

File Number:
HR20-D-H

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U.S. DEPARTMENT OF LABOR

OWCP/DFEC, PO Box 8311
LONDON, KY 40742-8311
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 Review of the Written Record, the case file was transferred to the Branch of Hearings and Review.

The review was completed . As a result of such review, it has been determined that the decision issued by the Office should be vacated and the case remanded to the office for further action as explained in the enclosed copy of the Hearing Representative's decision.

Your case file has been returned to the Jacksonville 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 8311
LONDON, KY 40742-8311

Sincerely,

Division of Federal Employees' Compensation

PAUL H FELSER, ESQ.
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, September 15, 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.

Examination of the Written Record was completed in Washington, D.C. Based on this review, the
Office's decision date is set aside for the reasons below.

The issue is whether the claimed disability for the period
is causally related to the work injury.

The claimant, , born is employed by the
, as a . On she filed form
Ca-1, Notice of traumatic injury and claim for compensation indicating that on
while delivering parcels she slipped on wet leaves and injured her left ankle. The claim
was accepted for left ankle sprain. Appropriate treatment and compensation benefits were
authorized.

On the claimant filed form CA-7, Claim for compensation for the period

By letter dated the claimant was advised to submit factual and medical
evidence to support her entitlement to total disability compensation. The claimant provided a
statement indicating that she worked as a substitute teacher during the period .
The claimant was given 30 days to provide additional evidence.
No additional evidence was received.

By decision date the Office denied the claim for the reason that the
evidence of record failed to support that the claimed disability is due to the
work injury.

The claimant disagreed with the decision and requested an oral hearing before a
representative of the Office of Workers' Compensation Programs. Her request was later
changed to a review of the written record.

In support of the claim the Office received a statement from the claimant's representative,
Paul Felser dated . Also received were medical records, treatment notes, and
an operative report from Orthopedics, intermittently from to

Washington DC, September 15, 2020

In a statement dated _____ Mr. Felser stated that the claimant believes that she is entitled to compensation for the period _____ to _____ as her employment as a _____ represented concurrent dissimilar employment. Had the _____ been able to offer her restricted duty work for the claimed period, the claimant would have been able to return and earn wages. Mr. Felser stated that the claimant should be entitled to the difference between her documented wages and her pay rate for her federal employment.

I have carefully evaluated all the evidence of record and find that further development of the claim is warranted.

The fundamental prerequisite to compensation under the Federal Employees' Compensation Act is that there be a causal connection, established by reliable, probative and substantial evidence, between the employment and a personal injury sustained in the performance of duty or disease proximately caused by the employment. The claimant's own assertion of an employment relationship is not proof of fact. Proof must include supporting rationalized opinion of qualified medical experts, based on complete and accurate factual and medical backgrounds, establishing that the implicated incidents caused or materially adversely affected the ailments producing the work disablement. (Margaret A. Donnelly, 15 ECAB 40) Under the Federal Employees' Compensation Act, the claimant has the burden of establishing by the weight of the reliable, probative and substantial evidence that his condition was caused or materially adversely affected by his employment. As part of this burden he must submit rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relation. Merely because a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two. Neither the claimant's belief that the condition was caused or aggravated by employment conditions nor the manifestation of a condition during the period of employment is sufficient to establish causal relation. (Birger Areskog, 30 ECAB 571)

In a similar claim, R.S., Docket No. 11-1973 issued May 7, 2012, Employees' Compensation Appeals Board found that the claimant established that he was disabled from February 12 to September 25, 2010 causally related to his October 7, 2009 employment injury. While his attending physician released him to return to modified sedentary duty, the employing establishment did not offer him a limited-duty position in writing as required by the implementing regulations under 20 C.F.R. 10.507(b).

In the present case, the office denied entitlement to compensation noting that the claimant did not respond to their development letter or provide medical evidence supporting that she was totally disabled for the period _____. They did not explain why the claimant would not be entitled to compensation. The record reveals that the claimant was released by her physician to return to work with restrictions. The agency in a statement dated _____ indicated that they could no longer accommodate the claimant's work restrictions. ○ _____ the office received a statement from Mr. Felser, along with a statement from the claimant stating that she worked as a _____ on 10-14-19, 10-16-19, 10-17-19, 10-21-19, 10-22-19, and 10-23-19. She earned \$85 dollars per day, but on 10-23-19 she worked ½ day and earned \$42.50 for a total of _____

\$467.50. The Office did not explain why the claimant was not entitled to compensation for the period claimed, therefore further development of the claim is warranted.

On remand the office should determine what the claimant's entitlement is based on her actual earnings.

The decision of the District Office dated _____ is therefore, set aside and the case remanded for the actions outlined above. Upon completion of the recommended action and any further developmental action as is deemed necessary, the Office should issue a de novo decision.

Issued:
Washington, D.C.

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