

File Number:
HR33-D-H

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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.

Since the enclosed order provides for the reinstatement of compensation for wage loss, you must forward a completed CA7 to the District Office cited below, through your employing agency.

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

Electronically Signed

Division of Federal Employees' Compensation

PAUL H FELSER
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 10, 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 Office's decision of _____ is set aside for the reasons set forth below.

The issue for determination is whether the claimant has a continuing, injury-related disability.

The claimant was employed as a machinist. On _____ the claimant filed a timely Notice of Traumatic Injury and Claim for Compensation, claiming that on _____ he stood up from a chair, sustaining a low back injury. The Office accepted the claim for aggravation of disc displacement at L5, aggravation of L5 radiculopathy, and aggravation of sacrolitis. The claimant stopped work _____ and did not return. He was paid appropriate compensation and placed on the periodic (28-day cyclic) compensation roll.

In a _____ report _____ MD, the claimant's treating physician, opined that the claimant could work part-time with restrictions on account of the accepted injury.

The Office prepared a Statement of Accepted Facts (SOAF) dated _____ that described the _____ work incident and included the accepted conditions as well as a description of the claimant's full duty position. The SOAF did not include any prior work-related injuries.

The Office referred the claimant to _____ MD, a board-certified orthopedic surgeon, for a second opinion medical examination. Dr. _____ examined the claimant, reviewed the SOAF and medical records, and submitted a report dated _____. Dr. _____ noted a prior medical history of non-occupational back pain dating to _____. Dr. _____ opined that the accepted injury had resolved, and that the claimant required work restrictions only on account of chronic back disease unrelated to the _____ work incident.

_____ MD, in an _____ report provided a finding of positive straight-leg raising and diagnoses of lumbar radiculopathy and disc displacement.

A report of CT of the pelvis dated _____ stated an impression of degenerative changes at L4.

On _____ the Office issued a notice of proposed termination of compensation and medical benefits. The Office accorded weight to Dr. _____ opinion. The claimant was advised he could submit additional evidence within 30 days.

In a letter of _____ the claimant's representative, Paul Felser, Esq., argued that the Office erroneously accorded weight to Dr. _____ opinion.

On _____ the Office made final the termination of compensation and medical benefits, effective _____. The Office accorded weight to Dr. _____ opinion. The claimant disagreed with the decision and requested an oral hearing.

I find that the case is not in posture for a hearing. Based upon a review of the evidence of record, I find that the Office's _____ decision should be reversed.

In a letter of _____ counsel argued that Dr. _____ opinion could not be accorded weight because the doctor was not made aware of prior work-related lumbar spine injuries. Counsel argued that as a result Dr. _____ erroneously concluded that chronic back disease was entirely non-occupational. Counsel referred to OWCP claims number _____¹ and _____²

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to his or her employment, the Office may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.³ The opinion of a second opinion medical specialist, if sufficiently rationalized, will support the Office's burden of proof.⁴

The Office should advise a referral (second opinion) physician of a claimant's previous work-related injuries that are pertinent to a current claim.⁵ A SOAF should include prior workers' compensation claims as appropriate.⁶

¹ Date of injury _____, accepted for lumbar disc degeneration, lumbar disc displacement, and lumbar spondylosis. On _____ the claimant underwent authorized lumbar laminectomy and insertion of a spinal cord stimulator.

² Date of injury _____, accepted for lumbar sprain and disc degeneration.

³ *David W. Pickett*, 54 ECAB 272 (2002)

⁴ Federal (FECA) Procedure Manual, Part 2—Claims, *Developing and Evaluating Medical Evidence*, Ch. 2-810-9(i) (September 2010)

⁵ *Gwendolyn Merriweather*, 50 ECAB 411 (1999)

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Dr. opinion cannot be accorded weight. The doctor based his opinion on an incomplete medical record, without consideration of the claimant's prior work-related low back injuries and surgery.

Accordingly, the Office's decision of is hereby REVERSED. As the Office did not meet its burden to terminate compensation and medical benefits, entitlement to such benefits should be restored retroactive to

It is recommended that the Office merge the present file with files and to facilitate cross-referencing of medical records.⁷

The Office may at its discretion conduct additional development in order to determine the nature and extent of injury-related disability.

Issued:
Washington, D.C.

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

⁶ Federal (FECA) Procedure Manual, Part 2—Claims, *Statements of Accepted Facts*, Ch. 2-809-6 (September 2009)

⁷ *J.M.*, Dkt. No. 18-1066, issued July 10, 2019