

File Number:
Merit Review4-D-RECO

RECEIVED DEC 09 2017

U.S. DEPARTMENT OF LABOR

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

December 05, 2017

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 [redacted]. Based on the information received, the decision is now vacated. The reasons for this decision are outlined in the enclosed Notice of Decision.

Please see the acceptance letter for a discussion of your rights and responsibilities.

Sincerely,

Senior Claims Examiner

Cc:

PAUL H FELSER
FELSER LAW FIRM, P.C.
7393 HODGSON MEMORIAL DRIVE
SUITE 102
SAVANNAH, GA 31405

If you have a disability (a substantially limiting physical or mental impairment), please contact our office/claims examiner for information about the kinds of help available, such as communication assistance (alternate formats or sign language interpretation), accommodations and modifications.

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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 _____, which was an initial denial of your claim.

REQUIREMENTS FOR ENTITLEMENT: In accordance with the regulations set forth in the Code of Federal Regulations at 20 CFR § 10.609, if an application for reconsideration is accompanied by new and relevant evidence or by an arguable case for error, the Office of Workers' Compensation Programs (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.

BACKGROUND: You are or were employed as a Clerk with the _____ (USPS) in _____. On _____ you filed a Form CA-1 (traumatic injury claim form) indicating you sustained an injury to your right kneecap and left hand on _____ as a result of your employment. Specifically, you claimed that you turned to speak to someone and missed the last step, outside on the stairs while you were exiting the building. (Your supplemental statement noted that your right elbow also hit the sidewalk.)

It appears that your fall occurred only 3 minutes after the end of your shift, which is an allowable amount of time so as to be considered within the 'performance of duty'. Later documentation also established that the parking area was owned by the USPS, and was designated for employee use.

You have some prior claims. Case file number _____ with date of injury _____, involved a right knee medial meniscus tear. Case file number _____ with date of injury _____ involved a right knee contusion, among other conditions.

After development and response, a formal decision was issued in your case on _____. The decision denied your claim, finding that the evidence was not sufficient to establish that you sustained an injury as defined by the Federal Employees' Compensation Act (FECA).

In addition to the Form CA-1, the documentation that had been received included the following:

- Medical reports from Dr. _____ from the date range _____
- Request for Durable Medical Equipment authorization
- X-ray results of the right knee and right hand
- Form CA-16 (Authorization for Examination and/or Treatment)
- Medical report and discharge instructions from Gwinnett Medical Center, dated _____
- Your statement received on _____
- Medical report from Dr. _____, dated _____

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- Medical report from Dr. _____, dated _____ It mentions a fall at work on _____ The impressions included, among others, right knee prepatellar bursitis.
- Medical reports from Dr. _____, dated _____ and _____
- Payslip received on _____
- Position description for Mail Processing Clerk or Distribution Clerk
- Medical report from Dr. _____ dated _____
- Grievance Resolution Form received on _____
- General Medical and Surgical request form received on _____
- Appointment for EMG/NCV exam received on _____
- Signed questionnaire form received on _____
- Employing agency statement received on _____

The reason for the decision was explained as follows:

Specifically your case is denied because the evidence is not sufficient to establish that the event(s) occurred as you described. The reason for this finding is that in determining fact of injury emphasis is place on time, place, and circumstance of injury. Evidence presented must be consistent to establish fact of injury. Specifically, an injury or work factor contributed to an injury on _____. As previously stated in our development letter you did not provide a clear description of the event of specific factors supporting an injury or a medical condition occurring at work. You did not provide any evidence to support that employment factors led to the medical condition claimed. The fact that you state that you was turning to speak to someone and missed the last step does not infer an actual work injury or event occurred. We requested that you provide an additional statement to support the cause(s) of injury and medical evidence to support your condition claimed in our letter dated _____. You provided no response to our additional request for factual clarification or events of injury. You only provided a signed questionnaire from our development letter dated _____ with no comments.

You disagreed with the _____ decision. Through your representative, you requested reconsideration by letter received on _____

DISCUSSION OF EVIDENCE: In addition to the reconsideration-request letter, the evidence reviewed in support of your reconsideration request includes the following:

- your statement in response to the questionnaire from our Office
- another statement from you dated _____ describing the circumstances surrounding your injury
- a USPS manager's statement supporting that your injury occurred on USPS premises
- medical evidence of record, including a newly received letter from Dr. _____

The factual evidence of record now paints a sufficiently clear picture to enable us to visualize how your injury happened. The factual aspect of Fact of Injury is considered established.

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We now turn to a review of the medical evidence. The hospital report from the date of injury indicated that you were there due to a fall from steps. You were found to have "mild ecchymosis to left thenar eminence." In those hospital records, M.D., indicated a right elbow abrasion, a right knee abrasion, a knee contusion, and a hand contusion.

Similarly, Dr. recently received letter indicated a right knee contusion. Although that letter also opined that the fall made your arthritis more symptomatic (more pain in your right knee), it did not clearly differentiate the effects of the prior/pre-existing injuries from any effects of the injury. In other words, the physician did not provide a fully rationalized statement of opinion, based upon a complete factual and medical history, regarding the possible aggravation of your right knee arthritis. His letter also did not explain why the pain/inflammation from your fall would result in the "permanent" aggravation that he opined. Given these considerations, your case is not being accepted for right knee arthritis, or an aggravation thereof, at this time.

BASIS FOR DECISION: The evidence is sufficient to vacate the decision dated because the additional statements provide sufficient clarity as to the factual circumstances surrounding your claimed injury. Also, the file contains medical evidence documenting diagnoses that are in line with how you described your injury, and that are a logical result of the type of injury incident that you had. (You missed a step, hit your left hand on a parked vehicle trying to take the impact of the hit, and impacted the sidewalk with your right elbow and your right knee.)

CONCLUSION: Therefore, the decision dated is vacated. Your case is now accepted for contusion of the left hand, abrasion of the right elbow, abrasion of the right knee, and contusion of the right knee. See the acceptance letter for further details.

Senior Claims Examiner
12/05/2017