

File Number:
HR11-D-H

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U.S. DEPARTMENT OF LABOR

OWCP/DFEC, PO BOX 34090
SAN ANTONIO, TX 78265
Phone: (202) 693-0045

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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 preliminary review has been completed, and it has been determined that the case is not in posture for a hearing at this time. The decision of the District Office has been vacated and returned to the district office for further action as explained in the attached Remand Order.

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
OWCP/DFEC, PO BOX 34090
SAN ANTONIO, TX 78265

Sincerely,

Division of Federal Employees' Compensation

PAUL FELSER
FELSER LAW FIRM
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, July 06, 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
Case No.

Merit Consideration of the case file was completed in Washington, D.C. Based on this review, the
decision of the District Office is set aside for the reasons set forth below.

The issue is whether the recommended mid-foot surgery is medically indicated for the accepted
condition(s).

The District Office accepted that the claimant, _____, born _____ was
injured in the performance of her _____ duties on _____
when she tripped over a tub. The Office accepted the claim for left plantar fascial fibromatosis, left
leg posterior tibial tendinitis, lumbar back strain, and bilateral ankle contusions; the claimant
underwent right ankle surgery in _____, right foot hardware removal in _____, and
left tendon debridement and ankle ligament repair surgery in _____

In a _____ decision, the Office denied the claim for repair foot dislocation.

In an _____ decision, the Office denied the claim for calf tendon revision and heel bone
incision stating that the procedures were not medically indicated for the accepted condition(s). On
_____ Dr. _____ performed posterior tibial tendon reconstruction and spring
ligament repair, left foot and ankle.

On appeal before the Branch of Hearings and Review (BHR), the Hearing Representative, in a
_____ decision, directed the Office to request the District Medical Advisor (DMA) to
clarify the conditions that should be accepted as a result of the work accident and clarify whether the
FDL tendon transfer with repair of the spring ligament and gastrocnemius recession surgery was
medically necessary for the accepted work conditions.

In a _____ letter decision, the Office accepted the claim for right leg posterior tibial
tendinitis.

In a _____ report, the DMA discussed the medical records and explained that the
recommended procedures of posterior tibial tendon debridement and repair (28899), FDL transfer
(27691), spring ligament repair (27698) and gastroc lengthening (27687) were medically indicated for
the accepted condition(s).

In a _____ letter, the Office detailed the actions taken in response to the
decision explaining that the accepted conditions were upgraded and the case was referred to the
DMA for review. In letters dated _____ the Office's authorization service advised that the
claim was approved for lower leg tendon revision (27691), foot/toes surgery (28899), ankle ligament
repair (27698), and left calf tendon revision (27687).

In his report, Dr. continued to hold the claimant out of work indicating that she was continuing to undergo physical therapy.

In a second opinion evaluation report, Dr. , a board certified orthopedic specialist, discussed his review of the medical records, outlined his examination findings and concluded that the claimant's accepted lumbar strain, bilateral ankle contusion and *right* posterior tibial tendinosis had resolved but opined that the claimant continued to have residuals of the accepted *left* posterior tibial tendon. Dr. discussed the claimant's ability to work noting her limitations of minimal ambulating and being on her feet. He opined that no additional treatment of the ankle was necessary, that no further surgery of the tendon was necessary but stated that the claimant may benefit from a fusion of the mid-foot. Dr. stated that further medical treatment was not needed nor would a work hardening be beneficial explaining that she would continue to have problems with her foot secondary to her weight.

In his report, Dr. discussed the claimant's condition and her ability to work. In a (second) report, Dr. discussed Dr. assessment and explained that arthrodesis of the talonavicular joint would benefit the claimant's condition contrary to Dr. conclusions that no further treatment was necessary. Various medical records were received including right and left foot MRI reports. In his report, Dr. reiterated his recommendation for the talonavicular joint fusion left, noting that the bone graft had already been approved.

In a decision, the Office denied the claim for fusion of the foot bones explaining that the procedure was not within the treatment suite for the accepted conditions. The claimant disagreed with the decision and through her attorney requested a hearing with an OWCP Representative.

I find that further medical development of the evidence is necessary.

Section 8103(a) of FECA states in pertinent part: "The United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances, and supplies prescribed or recommended by a qualified physician, which the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of the monthly compensation."¹ The Board has found that OWCP has great discretion in determining whether a particular type of treatment is likely to cure or give relief.² The only limitation on the OWCP's authority is that of reasonableness.³ Abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from established facts. It is not enough to merely show that the evidence could be construed so as to produce a contrary factual conclusion.⁴

In order for a surgical procedure to be authorized, a claimant must submit evidence to show that the surgery is for a condition causally related to an employment injury and that it is medically warranted. Both of these criteria must be met in order for OWCP to authorize payment.⁵

¹ 5 U.S.C. § 8103(a).

² *Vicky C. Randall*, 51 ECAB 357 (2000).

³ *Lecil E. Stevens*, 49 ECAB 673, 675 (1998).

⁴ *Rosa Lee Jones*, 36 ECAB 679 (1985).

⁵ *R.C.*, 58 ECAB 238 (2006).

In the present case, Dr. _____ as the treating surgeon, provided a well-discussed report addressing the claimant's condition and need for the recommended surgery as a result of the accepted conditions and related conditions arising from work injuries. Dr. _____ explained what the impact would be on the claimant's condition. While Dr. _____, as the second opinion evaluator, indicated that additional treatment was not needed due to the nature of the claimant's condition, he did state that fusion was an option for the claimant.

Upon return of the case record, the Office should refer the medical records back to Dr. _____ for a supplemental report addressing the request fusion surgery as discussed in Dr. _____ and _____ reports. The Office should request that Dr. _____ provide a discussion explaining whether the evidence supports the need for surgery noting his comments that mid-foot fusion surgery was an option. Dr. _____ should provide supportive rationale explaining his opinion in support of or ruling out the procedure discussing any discrepancies with Dr. _____ evaluation. Following any further development considered necessary, the Office should provide the claimant with a new decision regarding the proposed talonavicular joint fusion surgery.

Consistent with the above, the District Office's _____ decision is set aside and the case is **remanded** for further medical development and a *de novo* decision.

Issued:
Washington, D.C.

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