

U.S. DEPARTMENT OF LABOR

DFELHWC-FECA, PO Box 8311  
LONDON, KY 40742-8311  
Phone: (202) 513-6860

Want Faster Service?  
Upload a document at [ecomp.dol.gov](https://ecomp.dol.gov)

October 22, 2020  
October 22, 2020

Date of Injury:  
Employee:

This concerns your compensation case and your request for reconsideration received on

We have evaluated the evidence submitted and have reviewed the merits of your case under 5 U.S.C. 8128. You have provided sufficient evidence to warrant modification of the decision dated [redacted].  
Based on the information received, the decision is now vacated.

The reasons for this decision are outlined in the enclosed Notice of Decision. Please see the enclosed acceptance letter for a discussion of your rights and responsibilities.

Sincerely,

Federal Employees Program

PAUL H FELSEK  
ATTORNEY  
7393 HODGSON MEMORIAL DR  
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.*

File Number:  
Merit Review4-D-RECO

**NOTICE OF DECISION**

**Claimant Name:**  
**Case Number:**

**ISSUE:**

The issue for determination is whether the evidence presented is of sufficient probative value to vacate the decision dated

**REQUIREMENTS FOR ENTITLEMENT:**

In accordance with the regulations set forth in 20 CFR § 10.609, if an application for reconsideration is accompanied by new and relevant evidence or by an arguable case for error, OWCP will conduct a merit review of the case to determine whether the prior decision should be modified. If sufficient evidence exists to overturn the prior decision, it should be vacated.

**BACKGROUND:**

You are employed as ; with the !

On you filed a claim for Occupational Disease indicating you sustained an injury or medical condition on as a result of your employment. Specifically, you stated that you developed a biotoxin illness, chronic Inflammatory Response syndrome (CIRS), due to exposure in the water damaged Postal building. You stated that you first became aware of the condition and realized that it was due to or aggravated by your employment on or around

Evidence received in support of your claim includes the following:

- CIRS overview, diagnoses of treatment memorandum
- 2 Memorandums from USPS Challenging claim dated
- Indoor Air Quality Mold Observation Report dated
- Medical Evidence from Dr. which is undated but received on
- Statement from you which is also undated but received or

On this office advised you of the deficiencies in your claim and provided you the opportunity to submit additional evidence. You were provided 30 days to submit the requested information.

In response to our development letter, we received the following evidence:

- Memorandum Copy Request & Authorization of appointing from Attorney Felser dated
- CA-17 Duty Status Report dated
- Medical Memorandum from Dr. not dated received
- Attachment 1 Indoor Air Quality and Mold Observation Report dated report no air quality issues or mold issues.
- Position Description and letter from dated
- Memorandum Challenging Claim from Post Master
- 24 Photos not dated received and 1 received and letter dated

File Number:  
Merit Review4-D-RECO

- Memorandum from [redacted] dated [redacted]
- Memorandum from [redacted] dated [redacted]
- Memorandum from [redacted] dated [redacted]
- Memorandum from Attorney Felser dated ( [redacted] ) requesting extension until [redacted] which was granted.
- Memorandum from you dated ( [redacted] ) and [redacted]

On [redacted] a formal decision was issued in our case finding the evidence is not sufficient to establish that the event(s) occurred as you described. The reason for this finding is that you are claiming exposure to water damaged building causing CIRS, however, based on all the documentation received to date including the Indoor Air Quality and Mold Observation Report dated [redacted] report no air quality issues or mold issues, there are no evidence to support your exposure.

You disagreed with the [redacted] decision and requested a hearing with the Branch of Hearings and Review. You submitted the following evidence in support of your hearing request:

- Witness statement from [redacted] dated [redacted]
- Requisition for ceiling tiles purchase and a picture of area damage dated [redacted]
- two-page statement dated [redacted]
- Dr. [redacted] report, [redacted]
- Witness statements from [redacted] dated [redacted] and [redacted]
- Environmental inspection report dated [redacted] regarding a [redacted] microbial inspection and fungal air samples collection of the you condominium.

On [redacted] a telephonic hearing was held between your attorney and the hearing representative. By decision dated [redacted] the Hearing Representative found that while it was argued that the presence of mold could not be discounted based on an observation only, you did not provided evidence to establish the presence of such to question the results of the agency's inspection report. The reason for this decision was the evidence was insufficient to establish a water-damaged building as claimed to further consider an exposure to such in the workplace as argued and addressed in Dr. [redacted] report.

You disagreed with the [redacted] hearing decision and requested reconsideration by letter/appeal request form received on [redacted] You submitted the following evidence in support of your request for reconsideration:

- attorney's argument that the indoor air quality and mold observation report was incomplete,
- Report from [redacted] dated [redacted]
- Photo Documentation of the work site,
- Medical report from [redacted] dated [redacted]
- Letter to Mr. Felser dated [redacted] from Dr. [redacted]
- Statement from [redacted] dated [redacted]
- Witness Statement from [redacted] dated [redacted]

File Number:  
Merit Review4-D-RECO

On a formal decision was issued in your case finding the evidence is sufficient to modify the decision dated from a denial based on one of the 5 basic elements for FECA coverage to a denial based on another basic element. Specifically, the factual evidence of record is sufficient to establish that you were exposed to a building that was exposed to leaks and water damages. The witnesses provided statements concurring about the water damage over the years prior to and after the hurricane in 2016. The evidence does not provide that you were exposed to mold or any other bio toxins however the evidence does provide that the building had issues with standing water and damaged ceiling tiles which is sufficient to establish fact of injury factual.

The decision also found that Dr. noted that she evaluated you on and prior to your appointment she reviewed your prior medical history. Your respiratory condition is considered pre-existing since you had a similar problem to your respiratory system prior to filing your claim. Causal relationship requires additional evidence when a medical condition is pre-existing or to the same part of the body.

You disagreed with the decision and requested reconsideration by letter/appeal request form received on You submitted the following evidence in support of your request for reconsideration: handwritten note dated from St. Johns Express Care; Emergency room note dated by Dr. operation report dated from Dr. medical note dated by Dr. CT scan dated right ankle MRI dated handwritten note dated by Dr. operation report dated by Dr. medical note dated by Dr. neck CT scan dated medical note dated by Dr report dated by Dr. ; gynecology note dated by Dr. medical note dated by ARNP; operation report dated by Dr. medical note dated from Dr. cervical spine MRI dated right ankle MRI dated ; medical note dated from Dr. ; CT scan dated medical note dated and from Dr. ; operation report dated lab test results dated medical note dated and by Dr. letter dated by Dr. MRI study dated ; laboratory tests on ; medical note dated from Dr. nasal culture dated

Thus, in accordance with 20 CFR § 10.609(a,) a copy of your application for reconsideration was forwarded to your employing agency via letter dated In the letter, your agency was advised that while they were being notified of your application for reconsideration, the pending issue is of a medical nature, and thus, the Office would proceed with a merit review of the decision issued on

#### DISCUSSION OF EVIDENCE:

In the handwritten note dated from St. Johns Express Care, however the physician is illegible. You were seen for a status post rhinoplasty and had symptoms of sinus pressure and cough and diagnosed with sinusitis.

File Number:  
Merit Review4-D-RECO

The emergency room note dated [redacted] from Dr. [redacted] was an evaluation for chest pain however the chest x-ray showed no acute process and lab results were essentially normal. You were diagnosed with pleurisy and given medications.

The operation report dated [redacted] from Dr. [redacted] was for removal of a right foot cyst.

The medical note dated [redacted] from Dr. [redacted] was an evaluation for sore throat as you reported a history of cyclic vomiting and has been hospitalized in the past. Upon examination you were found to have normal upper airway, normal mucosa and vocal cords with good mobility, no masses or ulcerations and were diagnosed with laryngeal pharyngeal reflux. It was recommended you take over the counter medication and a neck CT scan was ordered.

The neck CT scan dated [redacted] was unremarkable as no mass or adenopathy however an aberrant right subclavian artery was noted.

Right ankle MRI dated [redacted] was unremarkable.

The handwritten note dated [redacted] from Dr. [redacted] diagnoses you with GERD, dysphasia, and hoarseness.

The operation report dated [redacted] from Dr. [redacted] was diagnostic laparoscopy for endometriosis.

In the note date [redacted] from Dr. [redacted] you were seen for right sided cervical lymph node enlargement and a neck CT scan was ordered.

The neck CT scan dated [redacted] showed a nonspecific jugular chain and posterior triangle lymph nodes seen on previous scan.

The medical note date [redacted] from Dr. [redacted] was a follow-up for the swollen right sided lymph node as you continued to have neck pain and tenderness. You were diagnosed with pharyngitis, GERD, dysphasia, and cervical Lymphadenopathy.

The operation report [redacted] from Dr [redacted] was removal of the bilateral great toenails due to ingrown toenails and onychomycosis.

The gynecology note dated [redacted] by Dr. [redacted] diagnosed you with endometriosis.

The medical note dated [redacted] ARNP had the assessment of urinary tract infection.

The operation report date [redacted] from Dr. [redacted] was a Nissen fundoplication for gastroesophageal reflux disease.

The medical note dated [redacted] from Dr. [redacted] was an evaluation for continued right sided sore throat and neck pain as you were admitted to the hospital due to pain with swallowing and turning of your neck. Upon physical examination you were found to have

File Number:  
Merit Review4-D-RECO

a small, lymph node was palpated on the right side of the neck and were diagnosed with throat pain and right upper neck pain.

The cervical spine MRI dated \_\_\_\_\_ showed loss of lordosis. There was early degenerative change and asymmetric disc bulge at the level of C6/C7.

A right ankle MRI dated \_\_\_\_\_ showed a ganglion cyst adjacent to the lateral aspect of the talonavicular joint.

The medical note dated \_\_\_\_\_ from Dr. \_\_\_\_\_ was an evaluation for postnasal drip, throat clearing with nasal congestion and nasal/ocular itching. Dr. \_\_\_\_\_ notes that you felt your symptoms may be related to dust and mold you were exposed to while handling various packages at the post office. However you also report symptoms with outdoor exposures and possibly with you dog and your symptoms progress to a sinus infection for which you have received multiple courses of antibiotics and steroids. Dr. \_\_\_\_\_ notes that an intradermal allergy test was positive for hickory pecan tree, grasses, weeds and mold. You were diagnosed with chronic allergic conjunctivitis, allergic rhinitis unspecified and allergic rhinitis to the pollen.

The CT scan dated \_\_\_\_\_ showed suggestion of nasal polyposis, greater in the right maxillary region and patchy acute on chronic sinusitis.

The medical note dated \_\_\_\_\_ from, Dr. \_\_\_\_\_ was an evaluation for polyps and diagnosed you with chronic sinusitis, deviated nasal septum, hypertrophy of nasal turbinates and laryngeal pharyngeal reflux.

The operation report dated \_\_\_\_\_ by Dr. \_\_\_\_\_ notes you underwent septoplasty, bilateral turbinate reduction, bilateral maxillary antrostomy with tissue removal, bilateral total ethmoidectomy, lateral frontal sinusotomy and bilateral repair of nasal vestibular stenosis.

The medical note dated \_\_\_\_\_ from Dr. \_\_\_\_\_ was a follow-up for endoscopic sinus surgery.

The lab test results dated \_\_\_\_\_ was positive for human transforming growth factor. The results are intended for research purposes or an attempt to understand the pathophysiology of unusual immune or inflammatory disorders.

The lab results dated \_\_\_\_\_ were positive for Epstein-Barr virus viral capsid and nuclear antibodies. The results were suggestive of a past Epstein-Barr virus infection.

The medical note dated \_\_\_\_\_ by Dr. \_\_\_\_\_ you were diagnosed with hypothalamic dysfunction, Epstein-Barr virus disease, noninfectious systemic inflammatory response syndrome, chronic fatigue syndrome, perimenopausal, and gastrointestinal/digestive disorder.

The lab results dated \_\_\_\_\_ showed a nominal human transforming growth factor. CBC, CMP, and thyroid levels were normal.

File Number:  
Merit Review4-D-RECO

The letter dated \_\_\_\_\_ by Dr. \_\_\_\_\_ stated you worked at the \_\_\_\_\_ and in \_\_\_\_\_ water leaks and musty smell in that building was becoming apparent. Dr. \_\_\_\_\_ notes that you started experience symptoms associated with illness in 2009. The symptoms would get worse at work. Dr. \_\_\_\_\_ diagnoses you with chronic inflammatory response syndrome and opines that it occurs after exposure to biotoxin-producing microorganisms, biotoxin's and inflammagens commonly found in water damaged buildings. Dr. \_\_\_\_\_ notes that you needed to continue avoidance of exposure to water damaged buildings.

The TMJ MRI study dated \_\_\_\_\_ showed degenerative increased signal intensity of the right and left TMJ discs. There was anterior displacement of the right TMJ joint disc on closed valve images with production noted on open-mouth images.

A laboratory tests on \_\_\_\_\_. The test was for perimenopausal hormone evaluation. Results and comments were for information purposes only and are not to be construed as medical advice.

The medical note dated \_\_\_\_\_ from Dr. \_\_\_\_\_ diagnosed you with chronic fatigue syndrome, myalgia, chronic inflammatory response syndrome, anxiety/depression, insomnia, perimenopausal, cognitive decline, gastrointestinal and digestive disorder, HPA axis dysfunction, and chronic sinusitis.

The nasal culture dated \_\_\_\_\_ was positive for MARCoNs, MARCoNs is a multi-antibiotic resistant coagulative negative staph aureus bacterium that is common in biotoxin illness.

The letter dated \_\_\_\_\_ by Dr. T \_\_\_\_\_ was a response to the Department of Labor letter dated \_\_\_\_\_ addressed to you. Dr. \_\_\_\_\_ felt you symptoms were due to her prolonged exposure to the water leaks and musty smells at the post office building where you worked. Prior to you work at the post office you had no symptoms or so called "pre-existing condition".

In order to further medically manage your claim this office referred you to a second opinion in order to determine whether you claimed work exposure caused or contributed to your diagnosed condition. On \_\_\_\_\_ you were seen by Dr. \_\_\_\_\_ for a second opinion evaluation. In report dated \_\_\_\_\_ Dr. \_\_\_\_\_ provides an accurate history of your work exposure and review of the medical evidence in your case. Dr. \_\_\_\_\_ notes that your postnasal drainage is better, you have some shortness of breath and cough but no fever, and you report fatigue and sleep about 6 hours and take a daytime nap for about 2 hours, you report headaches 3-4 times per week and normally wears a mouth guard for TMJ but did not wear it today for communication purposes and currently have a UTI/bladder issue and are following a dairy and gluten free diet and spends significant time in food preparation. Upon physical examination you were found to have no sinusitis was detected, the nares had no swelling, erythema, or discharge.

Dr. \_\_\_\_\_ opines that you have the diagnoses of chronic sinusitis and chronic allergic rhinitis as evidenced by the intradennal allergy test dated \_\_\_\_\_ and the sinus CT scan dated \_\_\_\_\_. Dr. \_\_\_\_\_ further opines that you have an underlying susceptibility to environmental allergens based on the skin test dated \_\_\_\_\_ and have been working at a facility since \_\_\_\_\_ which has had water leaks and water damaged ceiling tiles and your regular and prolonged exposure to a workplace

File Number: \_\_\_\_\_  
Merit Review 4-D-RECO

environment known to have water leaks and water damage would be the etiology of your claimed condition. Dr. \_\_\_\_\_ further opines that the factors of employment aggravated your sensitivity to environmental allergens however it is unknown if the aggravation is temporary or permanent.

**BASIS FOR DECISION:**

The evidence is sufficient to vacate the decision dated \_\_\_\_\_ because Dr. \_\_\_\_\_ has provided a clear and rationalized medical opinion that your claimed work factors contributed to your diagnosed conditions.

**CONCLUSION:**

Therefore, the decision dated \_\_\_\_\_ is vacated. Your case is now accepted for aggravation of chronic sinusitis and aggravation of chronic rhinitis.

Federal Employees Program