

File Number:
HR12-D-H

U.S. DEPARTMENT OF LABOR

OFFICE OF WORKERS' COMP PROGRAMS
PO BOX 8300 DISTRICT 50
LONDON, KY 40742-8300
Phone: (202) 693-0045

RECEIVED DEC 01 2018

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 AT LAW
7393 HODGSON MEMORIAL DR
SUITE 102
SAVANNAH, GA 31405

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 28, 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 by telephone on _____ . As a result, the decision of the District Office dated _____ is hereby reversed, and the case is remanded for additional actions, for the reasons set forth below.

The issue for determination is whether the Office met its burden when it terminated the claimant's medical and wage-loss compensation benefits under the current claim.

The claimant is an employee of the _____ .

Under OWCP file number _____ the District Office accepted that the claimant sustained an injury in the performance of duty on _____ working as a _____ when she stepped into a hole with her right foot causing her to put extra weight on the left leg. The claim was accepted for torn left medial meniscus and left knee sprain. The claimant underwent approved surgery on (_____ performed by _____, MD: left knee arthroscopy with partial medial meniscectomy; chondroplasty at the medial femoral condyle and patellofemoral condyle and patellofemoral articulation. She returned to full time work as a _____ on _____.

Under the current file _____ the District Office accepted that the claimant sustained an injury in the performance of duty on _____ working as a _____ when she was stepping up into her vehicle and felt a terrible pain in her right knee cap. The claim was accepted for right torn medial meniscus. The claimant underwent approved surgery on _____ performed by her attending physician, Dr. _____ : right knee arthroscopy, medial and lateral meniscectomy and debridement of medial synovial plica. She received ongoing wage-loss compensation based on temporary total disability via the OWCP "Periodic Roll".

The claimant attended a directed "second opinion" examination with _____ MD on _____ . In his narrative report, Dr. _____ explained that the accepted, work-related torn medial meniscus of the left knee had resolved after she had surgery to correct it; however, he found the claimant continued to experience residuals of the work-related injury in the form of bilateral knee arthritis, which prevented her from returning to her pre-injury position as a _____ due to limitations of walking, standing and climbing; and inability to operate a motor vehicle at work. He found the claimant was at maximum medical improvement.

The claimant returned to a limited duty job as a F on working 20 hours a week.

In a memorandum of record dated , the District Office expanded the current claim to include osteoarthritis of the right knee as an accepted, work-related medical condition based on the well-reasoned medical opinion of Dr.

On the District Office issued a formal decision with a finding that the part-time position of : fairly and reasonably represented the claimant's wage-earning capacity, and reduced her wage-loss compensation accordingly.

The claimant continued to receive ongoing compensation based on her loss of wage-earning capacity via the OWCP "Periodic Roll".

The claimant stopped working on . Treatment notes from the attending physician, Dr. , dated advised the claimant was unable to work due to bilateral knee osteoarthritis.

The claimant underwent a directed "second opinion" examination with DO on

In a formal decision dated , the District Office denied the claim for recurrence of total disability effective and ongoing with a finding that the medical evidence failed to establish the claimant became disabled due to a change in the accepted, work-related injury. Dr. stated on that the accepted condition of tear of the right knee medial meniscus had resolved following the surgical repair.

The claimant underwent a directed "second opinion" examination with Dr. MD on

The claimant underwent a directed "second opinion" examination with , MD, on

On , the District Office released a pre-termination notice to the claimant, advising of the intention to terminate medical and wage-loss compensation benefits, on the basis that the weight of medical evidence, represented by the opinion of the second opinion physician, Dr. supported that she was no longer suffering from the effect of the accepted work injury. In his report dated . Dr. explained that the accepted, work-related condition, right knee medial meniscus tear, had resolved with surgery to correct the problem. There was no reason to restrict activity more than 8 weeks after a right knee arthroscopy that was uncomplicated. There was no evidence of any ongoing complications from the surgery. It was apparent that the claimant had multiple other unrelated conditions preventing her return to work.

The claimant was afforded 30 days to provide evidence or argument against the proposed termination action.

Evidence received to the record in response to the pre-termination notice included a treatment note from Dr. [redacted] dated [redacted] advising the claimant was unable to return to work due to pain, swelling and crepitus in both knees; and a letter from the claimant's attorney dated [redacted] arguing against the proposed decision to terminate the claimant's benefits on the basis that the opinion of Dr. [redacted] was not sufficiently reasoned and did not take into account the prior medical evidence of record.

On [redacted] the District Office issued a formal decision terminating the claimant's medical and wage-loss compensation benefits. The Office found that the weight of medical evidence resided with the opinion of Dr. [redacted], the second opinion physician, and supported that the claimant was no longer suffering from the effect of the accepted work injury, and was no longer disabled from work as a result of the accepted injury. The documents submitted in response to the pre-termination notice were found insufficient to shift the weight of medical evidence away from the opinion of Dr. [redacted].

The claimant disagreed with this decision and requested an appeal in the form of an Oral Hearing before the Branch of Hearings and Review. A Hearing was held by telephone on [redacted]. The claimant did not attend the Hearing; however, her authorized representative, Attorney Paul Felser, offered argument on the record on her behalf. There was no representative from the employing agency present to observe the proceedings.

Attorney Felser noted that the current claim was filed as an occupational disease, but had been administratively converted to a traumatic injury claim. He posited that there may have been components of a worsening knee condition at work over time leading up to the incident on [redacted]. He noted that the claimant had accepted, work-related injuries to the left and right knees and asserted that these were overlapping issues. An argument could be made that the cases should be doubled together, as both were similar work-related injuries.

Attorney Felser argued there were additional work-related conditions identified by the second opinion physicians of record that had either been overlooked, or ignored by the District Office, without explanation. On [redacted] Dr. [redacted] indicated the residuals of the work-related injuries included bilateral osteoarthritis of the knees, evident on radiographs, and she was thus unable to return to her job as a [redacted], as she was not able to perform the walking, standing or climbing required. Attorney Felser argued that the bilateral osteoarthritis of the knees identified by Dr. [redacted] should have been accepted by the District Office, or at the very least, the issue should have been developed further.

Attorney Felser noted that second opinion physician Dr. [redacted] on [redacted] advised that the accepted condition of localized osteoarthritis of the right knee had not resolved. He explained it was a chronic and progressive disorder. Despite surgery, the osteoarthritis continued to exist and slowly worsened over time. X-rays of record validated his opinion.

Attorney Felser noted that Dr. _____ report of _____ was very thorough, and also supported that the claimant's pre-existing degenerative joint disease was aggravated by the work injury.

Attorney Felser indicated that he believed Dr. _____ was in the same practice as Dr. _____ but Dr. _____ did not explain why his medical opinion differed from that of Dr. _____ and the other second opinion physicians of record.

Attorney Felser argued that Dr. _____ offered a brief summary opinion, asserting that the accepted injury resolved and the claimant could return to work, without sufficient medical rationale or reference to any findings or testing to support his opinion. The Office incorrectly accepted the brief, unreasoned opinion of Dr. _____ to justify termination of benefits and ignored the numerous prior second opinions that supported ongoing disability and residuals due to the accepted work injury.

Attorney Felser asked that the record remain open for 30 days to allow for the submission of additional evidence for the appeal. The request was granted, and the record held open. Following the conclusion of the Hearing, copies of the transcript were released to the claimant and the employer, and their comments were invited. As of this date, no response to the transcript has been received.

Based on my careful consideration of the evidence of record at this time, I find the decision of the Office terminating the claimant's medical and wage-loss compensation must be set aside. The Office failed to meet its burden of proof when it relied on the opinion of Dr. _____ to justify termination of these benefits.

Once the Office accepts a claim, it has the burden of proof to justify a termination or modification of compensation benefits.¹ 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.² The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, the Office must establish that a claimant no longer has residuals of an employment-related condition, which requires further medical treatment.³ The Office's burden includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁴

The weight of medical 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 analysis

¹ *Harold S. McGough*, 36 ECAB 332 (1984).

² *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

³ *Leonard M. Burger*, 51 ECAB 369 (2000).

⁴ *Raymond W. Behrens*, 50 ECAB _____ (Docket No. 97-1289, issued January 14, 1999).

manifested, and the medical rationale expressed in support of the physician's opinion are factors which enter into this evaluation.⁵

On _____, the District Office terminated wage-loss compensation and medical benefits on the grounds that the weight of medical evidence supported that the accepted work-related condition had resolved. To justify the termination of benefits, the Office relied on the opinion of the second opinion physician, Dr. _____, as the weight of medical evidence. Dr. _____ opined that the accepted work-related medical condition, right knee tear of meniscus, had resolved without complications after surgery in _____. He opined that, with respect to that diagnosis alone, the claimant could return to her pre-injury job; however, it was apparent that the claimant had multiple unrelated conditions preventing her from returning to work.

On appeal, the claimant's attorney argued that the District Office was incorrect to rely on the unreasoned opinion of Dr. _____ as the weight of medical evidence; and incorrect to ignore prior second opinion physicians of record who offered reasoned opinions based on the objective findings supporting that the claimant was still disabled from her pre-injury position due to work-related osteoarthritis of the right knee caused by the work injury of _____.

In this case, I find that the argument of the claimant's representative is persuasive. The opinion of Dr. _____ is not sufficiently reasoned, and therefore is of diminished probative value. Furthermore, Dr. _____ has not based his opinion on the accepted facts of the case, and is of further diminished probative value as a result. The Office therefore failed to meet its burden when it terminated benefits based on the opinion of Dr. _____.

In this case, the claim was initially accepted for right knee meniscus tear due to the work injury on _____. Based on the well-reasoned opinion of the second opinion physician, Dr. _____ as expressed in his report dated _____; the District Office expanded the claim to include right knee osteoarthritis as an accepted, work-related medical condition. This is explained in the memorandum of record by the District Office dated _____. The District Office acknowledged in that same memo that Dr. _____ found the claimant had reached maximum medical improvement with ongoing work-restrictions due to right knee osteoarthritis with respect to walking, standing, climbing and driving that prevented her from returning to work in her pre-injury position a _____. There is no evidence of record to establish that the acceptance of right knee osteoarthritis was rescinded.

The Office provides a physician with a SOAF to assure that the medical specialist's report is based upon a proper factual background.⁶ The SOAF must include the date of injury, claimant's age, the job held on the date of injury, the employer, the mechanism of injury and the claimed or accepted conditions.⁷ Office procedures further indicate that, when an Office medical adviser, second opinion specialist or referee physician "renders a medical opinion based on a SOAF which is incomplete or inaccurate or does not use the SOAF as the

⁵ *Connie Johns*, 44 ECAB 560 (1993).

⁶ *Helen Casillas*, 46 ECAB 1044 (1995).

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Statements of Accepted Facts*, Chapter 2.809.12 (June 1995); *see also Darletha Coleman*, 55 ECAB _____ (Docket No. 03-868, issued November 10, 2003).

framework in forming his or her opinion, the probative value of the opinion is seriously diminished or negated altogether.”⁸

The Statement of Accepted Facts (SOAF) provided to Dr. [redacted] failed to identify the accepted, work-related condition “right knee osteoarthritis”. The SOAF incorrectly states that right knee osteoarthritis is not accepted as work-related. The SOAF that was provided to Dr. [redacted] therefore did not reflect the accepted facts of the case. This error was repeated in the list of questions provided to Dr. [redacted], to answer in his narrative report.

As the SOAF was deficient; the medical opinion of Dr. [redacted] based on a defective SOAF, was also deficient. As Dr. [redacted] based his opinion on an incorrect SOAF, his opinion is of severely diminished probative value. Dr. [redacted] offered no opinion addressing whether the claimant had residuals or disability related to the accepted work-related condition, right knee osteoarthritis.

In sum, the Office failed to meet its burden when it terminated the claimant’s compensation and medical benefits based on the medical opinion of Dr. [redacted] for the reasons noted above. The decision of the Office dated [redacted] must therefore set aside. Since the Office failed to meet its burden of proof when it terminated the claimant’s compensation and medical benefits; the claimant is entitled to retroactive reinstatement of these benefits, back to the date of termination.

It is noted that documentary evidence of record from the employing agency and the Office of Personnel Management (OPM) confirms the claimant was approved for retirement on [redacted]. To avoid a potential overpayment due to concurrent receipt of prohibited dual benefits, the claimant should be required to effect a written election between OPM retirement benefits and FECA wage-loss compensation benefits for the period beginning [redacted] and to verify whether she has been in receipt of OPM retirement benefits for any portion of this period.

In addition, upon return of the case file record to the District Office, the Statement of Accepted Facts (SOAF) should be amended to correctly identify right knee osteoarthritis as an accepted, work-related medical condition. The District Office should also administratively combine, or “double” the current claim file ([redacted]) with the claimant’s prior file ([redacted]) as these claims pertain to similar injuries affecting the lower extremities with an overlapping component, as noted by the claimant’s representative at the Hearing.

OWCP procedures provide that cases should be combined when correct adjudication of the issues depends on frequent cross-reference between files. If a new injury case is reported for an employee who previously filed an injury claim for a similar condition or the same part of the body, doubling is required.⁹

⁸ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.3 (October 1990).

⁹ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8(c) (February 2000); *T.D.*, Docket No. 07-2331 (issued June 19, 2008).

The decision of _____ is hereby reversed, and the case is remanded to the District Office for actions consistent with this decision.

Issued:
Washington, D.C.

Electronically Signed

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