

File Number:
HR13-D-H

RECEIVED AUG 31 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 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 H FELSER
ATTORNEY
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, August 28, 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 in , Case
No. |*

*Merit consideration of this claim was completed in Washington, D.C. Based on this review, the
District Office's decision, dated has been reversed for the reasons below.*

The issue for determination is whether the Office appropriately denied the claim for compensation for the period of to

The claimant was born on and was employed as a or the in , when she filed a Form CA-1, Notice of Traumatic Injury, claiming an acute left ankle sprain after slipping on leaves while delivering parcels on . The claim was initially allowable for limited medical expenses only and formally accepted on for a left ankle sprain. The record reflects that the claimant stopped work on the date of injury.

On the COP Nurse spoke with the claimant's supervisor, who advised that the Post Office was unable to accommodate the claimant's work restrictions because she is on crutches. Mr. indicated that the claimant stopped work on the date of injury and that her restrictions at that time included 90% seated work, no climbing, no squatting, no walking on uneven surfaces, and must wear splint and use crutches. On the claimant was noted to have some improvement of her symptoms. The seated work restriction was lifted to 50%. The claimant was still directed to wear a splint/brace constantly and an MRI of the left ankle was ordered. On , the MRI was noted to reveal a partial thickness tear of the ATF ligament of the left ankle. At that time, the claimant was restricted to seated work 75% of the time, no squatting, no kneeling, no walking on uneven terrain, no climbing stairs, and no climbing ladders. The claimant was directed to wear a walker boot.

On the claimant filed a Form CA-7, Claim for Compensation, claiming temporary total disability wage loss for the period of through . On the CA-7 Form, the employing agency indicated that COP had not been paid. They stated that no work was available within the claimant's restrictions.

On the District Office requested additional information from the employing agency as to the period of COP paid and the claimant's proper pay rate. On , the Office received a call from the employing agency advising that the CA-7 was not correctly completed, the claimant did receive COP, and a corrected form would be submitted.

On the claimant was referred for consultation with VID, who diagnosed a left ankle strain, recommended that the claimant be moved from a boot to an ankle air cast, allowed to change positioning from sit to stand, and restricted from walking on uneven surfaces.

On _____, the employing agency submitted a revised Form CA-7 claiming temporary total disability wage loss for the period of _____ through _____. They indicated that the claimant was a temporary employee who had entered on duty on _____. The agency reported that COP was paid from _____ through _____.

By letter dated _____, the claim for compensation was developed as if the claimant sustained a medical worsening of her condition. The claimant was advised that she needed to submit a comprehensive, narrative medical report thoroughly explaining how her condition worsened to the point that she could no longer perform the duties of her position when she stopped work. This was improper, as the claimant had been off work since the date of injury and no worsening of her condition was at issue.

On _____, Dr. _____ advised that the claimant had returned to a regular shoe earlier that week, but felt fatigue after walking short distances. The claimant had mild tenderness over the ATL. She was directed to continue physical therapy for 3 weeks and to continue the sit-stand as needed restriction at work until _____ at which point she was to be released to full duty.

On _____, the District Office received a claim Form CA-7, claiming temporary total disability wage loss for the period of _____ through _____. On the form, the employing agency advised that the claimant returned to work on _____ modified job offer signed by the claimant or _____ They submitted a copy of a restriction of sit-stand as needed. _____ for 6 hours per day reflecting the _____.

On _____, the District Office received a Physician Activity Status Report from Dr. _____ dated _____, stating that the claimant can return to her full, regular duties effective _____.

On _____, Dr. _____ placed the claimant at MMI, assigned a permanent partial impairment rating of 0%, continued her at full duty, and released the claimant from care on an as needed basis. Dr. Foster noted that he advised the claimant that she can seek a second opinion if she so wishes.

By decision dated _____, the claim for compensation for the period of _____ was denied for the reason that the claimant's physician neglected to explain why she is still temporarily totally disabled for her left ankle sprain.

The claimant disagreed with the _____ denial and requested an oral hearing through her attorney by letter dated _____.

Based on my preliminary review, the _____ decision is reversed for the reasons set forth below.

OWCP procedures note that 20 C.F.R. § 10.500(a) provides the basic rules governing continuing receipt of compensation benefits and return to work as follows: (a) Benefits are available only while the effects of a work-related condition continue. Compensation for wage loss due to disability is available only for any periods during which an employee's work-related medical condition prevents him or her from earning the wages earned before the work-related injury. For example, an employee is not entitled to compensation for any wage-loss claimed on a Form CA-7 to the extent that evidence contemporaneous with the period claimed on a Form CA-7 establishes that an employee had medical work restrictions in place; that light duty within those work restrictions was available; and that the employee was previously notified in writing that such duty was available. Similarly, an employee receiving continuing periodic payments for disability was not prevented from earning the wages earned before the work related injury if the evidence establishes that the employing establishment had offered,

in accordance with OWCP procedures, a temporary light-duty assignment within the employee's work restrictions.

Office regulations provide that, where an attending physician notifies the employer in writing that the employee can return to restricted duty, the employer must advise the employee in writing of any available positions which accommodate his restrictions. The offer must include a description of the duties of the position, the physical requirements of those duties and the date by which the employee is either to return to work or notify the employer of his decision to accept or refuse the job offer. When the employer sends a copy of the offer to the employee, it must simultaneously send a copy of the offer to the Office.¹

In the instant case, it is noted that the basis upon which the District Office denied the claim for compensation for the period of [redacted] through [redacted] was a lack of medical evidence from the claimant's physician explaining why she was still temporarily totally disabled from all work due to her left ankle strain. However, it is noted that none of the medical evidence during the period in question stated or supported that the claimant was temporarily totally disabled. In fact, a review of the file reveals that the claimant was evaluated in the emergency room on the date of injury and followed up with Concentra the following day, November 30, 2018, where she was evaluated by Physician's Assistant, [redacted]. At that time, the claimant was released to return to modified work with restrictions of must use crutches, sitting 90% of the time, no squatting, no walking on uneven terrain, no climbing stairs or ladders, and elevate foot when sitting. These restrictions were continued by [redacted] MD on December 7, 2018. In her report, Dr. [redacted] stated that the claimant has not been working because light duty is not available. Per her report dated [redacted], MD continued the restrictions as well, with the exclusion of elevating the foot while sitting. Dr. [redacted] decreased the restrictions on [redacted] to sitting 50% of the time, wear splint/brace constantly, may not walk on uneven terrain, and no climbing stairs or ladders. Following the MRI of the left ankle that revealed a partial tear of the ATL, the work restrictions were increased to sitting 75% of the time, no squatting, no kneeling, no walking on uneven terrain, no climbing stairs or ladders and wear a walker boot. The claimant began treating with [redacted] MD on February 5, 2019. Dr. [redacted] determined that the claimant was restricted to sit-stand as needed and no walking on uneven terrain. He again altered the restrictions on [redacted] to sit/stand as needed and released the claimant to full, regular duty on [redacted]. On [redacted], Dr. [redacted] continued full duty and released the claimant from care PRN.

A review of the Form CA-7 dated [redacted] indicates that the employing agency stated that no work was available within the claimant's restrictions. Although the employing agency indicated that the form was not correct regarding payment of COP, they did not indicate that the form was incorrect as far as the agency not having work available within her restrictions. Moreover, the employing agency does not challenge the claim for compensation or indicate that work was available during the period in question. Additionally, the case file contains only one modified job offer. The job offer has a date of offer of [redacted], yet an effective date of [redacted]. The claimant signed the offer on [redacted] and the employing agency confirmed on the CA-7 Form dated [redacted] that the claimant returned to work on [redacted].

Therefore, the evidence of record is sufficient to support payment of compensation for the period of [redacted] through the period of [redacted], as claimed herein. The medical evidence substantiates that immediately following the injury, the claimant was placed on work restrictions that continued through his release to full duty by Dr. [redacted] on [redacted]. These restrictions were consistent with the claimant's presentation, findings upon evaluation, history of injury, and diagnosis.

¹S.J., claimant, Docket No. 06-2135, Issued: August 21, 2007.

The factual evidence supports that the employing agency could not accommodate those restrictions and did not make a job offer to the claimant until . The COP nurse spoke to the claimant's supervisor on who confirmed that the claimant was not working and that the employing agency could not accommodate the claimant on crutches. The CA-7 form signed by the claimant's supervisor on stated that no work was available within the claimant's restrictions. At no point after that, until the job offer dated did the employer indicate that they could accommodate any restrictions. This is also generally logical, as the claimant was on crutches, splinted, in boots, and casted throughout the period in question which the Post Office often cannot accommodate.

Consistent with the above findings, the decision of the District Office dated is REVERSED. Upon return of the case file, the District Office should process compensation for wage loss disability for the period of through

ISSUED:
WASHINGTON, D.C.

Hearing Representative
For
Director, Office of Workers'
Compensation Programs