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U.S. DEPARTMENT OF LABOR      OFFICE OF WORKERS' COMP PROGRAMS  
PO BOX 8300 DISTRICT 6 JAC  
LONDON, KY 40742-8300  
Phone: (904) 366-0100

June 28, 2018

Date of Injury:  
Employee:

Dear

This concerns your compensation case and your request for reconsideration received on

We have evaluated the evidence submitted and have reviewed the merits of your case under 5 U.S.C. 8128. You have provided sufficient evidence to warrant modification of the decision dated  
Based on the information received, the decision is now vacated.

The reasons for this decision are outlined in the enclosed Notice of Decision.

Sincerely,

Senior Claims Examiner

PAUL H. FELSER  
ATTORNEY AT LAW  
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.*

File Number:  
Merit Review4-D-RECO

**NOTICE OF DECISION**  
**Claimant Name:**  
**Case Number:**

**ISSUE:** The issue for determination is whether the evidence presented is of sufficient probative value to vacate the decision dated

**REQUIREMENTS FOR ENTITLEMENT:** In accordance with the regulations set forth in 20 CFR § 10.609, if an application for reconsideration is accompanied by new and relevant evidence or by an arguable case for error, OWCP will conduct a merit review of the case to determine whether the prior decision should be modified. If sufficient evidence exists to overturn the prior decision, it should be vacated.

As part of an employee's burden of proof, he or she must present rationalized medical opinion evidence, based on a complete factual and medical background, establishing causal relation. The question of whether there is a causal relationship is medical in nature, and generally, can be established only by medical evidence. This medical opinion must be based upon a complete factual and medical background, with an accurate history of appellant's employment injury, and must explain how the condition is related to the injury. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion. 43 ECAB — (1991) [Docket No. 91 -1 256, issued December 13, 1991].

**BACKGROUND:** You are employed as a \_\_\_\_\_ with the \_\_\_\_\_ of the \_\_\_\_\_. On \_\_\_\_\_ you filed a Form CA-2, Notice of Occupational Disease, indicating you sustained a medical condition as a result your employment. You indicated that you first became aware of the condition on \_\_\_\_\_ and on that date first realized that the condition was caused or aggravated by employment. Specifically, you stated that the injury or condition occurred as a result of sitting in a new desk chair, which caused injury to your spine. There was no additional documentation provided with the claim.

In correspondence dated \_\_\_\_\_ you were advised in writing of the deficiencies in your claim and were afforded 30 days from the date of the letter to submit additional evidence. Specifically, you were asked to submit a detailed medical report to include the diagnosis and history of injury provided by you to the physician, the objective findings and physician's medical opinion with rationale as to how your employment activities/exposure caused, contributed to, or aggravated any diagnosed condition.

After development and time for response, on \_\_\_\_\_, a formal decision was issued in your claim finding that the medical component of the third basic element, Fact of Injury, has not been met. Specifically, you did not submit any medical evidence containing a medical diagnosis in connection with the injury and/or event(s). The medical evidence in your claim was from a chiropractor. Under the FECA, a "physician" includes chiropractors only if there is a diagnosed spinal subluxation and it is demonstrated by x-ray. Since the chiropractor did not diagnose a subluxation of the spine, the report cannot establish the medical portion of the claim.

In a letter dated \_\_\_\_\_, your authorized representative Paul H. Felser, Attorney At Law on your behalf requested an Oral Hearing of the \_\_\_\_\_ decision by telephone. On \_\_\_\_\_ a telephonic hearing was held with your

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representative, Paul Felser. By decision dated \_\_\_\_\_, the Hearing Representative finding that the decision dated \_\_\_\_\_ should be affirmed with modification. The evidence in your case consisted of a secure diagnoses to support, Fact of Injury medical. However, the case remained denied because the medical evidence did not provide a rationalized opinion explaining how the diagnosed conditions was caused by or aggravated by the work factors claimed.

Your representative, Paul Felser on your behalf disagreed with the decision and requested reconsideration in a letter dated \_\_\_\_\_ and received in our Office on \_\_\_\_\_. By decision dated \_\_\_\_\_, our Office denied modification of the decision dated \_\_\_\_\_.

You disagreed with the \_\_\_\_\_ decision and your representative, Paul Felser on your behalf requested reconsideration by letter dated \_\_\_\_\_ and in received in our Office on \_\_\_\_\_. In a letter dated \_\_\_\_\_, your employer was advised of your request for reconsideration in accordance with our regulations. Our Office advised that the issue in question pertains to a medical issue; therefore, we would proceed accordingly with action on your request. New evidence not previously considered was also received.

**DISCUSSION OF EVIDENCE:** The evidence reviewed in support of your reconsideration request since the date of the contested decision dated \_\_\_\_\_, which includes your representative, Paul Felser letter dated \_\_\_\_\_ and medical letter from \_\_\_\_\_, M.D. dated \_\_\_\_\_.

**Causal relationship** is a medical issue which requires your physician to explain how he or she believes that the accident, event, or employment factors caused or affected your condition and the objective findings that support that conclusion.

I have reviewed this new evidence and the evidence of record. In the statement from your representative, Mr. Felser dated \_\_\_\_\_ argues that the request has been submitted within one year of the decision and the new medical evidence from your physician Dr. \_\_\_\_\_ is enough to vacate and accept the claim. However, it is not enough that he believes the condition resulted from the employment factors as such a relationship must be shown by rationalized medical evidence. Again, we would need to look to the medical evidence for support of a cause-and-effect relationship between your conditions and employment factors. Your statement is of probative value as the issue is medical in nature.

In the medical letter from Dr. \_\_\_\_\_ dated \_\_\_\_\_ provides a discussion of the specific history of injury, medical history of you and examination/diagnostic findings and offers a medically rationalized opinion explaining how a the diagnoses were caused by and aggravated by work factors. Dr. \_\_\_\_\_ states, "Based on my review of medical history, medical records, objective testing performed by myself and her other providers, her job requirements and the issue with her chair after the clinic was moved, it is my opinion to a reasonable degree of medical certainty that the broken chair, along with the delay in receiving the ergonomic chair/desk, has caused a permanent aggravation of your degenerative disc disease in the lumbar and cervical spine. In addition, due to the additional stress placed on her spine in sitting position because of the faulty chair has caused the development of the disc herniation at the levels outlined in my previous office notes."

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**BASIS FOR DECISION:** The evidence is sufficient to vacate the decision dated \_\_\_\_\_, because the evidence of record now supports that your conditions of degenerative disk disease at L4-L5, L5-S1 with annular tearing at L4-5; bilateral foraminal stenosis at L4-L5, L5-S1 bilateral radiculopathy; bilateral facet effusions and facet arthropathy at L4-L5, L5-S1; and bilateral lumbar instability with Kader grade IV multifidus atrophy are causally related to the accepted work factors established in your case. Given a basic Occupational Disease claim, the medical evidence of record which includes Dr. Weiss' medical letter now provides a clear affirmative opinion on causal relationship between the accepted work factors and your diagnosed conditions.

**CONCLUSION:** Therefore, the decision dated \_\_\_\_\_ is vacated. Your case is now approved for degenerative disk disease at L4-L5, L5-S1 with annular tearing at L4-5; bilateral foraminal stenosis at L4-L5, L5-S1 bilateral radiculopathy; bilateral facet effusions and facet arthropathy at L4-L5, L5-S1; and bilateral lumbar instability with Kader grade IV multifidus atrophy.

Senior Claims Examiner