

File Number:
HR13-D-H

RECEIVED NOV 08 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.

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.

Your case file has been returned to the San Francisco 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 13 SFC
LONDON, KY 40742-8300

Sincerely,

Division of Federal Employees' Compensation

PAUL H FELSER
FELSER LAW FIRM PC
7393 HODGON 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, November 01, 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 claim was completed in Washington D.C. Based on this review, the decision of the district office dated _____ is reversed for the reasons set forth below.

The issue is whether the Office met its burden of proof to terminate medical benefits and wage loss compensation in relation to the accepted _____ traumatic injury, based on the weight of medical evidence of a second opinion examination.

The claimant was employed as a _____ with the _____

_____, when he filed a CA1 Notice of Traumatic Injury form claiming on _____ while doing a search of an aircraft he bent down to look under a first class seat and put his arm on the armrest, and a flight attendant jumped on his back as if riding a horse. The nature of injury claimed involved "right shoulder sore, sharp pain and tingling in hand and fingers". The claimant was placed on modified duty following the incident.

The Office initially accepted the claim for right rotator cuff strain. On _____, the claimant underwent a right shoulder MRI which revealed relatively mild changes of tendinosis of the supraspinatus tendon without attenuation, thickening, or tear, and small glenohumeral joint effusion. The claimant was treated with physical therapy, medications, and injections, without symptom relief. On _____ he underwent a nerve conduction study, which was normal. On _____ the claimant underwent right shoulder arthroscopic debridement of the rotator cuff, acromioplasty with subacromial decompression, partial distal clavicle resection, and insertion of pain pump catheter, performed by orthopedic surgeon, M.D. The claimant returned to modified duties as of _____. He later underwent examination under anesthesia with manipulation of the right shoulder on _____. The Office expanded the claim for the conditions of right shoulder impingement syndrome and right shoulder adhesive capsulitis. The claimant was removed from the _____ based on his inability to perform the regular duties of his position effective _____ and the Office began paying compensation for temporary total disability.

The Office combined two other claims into the instant master claim. Under case _____ the Office accepted a _____ occupational disease claim for chronic sinusitis, cerebrospinal fluid leak (rhinorrhea), other specified disease of white blood cells, meningitis, chronic bronchitis, acute maxillary sinusitis, and lumbosacral neuritis/radiculitis. Under case _____, the Office accepted a _____ occupational disease claim for barotrauma sinus, aero sinusitis (effects of high altitude on sinuses while flying), resolved.

In _____, the Office referred the claimant for vocational rehabilitation services and he began training; however, services were closed effective _____, based on his inability to fully participate due to his sinus condition.

On _____, an MRI right shoulder arthrogram was performed which revealed postsurgical shoulder with mild supraspinatus and infraspinatus tendinosis, no rotator cuff or labral tear, and mild AC joint osteoarthrosis. The claimant remained under the care of Dr. _____ and was seen annually. Dr. _____ reported his residual loss of range of motion and strength deficit were directly related to his work condition and injury. Dr. _____ continued to recommend permanent light duty, limited overhead activities, limited pushing or pulling, and no lifting over twenty pounds. The claimant remained off work and in receipt of wage loss compensation.

Most recently, on _____ the Office referred the claimant for a current second opinion examination with Board-certified orthopedic surgeon, _____ M.D. The record reflected Dr. _____ had previously seen the claimant for a second opinion examination on _____. Dr. _____ was provided with the Statement of Accepted Facts (SOAF) on file and the pertinent medical records for review. Dr. _____ was requested to provide a description of any injury-related factors of disability, including objective findings and subjective complaints; prognosis and recommendations for future medical treatment; periods of total disability due to the work-related condition; a description of the claimant's physical limitations resulting from the work related disability, as well as any restrictions attributable to pre-existing conditions; an assessment of the potential for vocational rehabilitation and re-employment in the future; and whether the claimant continued to suffer residuals of the injury. Dr. _____ was advised that the SOAF must be used as the only factual framework for medical opinions rendered.

In his narrative report, Dr. _____ provided the claimant's history and outlined the ongoing complaints involving his medical conditions. Dr. _____ also described the physical findings on examination and his review of the interval medical record. Dr. _____ advised that he maintained the impressions and opinions from his initial _____ exam, specifically, that it was more likely than not this episode did not result in an injury to the right shoulder or may have caused a brief temporary aggravation of preexisting degenerative changes, which would have ceased by _____. Dr. _____ discussed the initial medical records from _____ and how the findings were not reflective of a traumatic injury causing years of disabling pain and the necessity for surgery. Dr. _____ indicated the diagnostic testing or the findings at the time of surgery would have no relationship to the _____ injury. He stated there were degenerative changes that he had developed independently of this claim, given a prior right shoulder surgery in approximately _____ and since there was no evidence of an injury of any significance. Dr. _____ advised that his examination of the claimant on _____ would not reflect the claimed injury, and opined it was more likely than not the claimant was experiencing the residuals of his prior surgery, as there was no finding of a valid objective-based mechanism of injury for _____.

Dr. _____ further advised there was no evidence of a right shoulder injury that was any more than possibly a mild strain, with questionable evidence of an adult female climbing onto his back for fun while he was bending down under a seat in the course of his job as an _____. Dr. _____ stated the MMI date for the claimant's right shoulder pain was _____, and there was only a relatively mild self-limiting soft tissue strain occurring or _____ from _____, which he had fully recovered and required no further treatment or restrictions or modifications of his work based on the right shoulder claim of _____. Dr. _____ noted there had _____.

been no need for temporary total disability referable to this claim, and his physical limitations resulting from the work-related disability would not be valid. It was noted the claimant did not appear to be employable based on his other chronic conditions. Dr. reiterated the claimed right shoulder injury, which appeared not to have been an injury, except for the possibility of a mild soft tissue strain of the right shoulder, had since resolved by

On , the Office issued a "Notice of Proposed Termination" of medical benefits and wage loss compensation, based on the weight of medical evidence of the second opinion specialist, Dr. , finding the claimant no longer had any residuals or continuing disability stemming from the work injury. correspondence from the claimant's attorney outlining their contentions to the proposal and the second opinion report was submitted in response. Medical reports related to the claimant's other conditions were also received, documenting he could not return to work without restrictions.

By decision dated , the Office made its proposal final and terminated medical benefits and wage loss compensation effective . The claimant disagreed with this decision and by letter dated requested an oral hearing.

Based on my preliminary review of the evidence of record, the decision should be reversed for the reasons set forth below.

Once the Office accepts a claim, it has the burden of justifying a termination or modification of compensation benefits.¹ The Office may not terminate or modify compensation without establishing that the disabling condition ceased or that it was no longer related to the employment.² The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, the Office must establish that a claimant no longer has residuals of an employment-related condition that require further medical treatment.³

In assessing medical evidence, the number of physicians supporting one position or another is not controlling; the weight of such evidence is determined by its reliability, its probative value and its convincing quality. The factors that comprise the evaluation of medical evidence include the opportunity for and the thoroughness of, physical examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.⁴

In the instant case, the Office did not meet its burden of proof to justify termination of medical benefits and wage loss compensation causally related to the accepted traumatic injury, based on the weight of the second opinion report of Dr. In his report, Dr. clearly did not use the SOAF as a framework as he questioned whether there actually was an injury and if so, only considered that a mild soft tissue strain or a brief temporary aggravation of degenerative changes may have occurred. However, the Office also accepted impingement syndrome and adhesive capsulitis of the right shoulder as injury-related conditions, and authorized the right shoulder surgeries performed on and

¹ *LaDonna M. Andrews*, 55 ECAB ___ (Docket No. 03-1573, issued January 30, 2004)

² *Jaja K. Asaramo*, 55 ECAB ___ (Docket No. 03-1327, issued January 5, 2004)

³ *T.P.*, 58 ECAB ___ (Docket No. 07-60, issued May 10, 2007).

⁴ *Connie Johns*, 44 ECAB 560, 570 (1993).

Based on the belief that there was no objective injury in [redacted] or that it was just a mild soft tissue injury, Dr. [redacted] also concluded that the claimant's residuals were more likely related to a prior surgery and preexisting degeneration, although no medical records were available from prior to [redacted] for Dr. [redacted] to assess the claimant's right shoulder baseline prior to the work injury. When the DMA, second opinion specialist or referee physician renders a medical opinion based on a Statement of Accepted Facts which is incomplete or inaccurate or does not use the SOAF as a framework in forming his or her opinion, the probative value of the opinion is seriously diminished or negated altogether.⁵

Further, the Office cannot interpret the medical evidence in order to conclude the injury-related residuals had resolved, when Dr. [redacted] questioned whether an injury actually occurred and did not accept that any other conditions or surgeries were causally related to the [redacted] work injury. Procedurally, the Board has held that it is a denial of administrative due process for the Office to terminate compensation benefits on the grounds that a claimant no longer has residuals of an accepted condition, where the record supports that the reason for the Office's action was that the condition was not causally related to the claimant's employment and should not have been accepted as such. The Office must inform claimants correctly and accurately of the grounds on which a decision rests, so as to afford them an opportunity to meet, if they can, any defect appearing therein.⁶

For these reasons, Dr. [redacted] medical opinions are not found to be based on a proper framework and his second opinion report would not carry the weight of medical evidence to support a termination of medical benefits and/or wage loss compensation in this case.

When OWCP refers a claimant for a second opinion evaluation and the report does not adequately address the relevant issues, it should secure an appropriate report on the relevant issues.⁷

Accordingly, the [redacted] decision is hereby reversed, and the case is returned to the district office for reinstatement of entitlement to medical and wage loss benefits retroactive to the date of termination.

ISSUED:

WASHINGTON, D.C.

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

⁵ FECA Procedure Manual, 3-0600-3.

⁶ *Sylena Wilkes*, Docket No. 05-1402 (issued June 2, 2006).

⁷ *Robert Kirby*, 51 ECAB 474, 476 (2000); *Mae Z. Hackett*, 34 ECAB 1421 (1983).