

File Number:  
HR12-D-H

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U.S. DEPARTMENT OF LABOR

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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 hearing was held on \_\_\_\_\_ Based upon that hearing, 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 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 H FELSER  
ESQ  
FELSER LAW FIRM, P.C.  
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, May 19, 2020

U.S. DEPARTMENT OF LABOR  
Office of Workers' Compensation Programs

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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. Hearing  
was held on by telephone in Washington, D.C.

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The issue for determination is whether the diagnosed conditions are causally related the motor vehicle accident (MVA) on

The claimant, born was employed by the as a  
On the claimant filed timely notice of traumatic injury claiming she  
was injured in a motor vehicle accident that occurred on during the  
performance of her job duties.

By letter dated the claimant was advised of the claim deficiencies and additional supporting evidence was requested.

By decision dated the Office rejected the claim for the reason that the medical evidence of record was insufficient to establish the diagnosed neck strain and concussion were causally related to the MVA.

The claimant appealed the decision through her attorney and requested an oral hearing by the Branch of Hearings and Review.

The claimant was represented at the hearing by attorney Paul Felser. The claimant was not present for the hearing. Her attorney discussed the evidence of record and advised the medical records did support the claimant was treated on the date of the accident and he noted the MVA was sufficient to have caused the diagnosed conditions. He did request the record be held open for 30 days to allow for the submission of any additional supporting evidence that became available. However, he argued it was clear the evidence supported the injury had occurred on the job and in the course of employment.

It was explained the hospital record did indicate the claimant was examined and treated by M.D. He advised the employer did not dispute the MVA had occurred and he advised the diagnosed cervical sprain and concussion were clearly consistent with the MVA injury. He argued the hospital documents were not disputed and were sufficient to establish causal relationship in accordance with PM 2-0805-3 subsection D.

Washington DC, May 19, 2020

Mr. Felser explained the claimant's vehicle was rear-ended causing the vehicle to flip over on its side. He argued it made no sense to deny the claim in light of the hospital records supporting the injury claim. He argued in the least the records were prima facie evidence necessitating further medical development.

The record was held open for thirty days to afford the claimant the opportunity to submit additional evidence. Correspondence dated \_\_\_\_\_ from attorney Felser requesting a copy of the file was received. No additional medical evidence was received.

A copy of the transcript was sent to the employing agency for review and comment. No comments were received.

Based upon hearing testimony, together with the written evidence of record, I find that the decision of the District Office dated \_\_\_\_\_ should be reversed and the case accepted for a cervical strain and concussion.

The medical records support the claimant was diagnosed with a concussion by \_\_\_\_\_ M.D. in the medical note of \_\_\_\_\_ from \_\_\_\_\_ Medical Center. Dr. \_\_\_\_\_ does provide a history of the MVA and lists the diagnosis of concussion and PTSD. However, there is no opinion concerning the causal relationship of the diagnosed emotional condition to the MVA. The initial medical report from \_\_\_\_\_ Regional Medical Center dated \_\_\_\_\_ supports the claimant was treated by \_\_\_\_\_ M.D. and does provide a history of the accident and a diagnosis of cervical strain.

I find the records are sufficient to establish the diagnosed cervical strain and concussion are causally related to the \_\_\_\_\_ MVA.

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether "fact of injury" has been established. Generally, "fact of injury" consists of two components that must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident or exposure that is alleged to have occurred. The second component is whether the employment incident or exposure caused a person injury and generally can be established only by medical evidence.<sup>1</sup>

The second component as noted above is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.<sup>2</sup>

The evidence clearly supports the event occurred as alleged on \_\_\_\_\_ and supports the claimant was transported and treated at the hospital immediately following the

<sup>1</sup> Elaine Pendleton, 40 ECAB 1143(1989)

<sup>2</sup> John M. Tornello, 35 ECAB 234 (1983)

accident for a cervical strain and head trauma. A CT head/brain scan was performed at the ER as well as cervical and thoracic x-rays.

I find the claimant has met her burden in establishing the diagnosed cervical strain and concussion was causally related to the MVA as required under the FECA. In an uncontroverted traumatic injury claim where fact of injury has been clearly established and the injury is competent to cause the condition described, a physician's affirmative statement is sufficient to establish causal relationship.<sup>3</sup>

The employer did not controvert or challenge the claim and advised the claimant was in the performance of her job duties. Clearly, a MVA is capable of causing a neck and head injury. The claimant sought immediate medical care on the date of injury and the treatment records provide a history of the injury, a definitive diagnosis and an affirmative opinion supporting causal relationship.

Upon return of the case record the Office should accept the claim for a cervical strain and concussion. In regard to the PTSD diagnosis there is no medical opinion establishing causal relationship and the claimant did not claim an emotional condition on her CA-1 of

Consistent with the above findings, the decision of the District Office dated is hereby **reversed** and the case file returned for acceptance of a cervical strain and concussion and payment of the appropriate entitled benefits.

Issued  
Washington, D.C.

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

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<sup>3</sup> *Walter J. Brown, 40 ECAB 607 (1989)*