

File Number:  
HR11-D-H

RECEIVED NOV 24 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 preliminary review has been completed, and it has been determined that the case is not in posture for a hearing at this time. The decision of the District Office has been vacated and returned to the district office for further action as explained in the attached Remand Order.

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  
7393 HODGSON DR  
STE 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 19, 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 No.

Merit consideration of the case file was completed in Washington, DC. Based on this review, the decision of the District Office is vacated for the reasons set forth below.

The issue for consideration is whether the claimant sustained an injury on in the performance of duty as claimed.

The claimant, born , has been employed with the as a . On she filed a timely Notice of Traumatic Injury and Claim for Compensation, claiming that she sustained a low back injury on when she twisted while lifting tubs and sacks of mail. The claimant's employer confirmed that she was in the performance of duty.

By letter dated the District Office of Workers' Compensation Programs requested that the claimant submit medical and factual evidence in support of the claim.

The claimant wrote that on she was sorting trays, tubs and sacks of mail, which required bending and turning while lifting. She stated that she felt a slight twinge at the time, but it was not until the evening at home that she felt strong pain. The next day, a Sunday, the claimant continued, she awoke with severe pain. She stated that she stayed in bed on her days off, Sunday and Monday, then took three sick days. She stated that she rested at home, but by Wednesday she had to go to an emergency room.

Medical evidence submitted to the record shows that the claimant was treated for back pain on at Summerville Medical Center. x-rays showed no acute fracture, and degenerative changes. A Nurse Practitioner examined the claimant on , noting that the claimant had lifted tubs on Saturday. A report is signed by Dr. MD. Dr. noted the lifting incident. Acute sciatica was diagnosed.

The Office denied the claim on

The claimant's attorney, Paul Felser, requested a hearing on behalf of the claimant. Additional evidence was submitted. The Nurse Practitioner also diagnosed sciatica on Dr. MD, orthopedic surgeon, reported on that the claimant was improving after 6 physical therapy visits. He diagnosed lumbar sprain and left-sided sciatica. He opined that the claimant's lifting activities in late were the source of her back pain and intermittent left-sided sciatica.

I find that the evidence of record compels further development.

An Employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> has the burden of establishing the essential elements of his claim<sup>2</sup> including the fact that the individual is an 'employee of the United States' within the meaning of the Act<sup>3</sup>, that the claim was timely filed within the applicable time limitation period of the Act<sup>4</sup>, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>5</sup> These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>6</sup>

Causal relationship is a medical issue,<sup>7</sup> and the medical evidence required to establish a causal relationship is rationalized medical evidence. Rationalized medical evidence is medical evidence that includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician 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.<sup>8</sup> Moreover, the mere fact that a disease or condition manifests itself during a period of employment or the belief that the disease or condition was caused or aggravated by employment factors or incidents is insufficient to establish causal relationship.<sup>9</sup>

In the instant case there is no dispute that the claimant performed the duties as described on

She has given a detailed explanation of what occurred and her actions/treatment in the days following. The medical evidence lends support to the claim of a back injury. Dr. signed a report and diagnosed sciatica, noting the history of lifting. Further, Dr. opined definitively that the claimant's lifting episode caused a back injury with sciatica. While the evidence is not sufficiently well rationalized to meet the claimant's burden of proof, it does present a *prima facie* claim.<sup>10</sup> Absent of medical evidence to the contrary, the report is sufficient to require further development of the record.<sup>11</sup>

It is well-established that proceedings under the Act are not adversarial in nature.<sup>12</sup> While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.<sup>13</sup>

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<sup>1</sup> 5 U.S.C. 8101-8193.

<sup>2</sup> See *Daniel R. Hickman*, 34 ECAB 1220 (1983).

<sup>3</sup> See *James A. Lynch*, 32 ECAB 2116 (1980).

<sup>4</sup> 5 U.S.C. 8122.

<sup>5</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>6</sup> *Delores C. Ellyett*, 41 ECAB 922 (1990).

<sup>7</sup> *Mary J. Briggs*, 37 ECAB 578 (1986).

<sup>8</sup> *Charles E. Burke*, 47 ECAB 185(1995).

<sup>9</sup> *Minnie Bryson*, 44 ECAB 713 (1995).

<sup>10</sup> See *Doyce Austin*, ECAB Docket No. 00-1037, Issued February 14, 2011.

<sup>11</sup> *John J. Corlone*, 41 ECAB 354 (1989).

<sup>12</sup> See, e.g., *Walter A. Fundinger, Jr.*, 37 ECAB 200 (1985).

<sup>13</sup> See *Dorothy L. Sidwell*, 36 ECAB 699 (1985).

On REMAND, the Office should prepare a Statement of Accepted Facts and refer the claimant, together with the Statement and all medical records, to an appropriate Board-certified specialist for a detailed opinion on the relationship of the claimant's back condition and the lifting incident. The specialist should clearly state the diagnosis.

When the specialist's response is received, and after any other case development that should become necessary, the Office may issue a *de novo* decision.

ISSUED:  
WASHINGTON, DC

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