

RECEIVED FEB 18 2020

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 hearing was held on [redacted]. Enclosed you will find a copy of the transcript of that hearing. Beginning on page five of the transcript you will find my summary decision which determined that the [redacted] decision issued by the district office should be vacated and the case remanded to the district office for further action.

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

Sincerely,

Division of Federal Employees' Compensation

PAUL FELSER
FELSER LAW FIRM
7393 HODGSON MEMORIAL
SUITE 102
SAVANNAH, GA 31406

Washington DC, February 14, 2020

1 UNITED STATES DEPARTMENT OF LABOR
2
3 OFFICE OF WORKERS' COMPENSATION PROGRAMS
4
5 FEDERAL EMPLOYEES' COMPENSATION ACT
6

7 File No.
8

9 Claimant:
10
11

12
13 Representative: Paul Felser, Esquire
14 7393 Hodgson Memorial Drive
15 Suite 102
16 Savannah, GA 31406
17

18 Employed by:
19
20
21
22
23
24
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27 ***

28 TRANSCRIPT OF PROCEEDINGS
29
30

31 HEARING REP:
32

33 DATE:
34

35 PLACE: Telephonic Hearing
36

37 TIME: 11:21 a.m.
38

39 REPORTED BY:

York Stenographic Services

York Stenographic Services, Inc.
34 North George St., York, PA 17401 - (717) 854-0077

Washington DC, February 14, 2020

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INDEX TO WITNESSES

Hearing Rep.

Attorney

[none]

EXHIBITS

MARKED ADMITTED

[none]

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Washington DC, February 14, 2020

P R O C E E D I N G S

HEARING REPRESENTATIVE:

1 Today's date is [sic], and
2 the time is 11:21 a.m. A hearing is being
3 held in connection with the claim of
4 , file number
5 The claimant is employed by the
6 Service in , as a
7
8 The claimant filed a CA-1,
9 Notice of Traumatic Injury claim, claiming
10 that on , that lifting and casing
11 mail caused her to reinjure her shoulders.
12 The office accepted the claimant sustained
13 strains of muscles and tendons of the rotator
14 cuff of the right shoulder. The claimant
15 filed a CA-7, Claim for Compensation form, on
16 , requesting disability
17 compensation benefits for the period
18 , through The claimant
19 filed a CA-7, Claim for Compensation form, on
20 , requesting disability
21 compensation benefits for the period
22 , through The claimant
23 filed additional claims for disability

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1 compensation benefits. By decision dated
2 the office denied
3 disability compensation benefits claimed
4 beginning , and continuing. The
5 claimant disagreed with the
6 decision and requested an oral
7 hearing which is what brings us here today.
8 is not present but is
9 represented by Mr. Felser at today's
10 proceedings who waived the opening at the
11 beginning of the hearing. I just want to
12 confirm that is the decision that was
13 appealed, sir?

14 MR. FELSER:

15 Yes, sir, the decisions with regard to the
16 CA-7, wage compensation benefit requests.

17 HEARING REPRESENTATIVE:

18 Okay. And I have your client's address of
19 record as

20 Is that what
21 you have?

22 MR. FELSER:

23 I have

24

25 HEARING REPRESENTATIVE:

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1 Okay. And then it looks like information
2 after this decision that was the decision on
3 compensation that was appealed, there was a
4 decision issued in which
5 the office terminated the claimant's medical
6 and wage loss compensation benefits based on
7 the determination that her work-related
8 injuries resolved which was based on
9 Dr. second opinion
10 reports. And then following that decision by
11 Hearings and Review decision dated
12 the Branch reversed that decision and
13 determined that the second opinion report was
14 not rationalized and cannot be the basis for
15 termination of benefits because it was based
16 on an incorrect Statement of Accepted Facts
17 and therefore needed to be clarified. The
18 hearing representative directed the office to
19 double the case with other cases and revise
20 the Statement of Accepted Facts and obtain a
21 supplemental second opinion report from
22 Dr. The office was directed to then
23 formally address the expansion of the claim,
24 the claimant's work capacity and the
25 claimant's entitlement to further benefit.

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1 remand, the office should ask the second
2 opinion physician if the claimant is disabled
3 for the denied period due to her work-related
4 injury in this case and issue a new decision
5 on her wage loss compensation entitlement
6 beginning and continuing. So
7 I'm also required to provide citations as
8 part of this summary decision. Whether a
9 particular injury caused an employee to become
10 disabled from work and the duration of that
11 disability or medical issues, that must be
12 proven by a preponderance of probative and
13 reliable medical evidence. That's at
14 docket number issued

15 It is well established that proceedings
16 under FECA are not adversarial in nature and
17 OWCP is not a disinterested arbiter. While
18 the claimant has the burden to establish
19 entitlement to compensation, OWCP shares the
20 responsibility to see that justice is done.

21 That's at : 51 ECAB 219,
22 Once it undertakes to develop the medical
23 evidence further, it has the responsibility to
24 do so in a manner that will resolve the
25 relevant issues in this case and that's at

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1 55 ECAB 406, 2004. So in this
2 case, the office sought further development
3 with a second opinion, but has to do so in a
4 manner to see that justice is done to resolve
5 the relevant issues in this case. So upon --
6 let me just double check. Okay, so the
7 decision is to set aside the office's decision
8 denying disability compensation -- wage loss
9 disability compensation benefits and this
10 summary decision constitutes the formal
11 hearing decision which is made final upon
12 receipt of the hearing transcript which should
13 likely be in about two weeks. So the decision
14 is remanded -- is set aside and remanded for
15 the office to further clarify with the second
16 opinion physician as it was directed to do in
17 the prior hearing representative's decision.
18 Was there anything you wanted to add, point
19 out or state for the record, Mr. Felser?

20 MR. FELSER:

21 No, sir, that's consistent with our off-the-
22 record discussion and what I understood was
23 going to be your directive here today.

24 HEARING REPRESENTATIVE:

25

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C E R T I F I C A T I O N

1
2 I, , hereby certify that the
3 examination of the witnesses, as provided to me by
4 , the Reporter in the within case, was
5 reduced to writing by me, and that the transcript is a
6 true record of the testimony given by the witnesses.

7 I further certify that I am neither attorney, nor
8 counsel for, nor related to or employed by, any of the
9 parties in which this action is taken, and further that
10 I am not a relative or employee of any attorney or
11 counsel employed by the parties hereto or financially
12 interested in the action.

13
14
15 Transcriber

16 York Stenographic Services

17 Lsw/CEG

York Stenographic Services, Inc.
34 North George St., York, PA 17401 - (717) 854-0077

Washington DC, February 14, 2020