a schedule award.

The claimant disagreed with the decision and requested an oral hearing before an OWCP representative.

By hearing decision dated [redacted] the claim was remanded for referral to a new referee physician. In so doing, the hearing representative advised that after multiple attempts to obtain reasoned opinion from Dr. [redacted] he hadn't provided a sufficiently reasoned medical opinion to resolve the conflict in the claim.

By report dated _____, the referee physician, _____ MD opined a 10 percent whole person impairment due to the claimant's cervical condition. He opined the carpal tunnel syndrome was not work related.

On _____ the office denied expansion of the claim. They separately requested clarification from Dr. _____ to include clarification on the claimant's permanent impairment under the 6th Edition of the AMA Guides.

The claim was reviewed by a District Medical Advisor _____, MD who opined in a report dated _____ that Dr. _____ had not provided the evidence required under the 6th Edition of the AMA Guides to establish an impairment. He recommended Dr. _____ be given the opportunity to provide the required evidence.

On _____ the office denied a schedule award.

By hearing decision _____, the claim was remanded for referral to a new referee physician.

By report dated _____, the referee physician, _____, MD, opined there was no medical evidence to confirm a bilateral arthritis of the shoulder nor was it work related. She advised there was no clinical evidence in the case file to document bilateral epicondylitis nor did her physical examination establish it. She advised there no evidence of bilateral cubital tunnel, radial tunnel, or tendinitis of the hands, nor were they established on examination. She advised there was no evidence of a complaint of symptoms of carpal tunnel prior to the claimant's retirement in _____. She advised the claimant did not have thenar atrophy and therefore the claimant did not have a work related carpal tunnel syndrome. She opined the bilateral knee and hip arthritis was genetic and degenerative in origin and not related to the claimant's work. She opined that there was no motor or sensory loss from the cervical and lumbar spine and thus the claimant's impairment in the upper and lower extremities was 0 percent. She indicated medical records appeared to be incomplete and questioned whether she had all the records. She didn't provide any discussion of the records she thought were missing. She also indicated she reviewed prior office directed medical reports to assist in the medical history.

By decision dated _____ the office denied expansion of the claim. By separate decision of the same date the office denied a schedule award.

The claimant disagreed with the decisions and requested an oral hearing before an OWCP representative.

Hearing was held on _____ The claimant was represented Paul Felser. The claimant was not present.

At hearing, Mr. Felser noted that the second opinion evaluation was performed in _____. He indicated subsequent reports had been provided from Dr. _____. He noted Dr. _____ had _____

indicated the records provided her did not appear to be complete or in any logical order. He noted as well that she said she then relied on other office directed reports for evidence. A transcript was provided to the employer and the claimant's attorney. Both were afforded 20 days to respond to the transcript.

In addition, the case record was held open for 30 days in order to allow the claimant time to submit any additional evidence.

~~Based upon a thorough review of the written evidence of record, I find that the decision of the district office dated [redacted] should be set aside and the claim remanded for additional development.~~

It is well settled that proceedings under the FECA are not adversarial in nature, nor is the Office of Workers' Compensation Programs a disinterested arbiter. It has the obligation to see that justice is done. Accordingly, once OWCP undertakes to develop the medical evidence further, it has the responsibility to do so in a proper manner and to obtain an evaluation which will resolve the issue involved in the case.

In the present case, as above, Dr. [redacted] stated unequivocally that the claimant did not have evidence on examination of multiple upper extremity conditions diagnosed by her various physicians, nor was there evidence to establish any other work related condition other than those accepted by the office. She noted there was no evidence of carpal tunnel syndrome symptoms at the time of the claimant's retirement. She opined a 0 percent upper and lower extremity impairment due to the accepted conditions. However she suggested she may not have received all the records as what she had for review appeared to be incomplete. She didn't actually explain what records she thought were missing. However, as noted by Mr. Felser at hearing, referee physicians are to be provided with the entire case record. I thus find that the claim should be remanded for office review on whether Dr. [redacted] was in fact provided with the entire case record. If not, the entire case record should be referred to Dr. [redacted] for further review and an addendum report. Upon completion of that development, along with any other the office deems necessary, the office should issue a de novo decision regarding the claimant's work related medical conditions and entitlement to a schedule award.

Consistent with the above findings, the decisions of the District office dated [redacted] are set aside and the claim remanded for the action above.

ISSUED
WASHINGTON, D.C.

Hearing Representative
For
Director, Office of Workers'
Compensation Programs