

File Number:
HR10-D-H

U.S. DEPARTMENT OF LABOR

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LONDON, KY 40742-8311
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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 _____ As a result of such hearing, 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 your assigned Claims Examiner. You may contact that Office by writing to our Central Mail Room at the following address:

US DEPARTMENT OF LABOR
DFELHWC-FECA, PO Box 8311
LONDON, KY 40742-8311

Sincerely,

Federal Employees Program

PAUL H FELSER
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, November 12, 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.
Claimant, Employed by the
Telephone hearing held on

Case No.

The issue for determination is whether the claimant's medical benefits and wage loss compensation were properly terminated on the grounds that she no longer suffers from the effects of the accepted work injury.

The claimant is employed as an _____ by the _____.
On _____ she filed a form CA-1 claiming that on _____ she sat in a chair that had broken hydraulics, which caused the seat to drop down to the base and jam her back from the impact, aggravating a pre-existing back injury from _____. The Office accepted contusion of lower back and pelvis and sprain of ligaments of the lumbar spine.

The claimant had a prior traumatic injury on _____ when she bent over to place equipment on a workbench. The Office assigned case file number _____ and that case is combined with the present case. By decision dated _____ the Office accepted right hip sprain, resolved as of _____.

To determine the nature and extent of the work injury, the Office referred the claimant for a second opinion orthopedic examination performed on _____ by _____ M.D. Dr. _____ found the claimant to have normal range of motion in the back and hips, normal gait, and determined that the work injury had resolved.

In a report dated _____ the claimant's treating physician, _____ M.D., expressed his opinion that the work injury had not resolved.

By decision dated _____ the Office determined that Dr. _____ second opinion report held the weight of medical evidence and terminated the claimant's medical benefits and wage loss compensation.

The claimant disagreed with the _____ decision and requested an oral hearing by the Branch of Hearings and Review. By decision dated _____ the Branch of Hearings and Review cited a _____ report from _____ M.D., which was received after the hearing. The only report received after the hearing was an _____ report from Dr. _____ in which he opined that the _____ work incident exacerbated the claimant's underlying lumbar degenerative disc disease as documented by a _____ CT myelogram which showed a synovial cyst at L4-5 and foraminal narrowing, as well as a finding of numbness in the left toes and diminished functional capacity. Dr. _____ recommended lumbar fusion surgery at L4-5. The Branch of Hearings and Review determined that the opinions of Dr. _____ and Dr. _____ held virtually equal weight and created a conflict of medical opinion which must be remanded for referral to a referee physician for resolution.

Washington DC, November 12, 2020

On _____ the claimant underwent lumbar fusion surgery which was performed without authorization by the Office.

Upon remand, the Office referred the claimant for a referee examination which was performed on _____ by _____, M.D. Dr. _____ noted that the claimant had a 12-year history of back problems including pre-existing nonindustrial intervertebral lumbar disc disease, anterolisthesis and degenerative lumbar disc disease. He opined that the sprain would have resolved within a brief period of time and did not contribute or aggravate her long-standing preexisting age-related degenerative lumbar spine condition.

By letter dated _____ the Office advised the claimant that it proposed termination of medical benefits and wage loss compensation based on Dr. _____ opinion that disability due to the work injury had ceased. She was provided thirty days to provide additional evidence in support of her claim.

By decision dated _____ the Office terminated medical benefits and wage loss compensation effective _____, based on Dr. _____ opinion that the claimant no longer suffered from the effects of the accepted work related injury.

The claimant disagreed with the _____ decision and requested an oral hearing with an OWCP representative. A telephone hearing was held on _____. Paul Felser represented the claimant at the proceedings.

At the hearing Mr. Felser argued that Dr. _____ did not sufficiently analyze whether the work injury aggravated the claimant's preexisting condition, and whether it has returned to its baseline condition. He argued that Dr. _____ did not explain why he disagreed with Dr. _____ report. Mr. Felser argued that Dr. _____ opinion should outweigh Dr. _____ opinion because he based his opinion on the CT scan which had not been performed at the time of Dr. _____ examination, and which Dr. _____ failed to discuss.

A copy of the transcript was sent to the employing agency for review and comment. The agency did not offer any comments on the transcript.

The record was held open for thirty days to allow for the submission of additional evidence. The Office received an _____ report from Dr. _____ along with medical reports from _____ previously received in the record.

Based upon the hearing testimony and the evidence of record, I find that the decision of the Office dated _____ terminating benefits should be remanded for further development.

Once the Office accepts a claim it has the burden of justifying modification or termination of compensation. After it has been determined that an employee has disability causally related to her employment, the Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.¹ The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.²

¹Louise R. Silva, 41 ECAB, Docket No. 89-0202 (issued October 31, 1989).

²Jaja K. Asaramo, 55 ECAB, Docket No. 03-1327 (issued January 5, 2004).

In assessing medical evidence, the weight of such evidence is determined by its reliability, its probative value and its convincing quality. The opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of the analysis manifested, and the medical rationale expressed in support of the physician's opinion are facts which determine the weight to be given each individual report.³

In situations where the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.⁴

I have carefully reviewed the opinion of Dr. _____, a Board-certified specialist selected to resolve the conflict in opinion, and find that it has not resolved the issue of whether the claimant still suffers from the residual effects of the work injury. Dr. _____ has opined that the _____ injury resolved, but he has not directly addressed why he disagreed with Dr. _____ opinion that the _____ work incident aggravated the claimant's underlying lumbar degenerative disc disease as documented by a _____ CT scan which showed a synovial cyst at L4-5 and foraminal narrowing, as well as a finding of numbness in the left toes and diminished functional capacity. Dr. _____ report fails to mention the _____ CT scan so it is unclear whether he has reviewed it.

The Office may undertake to develop either factual or medical evidence for determination of the claim.⁵ It is well established that proceedings under the Act are not adversarial in nature, and while the claimant has the burden to establish entitlement to compensation, the Office shares the responsibility in the development of the evidence.⁶ The Office has the obligation to see that justice is done.⁷

On return of the file, the Office should request a supplemental report from Dr. _____ asking him to discuss the objective findings cited by Dr. _____ in support of his opinion, specifically the _____ CT scan, and explain why he disagrees with Dr. _____'s opinion.

Once Dr. _____ supplemental report has been received, the Office should undertake any additional development of the evidence such as it finds warranted, and issue a *de novo* decision on whether the claimant has any residuals of the accepted conditions.

For the reasons set forth above, the decision of the Office dated _____ is remanded and returned to the Office for actions consistent with this decision.

Issued:
Washington, D.C.

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

³ *Connie Johns*, 44 ECAB 560 (1993).

⁴ *Guisepppe Aversa*, 55 ECAB (Docket No. 03-2042, issued December 12, 2003); *Jaja K. Asaramo*, 55 ECAB (Docket No. 03-1327, issued January 5, 2004); *LaDonna M. Andrews*, 55 ECAB (Docket No. 03-1573, issued January 30, 2004).

⁵ 20 C.F.R. § 10.11(b); see also *John J. Carlone*, 41 ECAB 354 (1989).

⁶ *Dorothy L. Sidwell*, 36 ECAB 699 (1985).

⁷ *William J. Cantrell*, 34 ECAB 1233 (1983).