

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 _____ As a result of such hearing, it has been determined that the decision issued by the District Office should be vacated and the case remanded to the district 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 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,

Electronically Signed

Rashawnda Snell
Hearing Representative

PAUL H 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, May 31, 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 _____
Case No. _____ An oral hearing was held via telephone on _____

The issue for consideration is whether the claimant sustained an injury as a result of his employment on _____

On _____ the claimant, _____ born _____ a _____ filed a notice of traumatic injury claiming that he sustained an injury on _____, when he bent over to pick up his drill and his back froze. The agency supervisor, _____ marked that the incident occurred in the performance of duty, that there was no willful misconduct involved and that the claimant sought medical treatment on the incident date. Supervisor _____ marked that he agreed with the claimant's account of the incident but stated that the agency was challenging any claim for continuation of pay due to timeliness. A copy of the claimant's job description was received.

In a _____ decision, the District Office denied the claim finding that the claimant had not provided sufficient discussion regarding the claimed work event. The Office also noted that there was no medical evidence for review of an injury or diagnosis due to the claimed incident. The claimant disagreed with the decision and through his attorney requested a hearing with an OWCP Representative.

A _____ report from Dr. _____, was received. In his _____ letter, Paul Felser, the claimant's attorney, argued that the record evidence, to include Dr. _____ report, was sufficient to establish the claim. Additional medical records were received including the _____ occupational health records, Dr. _____ report, Dr. D. _____ treatment report and a _____ lumbar MRI report.

A telephone hearing was held on _____, where Attorney Felser presented argument in support of the claim. He argued that there was no other comment regarding the claimant's account of the claimed injury and it should be taken as factual given the lack of contrary evidence. Attorney Felser advised that the claimant would provide an additional statement regarding the claimed injury. He argued that the claimant sought immediate medical care and the evidence supported a lumbar disc injury due to the work event. Attorney Felser argued that the claimant had a pre-existing condition that did not require treatment until the _____ work event. He stated that the claimant was able to perform his duties with no interruption until the work event. The attorney was advised of the deficiencies in the claim, particularly given the lack of response to the Office's _____ development letter requesting clarification of the work event, pre-existing condition(s) and treatment.

The agency did not submit comments following the hearing. The attorney submitted multiple medical and treatment records and copies of the claimant's undated statements following the hearing.

To determine whether a Federal employee has sustained a traumatic injury or occupational condition in the performance of duty, it must first be determined whether a fact of injury has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the

employment incident at the time, place and in the manner alleged.¹ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.² The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.³ Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident of employment factor(s).⁴ An award of compensation may not be based on the claimant's belief of causal relationship. Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by the employment or incidents is sufficient to establish a causal relationship.⁵

The Office denied the claim finding that the claimant had not provided sufficient explanation regarding the claimed work event to consider a factual basis to the claim. During the hearing, the claimant's attorney argued that the claimant had provided an initial statement that sufficiently explained the work event. Contrary to the argument presented, the attorney was advised that the Office rightfully explained that there were deficiencies in the record that required an explanation from the claimant. In his undated statements, received following the hearing, the claimant explained that he was sitting on a stool and hurt his back when he bent forward to retrieve a drill from the floor. He stated that his back froze when he leaned forward and he was unable sit up straight for a few minutes. The claimant stated that he experienced back spasms, radiating pain into the leg, foot and toes, and numbness in the genital area. The claimant stated that his supervisor, _____, instructed someone to take him to the ER. The claimant stated that the incident occurred on Friday and he returned to work on Monday, at which time the base physician placed him on light duty. The claimant stated that his the supervisor placed him off the floor and directed him to fill out the injury form. In a second undated statement, the claimant stated that he began working at the Air Force Base in _____, explaining the duties he had performed over the years. The claimant stated that he developed back problems while working in awkward positions and in confined spaces, was treated under "Workers Comp",⁶ and returned to work with no problems until the _____ work event. He stated that he underwent back and bilateral carpal tunnel surgeries. The claimant stated that he had experienced usual aches and pains in the course of his work but he was able to work and perform his regular duties. He stated that he had been out of work since _____, following back and bilateral wrist surgeries and related PT.

I find that the claimant's statements regarding the _____ work incident and his explanation of prior complaints is sufficient to accept his explanation of the mechanism of injury. While the claimant did not respond to the Office's initial request for additional information, the claimant has since provided detailed statements explaining the injury, prior symptoms and making other comments to consider a history of prior complaints. Supervisor _____ noted that the claimant was in the performance of duty and that he agreed with the claimant's account of the incident, only controverting C.O.P., as the claim form was not filed with the agency until five months after the injury date. The claimant has the burden to

¹ *Linda S. Jackson*, 49 ECAB 486 (1998); *John J. Carlone*, 41 ECAB 354 (1989).

² *Id.*

³ *Lourdes Harris*, 45 ECAB 545 (1994).

⁴ *John W. Montoya*, 54 ECAB 306 (2003).

⁵ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

⁶ In review of the claimant's prior injury claims, _____ (C1), _____ (C3) and _____ (C3), the record does not reflect that any of the claims were filed for a back injury for which treatment was authorized.

provide a detailed and clear account of the mechanism of injury or claimed condition, whether traumatic or occupational in nature. An alleged work incident does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty, but the employee's statement must be consistent with the surrounding facts and circumstances and his subsequent course of action.⁷ An employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.⁸ The claimant's supplemental statement is consistent with his initial statement and there has been no evidence or argument by the agency in response to the facts in the claim or the argument presented at hearing. I find that the claimant has presented sufficient evidence regarding the incident to establish the factual component of the element of fact of injury.

While the claimant has provided evidence sufficient to establish a factual basis to the claim, he bears the burden to ensure that there is sufficient medical evidence establishing,⁹ or at a minimum, warranting further review of a condition due to the employment.

In its denial, the Office stated that there was no medical evidence to further consider a diagnosis or injury as a result of the claimed work event. Following the denial, the Office received multiple medical records for treatment prior to and subsequent to the injury date.

The claimant was evaluated on the incident date by Physician Assistant, , for complaints of low back pain and stiffness following an incident when he bent over from a seated position to pick up a drill tool. The exam findings were noted and the claimant was released with a diagnosis of back pain. The occupational health records indicate that the claimant was seen for back pain complaints following the work incident. The exam findings were outlined and the claimant was diagnosed with muscle sprain and left-sided sciatica. It is unclear if the evaluator, is a physician or under the supervision of a physician. In his report, Dr. detailed the claimant's treatment following the initial evaluation noting the results of the diagnostic testing discussed at the time of his and appointments. He stated that the claimant underwent L4-5 decompression and fusion on Dr. concluded that the claimant was not experiencing pain or difficulties until the work event, which caused his low back pain and radicular symptoms and resulting surgery. In his report, Dr. stated that the claimant was seen for low back pain after bending over to pick up something at work on Dr. explained that the claimant developed progressive pain, numbness and tingling into his left leg, knee and foot. He noted that the claimant was treated with injections, NSAIDs, narcotic and muscle relaxants and found to have SI joint and trochanter bursitis. He explained that a lumbar MRI study demonstrated a large L4-5 herniated disc and the claimant was referred for a myelogram and CT scan in , after complaints of symptoms and numbness in the testicles and penis. He noted the results showed multilevel degenerative disc disease and severe stenosis at L4-5, for which L4-5 fusion surgery was performed. Dr. stated that the claimant was evaluated in and although he continued to have back spasms, there was noted improvement in his lower extremity strength. He stated that the claimant had neck pain with headaches for which cervical spine films were being ordered. Dr. opined that the job injury exacerbated the claimant's chronic condition and the lifting caused further disc protrusion into the canal and encroachment caused nerve root compression. He further concluded that the foot drop due to nerve compression was also related to the job injury.

⁷ *Rex A. Lenk*, 35 ECAB 253, 255 (1983).

⁸ *Id.*

⁹ *Supra* note 4.

I find that Dr. [redacted] reports imply a relationship of the claimant's lumbar herniated disc condition and aggravation of the underlying degenerative condition to the [redacted] work incident sufficient to require further development of the medical evidence on the part of the Office. While Dr. [redacted] mostly explained that the claimant did not have symptoms and was able to work until the [redacted] work incident, Dr. [redacted], a board certified orthopedic surgeon, has not offered a thorough discussion explaining how the accepted work event resulted in the diagnosed low back conditions and resulting surgery,¹⁰ however, his treatment reports indicate an clear understanding of the work incident, an understanding of the claimant's overall condition, treatment and an opinion relating the diagnoses to the employment event. Given the lack of contrary medical discussion, Dr. [redacted] reports represent an uncontroverted inference of causal relationship that is unchallenged in the record. While the medical evidence submitted does not have detailed rationale to support an opinion of causal relationship, it is sufficient to require further development.¹¹ Although Dr. [redacted] reports are insufficient to discharge the claimant's burden of proving by the weight of the reliable, substantive and probative evidence that the claimed condition is causally related to the employment, the report constitutes sufficient evidence in support of the claim to require further development of the record by the Office.¹² The Federal Employees' Compensation Act is not adversarial and the District Office is not a disinterested arbiter. When an uncontroverted inference of causal relationship is raised, the Office has a duty to further investigate the issue.

It is noted that there has been very little discussion of the claimed CTS diagnosis as a result of the [redacted] work incident and even less medical discussion explaining an injury due to the work event. In his [redacted] report, Dr. [redacted] made reference to the claimant's complaints at the time of his [redacted] evaluation to weakness, pain and stiffness in the neck shoulders, arms and hands. On his [redacted] report, Dr. [redacted] made reference to the claimant's complaints of headaches and neck pain for which he stated that films were being ordered, however, there was no other discussion provided or explanation that or how any resulting injury is due to the work event.

Upon return of the case record, the Office should prepare the case for a second opinion evaluation. The Office should prepare a Statement of Accepted Facts (SOAF) outlining the work event accepted as factual and refer the claimant with the medical records and SOAF to a board-certified specialist for a second opinion evaluation regarding a specific diagnosis and a discussion of causal relationship explaining whether the work event was significant to result in the diagnosed condition(s) either by direct cause or aggravation. The Office should request that the second opinion physician provide a rationalized discussion in support of any conclusion relating or ruling out any condition(s) or diagnoses to the accepted work event and explain whether the [redacted] lumbar fusion surgery was medically indicated as a result of the work event. Following any additional development considered necessary, the Office should issue a *de novo* decision regarding the claim for a work related injury or condition and any entitlement to benefits, if applicable, under the Act.

¹⁰ The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors. *Lourdes Harris*, 45 ECAB 545 (1994).

¹¹ *William J. Cantrell*, 34 ECAB 1233, (1983).

¹² *Horace Langhome*, 29 ECAB 820(1978).

Consistent with the above findings, the District Office's case is remanded for further medical development.

decision is set aside and the

Issued:

Washington, D.C.

Electronically Signed

Hearing Representative

for

Director, Office of

Workers' Compensation Programs