File Number:
HR12-D-H

RECEIVED AUG 27 2018

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 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
OFFICE OF WORKERS' COMP PROGRAMS
PO BOX 8300 DISTRICT 6 JAC
LONDON, KY 40742-8300

Sincerely,

Division of Federal Employees' Compensation

PAUL FELSER
ATTORNEY
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 23, 2018

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 number . A hearing was held on .

The issue for determination is whether the Office met its burden in terminating the claimant's entitlement to medical and wage loss benefits.

date of birth , is employed as a with the in She filed Form CA-1 for a Traumatic Injury which occurred on On this date, she was climbing down from a container when she slipped and fell in between two platforms. The claim is accepted for a lumbar strain, lumbar disc bulge and lumbar radiculopathy. The electronic record also reflects acceptance of a closed dislocation of the lumbar vertebra.

Following the injury, the claimant treated with the following practitioners: M.D. of Orthopaedic Associates, , M.D. of North Dade Neurological Consultants, , M.D., neurologist , M.D., orthopedist , M.D., Jr., M.D., , D.C. of the Chiropractic, Acupuncture and Wellness Center, and , M.D. of the DNA Center.

According to the evidence of record, the claimant lost intermittent time from work following her injury but continued to work modified duty up until at which time she stopped due to personal reasons. She attempted to return on or around however light duty was not available. She has remained out of work since that date. Supplemental payments were made from to and Ms. was placed on the automatic 28 day periodic roll effective

Ms. had started treating with Dr. . He stated that in order to address disability, an EMG and MRI were required. The EMG was performed on which documented severe lumbar radiculopathy at L5-S1 on the left with acute changes. An

---

[1] By decision dated Ms. received a schedule award for 3% permanent partial impairment of the left lower extremity. The award was calculated in accordance with the *Fifth Edition of the AMA Guides to the Evaluation of Permanent Impairment (the Guides).*

MRI of the lumbar spine was performed on which revealed disc bulges at the L4-5 and L5-S1 levels.

In a report of Dr. stated that the claimant had been unable to work because of her physical restrictions. This dated back to the original accident on Ms. continued to be seen in follow-up approximately every 4 weeks.

In a report of Dr. stated that the claimant presented with low back pain which radiated to the left lower extremity. A lumbar MRI revealed broad based disc bulges at L4-5 and L5-S1 with moderate bilateral neural foramen stenosis. The EMG/NCV showed severe lumbar radiculopathy at the L5-S1 level on the left. Dr. noted that the claimant had been out of work since He felt, based upon the EMG/NCV findings, that Ms. was not capable of working due the fact that she could not lift greater than 20 pounds, sit for more than 30 minutes or walk for more than 30 minutes.

In order to assess continuing injury related residuals, the Office referred Ms. for a second opinion evaluation which took place on with . He documented the history of injury, symptoms thereafter and treatment rendered. He noted that the claimant had not worked since around Following a physical examination, Dr. stated that a return visit was indicated in a month. He opined that Ms. condition had not resolved therefore a repeat EMG/NCV was recommended. A Functional Capacity Evaluation was also recommended to better assess the claimant's physical limitations. Dr. Hoffen proceeded to assign restrictions in the interim.

An NCV/EMG study was performed on A Functional Capacity Evaluation was also performed on However, due to inconsistent effort and inappropriate pain behaviors the results were at a minimum level only and did not depict potential capabilities.

Ms. was subsequently evaluated on by occupational medicine second opinion examiner M.D. He documented the history of injury and treatment rendered thereafter. He performed a medical record review and physical examination as well. He opined that the claimant continued to have chronic pain from a lumbar strain and radicular pain from bilateral neuroforaminal stenosis. Dr. felt that she had plateaued with regard to treatment and he felt that she was capable of returning to full-time, sedentary employment.

An addendum report dated was also received from Dr. He stated that the diagnostic impression at the time of his initial evaluation was left lower lumbar myofascial pain with concern for left lumbosacral radiculopathy. Dr. noted that the EMG/NCV performed on of the left lower extremity was normal. The FCE from revealed inappropriate pain behaviors and inconsistent effort. In conclusion, he opined,

> "Diagnostic impression is persistent lumbar myofascial pain with radicular complaints of left leg without motor/sensory impairment and normal. EMG/NCS study of the left

leg. There is objective evidence for lumbar myofascial spasm. Although the functional capacity evaluation revealed inconsistencies it did not assess for capacity beyond the written physician restrictions. Ms. is capable of working an 8 hour day in a light duty capacity. Physical limitations include maximum lifting or carrying 20 pounds, avoidance of unprotected heights and limited bending."

An OWCP-5c form was completed by Dr. He noted that the claimant was unable to return to her date of injury position however she was able to work with restrictions for 8 hours per day.

An addendum report dated was also received from Dr. He reviewed the FCE from and noted that the claimant performed with inconsistent effort and demonstrated inappropriate pain behaviors. However, given the findings outlined in that report, it appeared that would be capable of performing sedentary duty with a 10 pound limitation. An OWCP-5c form was completed outlining the claimant's limitations.

According to Dr. , an EMG/NCV study was performed in which revealed a normal left lower extremity. An MRI of the cervical spine was performed on which documented herniated discs at the C3-4, C4-5, C5-6 and C6-7 levels. An EMG/NCV from documented cervical radiculopathy at the C6-7 level on the left.

On the Office received an OWCP-5c form dated from Dr. While he agreed that the claimant could return to work, he opined that she was restricted to part-time (4 hours per day), limited duty. He assigned the following permanent limitations: Sitting for up to 3 hours, walking for 1 to 2 hours, standing for 1 hour, reaching with the left upper extremity up to 3 hours, reaching above the shoulder for 1 hour, no twisting, no bending or stooping, pushing up to 40lbs for 1 hr, pulling up to 20lbs for 1 hr, lifting for 0 to 1 hrs up to 20lbs, squatting for up to 1 hr, kneeling for up to 1 hr and no climbing. Additionally, she could only operate a motor vehicle at work or to/from work for up to 3 hours

A report was also received from , M.D. The impression was cervical spondylosis and degenerative disc disease, cervical stenosis (primarily C5-6 level), and possible left C6-7 radiculopathy. ; main complaint was pain across the lateral left neck and upper shoulder. She did not wish to proceed with surgical intervention unless there was a high chance of success. However, Dr. could not offer this therefore the claimant chose to pursue conservative treatment. With regard to disability, he stated, "She states that she has been on total disability for many years. She has not worked in several years."

The claimant also submitted treatment notes from her follow-up visits with Dr. on and although the content was largely the same as his prior treatment notes.

The Office found that a conflict existed between the opinions of Dr. and Dr. thus warranting an impartial examination. Specifically, Dr. had opined that the claimant was capable of returning to part-time (4 hrs per day), limited duty work while Dr. felt that she was capable of full-time, limited duty work. Therefore, was referred for a referee examination which took place on with M.D. In his report of the same date Dr. described the work accident of 1998 and the treatment rendered thereafter. He noted that since 2001 the claimant had not been gainfully employed secondary to persistent pain, despite conservative treatment. Dr. performed a medical record review and physical examination. He documented the claimant's complaints which were reportedly not present prior to the fall in 1998. He explained that multiple treatment modalities had been administered although the claimant had not improved after 19 years. He reviewed imaging studies of the spine and noted that there were age-related degenerative changes but no evidence of any injury. He opined that there was no possibility that the claimant had suffered any type of neurological, spinal chronic or serious injury as a result of the fall. He stated,

> "I find no evidence of any condition caused by the fall, which requires further neurological evaluation or intervention. I am unable to suggest a mode of therapy, which is likely to produce benefits after 19 years. I am unable to designate a permanent injury caused by the fall, which would explain her unimproved subjective symptoms."

Dr. stated that the claimant could return to her pre-accident daily living activities and any occupational duties she was capable of performing prior to the 1998 accident, without restrictions. In conclusion, he opined "This patient has reached an end result of medical care some time ago and further treatment would not be reasonable, in regards to the 10/09/98 work related accident." An OWCP-5c form was completed which supplied a full-duty work release.

On the Office released a proposal to terminate medical and compensation benefits for the claimant's condition, affording thirty days for submission of evidence to stay the pending termination. The weight of medical evidence was afforded to impartial examiner Dr.

In response to the proposed termination, additional evidence was received including a medical summary from Dr. He noted that the claimant was being treated for cervical and lumbar pain. A request was made for aqua therapy. Ms. returned to Dr. on although the content of this report is largely unchanged. He again documented her complaints of neck and back pain and he noted that pool therapy had reduced her pain.

A narrative report dated was also received from Dr. He was responding to the report of Dr. and stated that he was a "biased physician" who always found nothing wrong with patients. He stated, "He is a pawn for unscrupulous insurance companies." Dr. stated that the claimant had documented injuries on MRI

and EMG/NCV including a large herniated disc at C6-7 and nerve damage (C6-7) in the left leg.

A letter dated was also received from the claimant's legal representative Paul Felser, Esq. It was his position that the referee examiner exceeded his scope of the task for which he was assigned. Specifically, he stated that the conflict was with regard to work capacity. Specifically, the claimant's physician and Dr. both opined that the claimant suffered continued injury related residuals. However, they offered conflicting opinions relative to her work capacity. Therefore, Mr. Felser stated that Dr. opinion regarding continuing injury related residuals and disability could not be upheld or assigned special weight. He further took issue with Dr. opinion that there was no possibility that the claimant suffered an injury from a substantial fall from a height of 10 feet. He argued that this was simply not supported by the evidence of record. He stated that this was a blanket statement without consideration or discussion of the evidence of record. Therefore, it could not be considered a well-reasoned opinion. He recommended that another impartial exam be performed and the proposal to terminate be rescinded. Mr. Felser further argued that Dr. did not acknowledge reviewing the Statement of Accepted Facts nor did he discuss any of the medical documentation from the claimant's treating physician or the second opinion reports of Dr. and Dr. Additionally, he did not discuss the objective test results in file including the MRI and EMG/NCV studies. Furthermore, while Dr. opined that Ms. condition would have resolved early on in the course of her injury, he provided no rationale to support his conclusions. The claimant had performed full duty work prior to the work event and the impartial examiner provided no rationale to support her decline in functioning following this incident.

Mr. Felser also took issue with the Statement of Accepted Facts supplied to the impartial examiner. He noted that the SOAF only referenced diagnostic testing performed up until and only listed some of the Office directed medical examinations. Additionally, no reference was made to the treating physicians of record or the history of the treatment administered.

In conclusion, Mr. Felser argued that Dr. report was not sufficient to resolve the conflict as it was not based upon a proper SOAF, it was not well-reasoned, did not refer to any objective studies on file, and exceeded the scope of the issue in conflict. For the reasons outlined above, Mr. Felser argued that the Office failed to meet its burden of proof to terminate benefits. At the very least, he argued that the claimant should be referred for a new impartial examination to assess her work capacity.

Additional notes dated and were received from Dr. He opined that the claimant remained totally disabled and required continued use of pain medication for her complaints.

By decision dated the Office terminated the claimant's entitlement to medical and wage loss benefits, effective . They addressed the arguments outlined by Mr. Felser but maintained that the opinion of Dr. represented the weight of medical evidence on the claim.

Following this decision, the Office also received additional treatment notes dated , and from Dr. He stated that Ms. was not currently employed. She was restricted to lifting no more than 10 pounds. She was unable to climb stairs, balance, stoop, kneel, crouch or crawl. She was also limited with reaching. The assessment was other intervertebral disc displacement of the lumbar region, other cervical disc displacement at the C6-7 level, lumbar radiculopathy, muscle spasm of the back, cervical radiculopathy and long term use of opiate analgesic.

The claimant disagreed with the decision of and requested an oral hearing. A hearing was held on Ms. was not in attendance at the proceeding however she was represented by her retained attorney, Paul Felser, Esq.

The arguments outlined by Mr. Felser at the hearing were duplicative of his correspondence. He maintained that the evidence of record continued to support continuing injury related residuals, despite the opinion offered by Dr. He took issue with the Statement of Accepted Facts for the reasons previously outlined. He also felt that the questions posed to the impartial examiner were inappropriate and leading. Additionally, he took issue with the fact that the Office had asked the referee physician whether the claimant's conditions had resolved even though this was not part of the conflict. Specifically, he stated that everyone was in agreement that the claimant's conditions persisted. As such, any response to this question should not be given the weight and credibility of a referee response since the examiner exceeded the scope of the mandate. He argued that the purpose of the referee was strictly to address the claimant's work capacity. Additionally, he argued that the opinion of the impartial examiner was insufficiently rationalized to constitute the weight. In conclusion, he argued that the claimant's benefits should be reinstated because the District Office failed to meet its burden of proof with respect to termination of benefits.

The record remained open for 30 days in order to afford the claimant the opportunity to submit additional evidence. As required by Office procedures, a copy of the hearing transcript was forwarded to the employing agency to afford them the opportunity to comment on the claimant's testimony. No comments have been received and the time allotted to all parties for the submission of additional evidence has now passed.

Based upon the hearing testimony, together with the written evidence of record, I find that the decision of should be *REVERSED* for the reasons outlined below.

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.[2] After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.[3] Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement

[2] Lawrence D. Price, 47 ECAB 120 (1995).
[3] Id; Patricia A. Keller, 45 ECAB 278 (1993).

for disability. To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.[4]

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.[5] The Board has held that a medical opinion that is not fortified by rationale is of diminished probative value.[6] In situations where there are opposing medical reports of virtually equal weight and rationale and 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 on a proper factual background, must be given special weight.[7]

The instant case was filed for a Traumatic Injury which occurred on
Following a proposal, the Office formally terminated entitlement to medical and wage loss benefits by decision dated . This is the issue on appeal.

On review, I find that the decision of must be reversed as the Office did not meet its burden in terminating entitlement to medical and wage loss benefits effective . In order to assess continuing injury related residuals, the Office scheduled Ms. for a second opinion examination which took place with Dr. . A conflict was subsequently declared between the second opinion physician and the attending physician (Dr. As such, an impartial examination was scheduled with Dr.
It was based upon this report that medical and wage loss benefits were terminated. However, I find that his opinion was improperly afforded the weight of medical evidence.

Before making the determination that the claimant is no longer entitled to the current level of benefits, the CE must carefully review the evidence of file and ensure that the weight of evidence fully supports the conclusion. *If all medical benefits are being terminated, the CE must ensure that all accepted conditions in the claim, including authorized surgeries, consequential injuries, etc., were fully addressed by the physician who carries the weight of medical evidence of file.* If not, the CE should further develop the issue(s) until a solid conclusion on all previously accepted or authorized conditions can be reached.[9]

First, the purpose of scheduling the impartial examination was to resolve the conflict as it related to work capacity. Both her attending physician as well as the second opinion examiners acknowledged that she continued to suffer from injury related residuals

[4] Furman G. Peake, 41 ECAB 361, 364 (1990).
[5] Connie Johns, 44 ECAB 560 (1993).
[6] Cecilia M. Corley, 56 ECAB 662 (2005).
[7] Gloria J. Godfrey, 52 ECAB 486 (2001).
[8] When there are opposing medical reports of virtually equal weight and rationale, the case must be referred to an impartial medical specialist, pursuant to section 8123(a), to resolve the conflict in the medical evidence. Thomas J. Fragale, 55 ECAB (Docket No. 04-835, issued July 8, 2004).
[9] FECA Procedure Manual, Chapter 2, 2-1400 7(a)

however there was a conflict as it related to her work capabilities. Specifically, Dr. opined that the claimant could work part-time, modified duty while Dr. provided a full-time, modified duty release. While not part of the conflict, the Office asked Dr. to address whether the claimant continued to suffer from injury related residuals. Since there was not a true conflict in this regard, Dr. is not entitled to the special weight afforded to the opinion of an impartial medical specialist resolving a conflict of medical opinion. However, his opinion can still be considered for its own intrinsic value[10] and can still constitute the weight of the medical evidence.[11]

However, even when taken on its own merits, I find that the opinion of Dr. is insufficiently rationalized to constitute the weight of medical evidence as it relates to injury related residuals. First, it is important to note that he made no reference whatsoever to the accepted conditions on the claim. In fact, he did not even acknowledge reviewing the Statement of Accepted Facts. A SOAF is one of the most important documents a claims examiner prepares. The outcome of a claim and, ultimately, justice for the claimant may hinge on the completeness, conciseness and accuracy of the statement of accepted facts. The claims examiner thus has the responsibility to assure that the statement adequately covers the relevant points of information in a fair and clear presentation.[12]

It is the Office's responsibility to provide a complete and proper frame of reference for a physician by preparing a statement of accepted facts.[13] When the District Medical Adviser, second opinion specialist or referee physician renders a medical opinion based on a Statement of Accepted Facts which is incomplete or inaccurate or does not use the Statement of Accepted Facts as the framework in forming his or her opinion, the probative value of the opinion is seriously diminished or negated altogether.[14]

Again, there is no indication that Dr. reviewed the SOAF and was aware of the accepted conditions on the claim. Additionally, there are deficiencies as it relates to the Statement of Accepted Facts itself. The most recent SOAF in file is dated and reflects the accepted conditions on the case as a lumbar strain. lumbar disc bulge and lumbar radiculopathy. However, in their decision of the Office stated that the case was accepted for closed dislocation of lumbar vertebra, displacement of lumbar intervertebral disc without myelopathy, lumbosacral sprain/strain and thoracic/lumbosacral neuritis or radiculitis. The electronic record reflects acceptance of these conditions as well, although this is not properly documented in the SOAF.

---

[10] *See Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996).

[11] *See Leanne E. Maynard*, 43 ECAB 482 (1992) (the Board found that a physician's "opinion is probative even though he was not an impartial medical examiner" and that the opinion of this physician and another physician were sufficient to establish causal relation); *Rosa Whitfield Swain*, 38 ECAB 368 (1987) (the Board found that a physician was improperly designated as an impartial medical specialist, but that his opinion nonetheless constituted the weight of the medical evidence).

[12] Doris A. Reed, Docket No. 00-35, issued February 4, 2002.

[13] Donald E. Ewals, 51 ECAB Docket No. 98-2180 issued April 3, 2000.

[14] Federal (FECA) Procedure Manual, Part 3 -- Medical, Requirements for Medical Reports, Chapter 3.600.3 (October 1990); Willa M. Frazier, 55 ECAB 379 (2004).

In addition to the above noted deficiency, I find that the opinion of Dr. is insufficiently rationalized to constitute the weight of medical evidence. In his report he opined that there was no evidence of any condition caused by the fall which required further neurological evaluation or intervention. He stated that he could not "designate a permanent injury caused by the fall" which would explain her unimproved subjective symptoms. As such, it was his opinion that the claimant could return to her date of injury job without limitation. Furthermore, he stated that additional medical treatment was not indicated. While this opinion is noted, Dr. provided no rationale to support his conclusions. Specifically, he states that Ms. does not require further treatment and could return to full duty on the basis that she no longer suffered residuals of the work injury. However, he failed to address how he arrived at this conclusion. This is crucial as this directly affects work capacity, which is the issue in conflict.

Again, Dr. was tasked was resolving the conflict in medical opinion between Dr. and Dr. as it relates to work capacity. However, he provides no discussion of either of their reports or conclusions. Additionally, while they disagreed as to the number of hours was capable of working, they both agreed that she required restrictions secondary to continuing residuals of the work injury. Dr. opinion was in direct conflict with this, although he failed to provide sufficient rationale to support his findings.

Additionally, Dr. failed to discuss any of the diagnostic test results in file including MRIs and EMG/NCV studies. On the second page of his report, he stated that "Imaging studies of the spine" showed age-related degenerative changes but no evidence of an injury. This is noted however Dr. failed to discuss the actual imaging studies he reviewed and the findings therein.

In addition to the above, I find that the content of some of the questions posed to the impartial examiner was prejudicial in nature. First, in their instruction to the physician the Office stated,

> "When answering the questions below, please bear in mind that subjective complaints of pain unsupported by clinical findings, the claimant's attitude towards a return to work, and fear of re-injury are not to be considered."

The Office placed special emphasis on this statement by bolding it. They placed further emphasis relative to the claimant's attitude about returning to work by underlining it. Additionally, the Office asked the examiner to address whether the accepted conditions on the claim had resolved but went on to state, "If no, why have the conditions persisted after 18 years without any resolve." In combination, I find the above to be leading and therefore prejudicial to the claim. Specifically, this language appears to have been written in such a way as to elicit a particular response. An inquiry into whether appellant has any further employment-related disability or condition must be phrased in a manner which is *neutral* and does not lead the physician in his or her response.[15]

[15] Brenda C. McQuiston, 54 ECAB (Docket No. 03-1725, issued September 22, 2003).

In a similar claim, the Employees' Compensation Appeals Board found that the manner of a written inquiry to second opinion and designated impartial specialists presented questions *in a manner that was prejudicial* toward claimant and suggested that the physician find her capable of returning to work. The claims examiner did not observe the distinction between inappropriate adjudicatory questions and appropriate medical questions. In light of these deficiencies in the preparation of the questions to be addressed, the Employees' Compensation Appeals Board found that the report of the designated impartial specialist should be excluded from consideration pursuant to Office procedures.[16]

For the reasons outlined above, I find that the Office did not meet its burden in terminating the claimant's benefits. Specifically, the evidence fails to establish that the claimant is no longer entitled to medical and wage loss benefits due to the effects of the work injury. The termination was based upon the findings of Dr. however this was improper for the reasons outlined above.

Proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter.[17] While the claimant has the responsibility to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence and has the obligation to see that justice is done.[18]

Upon return of the case file, the District Office should immediately reinstate the claimant's medical benefits retroactive to the date of termination. Concurrently, the claimant should, if she wishes to have compensation benefits reinstated, file Form CA-7, Claim for Compensation. Upon receipt of the completed form, the Office should review whether there were any prohibited dual benefits received or any earnings for which a reduction in compensation would be necessary. If there were no such prohibited benefits received or earnings, or, after any development the District Office deems necessary, the District Office should promptly reinstate the claimant's compensation benefits at the prior total disability level retroactive to the date of termination. If there were benefits received which require an election, the Office should obtain such an election from the claimant. If there were earnings, the Office should reinstate the claimant's compensation benefits, with any appropriate reductions, in accordance with Office procedures.[19]

In addition, the Office must take the steps necessary to exclude referee examiner Dr. report from the file. Chapter 2-0810(12) of the Procedure Manual notes that the ECAB has established criteria for excluding improperly obtained medical reports from the case record. Specifically, the Board has requested exclusion of medical reports if it is

[16]Brenda C. McQuiston, 54 ECAB (Docket No. 03-1725, issued September 22, 2003).
[17] See Vanessa Young, 55 ECAB 575 (2004).
[18] See Richard E. Simpson, 55 ECAB 490 (2004).
[19] See FECA Procedure Manual 2-1601.9(b)(1)-(3). I note that an immediate reinstatement of compensation benefits without review of possible receipt of prohibited dual benefits or of "earnings" would risk creating an overpayment of compensation. Thus, requiring the claimant to certify whether she received any prohibited dual benefits or had any "earnings" is necessary and appropriate before reinstating full compensation benefits. However, because the burden remains with the Office to terminate compensation benefits in this case, the claimant's reinstatement of compensation should not be delayed to undertake development of medical evidence related to the claimant's disability.

obtained as a result of "leading questions" to the physician in a referee context. As stated above, it has been determined that one of the questions posed to Dr. was leading. As such, the Office must annotate the file in accordance with Chapter 2-0810(12)(b). A memorandum to the file must be prepared explaining why the report is excluded and the referee report and any clarification reports should be deleted and combined with this exclusion memorandum.

The Office should then prepare a new Statement of Accepted Facts. This should be done in accordance with the criteria set forth in Chapter 2-0809 of the FECA Procedure Manual. The Office must also clarify the accepted conditions on the claim and ensure that the diagnoses documented in the SOAF correspond with what is reflected in the electronic record. The Office must then refer the claimant for a new impartial examination to resolve the conflict identified between Dr. and Dr. , relative to work capabilities. Medical rationale and a discussion of the objective examination findings and test results (i.e. MRIs, EMG/NCV testing, etc.) should be provided in support of all opinions rendered. An OWCP-5c work restriction form should be completed. Following receipt and review, the Office should take any further action deemed necessary in addressing continued entitlement to FECA benefits.

Consistent with the above findings, the decision of the District Office dated is ***reversed*** and the case file is returned for further action as described above.

ISSUED:

WASHINGTON, D.C.

Electronically signed

Hearing Representative
for
Director, Office of Workers'
Compensation Programs