

File Number:  
HR10-D-H

RECEIVED DEC 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 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 Washington, D.C. 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 25 WAS  
LONDON, KY 40742

Sincerely,

Electronically Signed

Division of Federal Employees' Compensation

PAUL H FELSER  
ATTORNEY  
7393 HODGSON MEMORIAL DRIVE  
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, December 21, 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.  
*A telephone hearing was held on*

---

The issue for determination is whether the claimant established that he sustained an injury or medical condition as alleged.

is employed as a with the in  
On he filed a claim for Occupational Disease Injury  
indicating that he sustained an injury or medical condition result of not realizing the total  
progression of his disease until complete doctor's report dated confirmed the  
long career as a contributed to the eventual disability to his body, which resulted in  
his injury on He stated that he suffered Spinal Stenosis.

Along with the claim, he submitted a medical narrative from Dr. dated

By letter dated the Office advised the claimant of the deficiencies in the evidence and afforded him 30 days to provide additional documentation sufficient to establish the claim. Specifically, the claimant was asked to provide factual evidence concerning his activities. He was also informed that the employing agency challenged the claim on the grounds that this was a duplicate claim. He filed a CA-1 on and the claim was denied under and they indicated that he should be using his appeal rights instead of filing another claim. He was asked to provide all medical treatment records and diagnostic test results, as well as all surgical reports relating to his Lumbar conditions and a physician's opinion supported by a medical explanation as to how the reported work incident/activities caused or aggravated a medical condition. Subsequent to the letter the office received correspondence from Attorney Paul H. Felser dated and email correspondence from the claimant dated

By decision dated the Office denied the claim for the reason that the factual evidence was insufficient to establish the factual component of the third basis element, fact of injury. A response to the questionnaire was not received. In addition, a physician's opinion as to how employment activities caused, contributed to, or aggravated his medical condition had not been provided.

The claimant disagreed with the Decision and requested a hearing by an OWCP Representative. Accordingly a telephone hearing was scheduled and held on . The claimant did not attend but was represented by his attorney, Paul Felser, at the hearing. Mr. Felser asked

that consideration be given on combining the two cases and that they were inextricably linked. Mr. Felser discussed the claimant's back condition and work duties performed and argued that his back had weakened and that the injury was the "straw that broke the camel's back." He discussed the work incident and noted that a manager was not on site when he returned to the post office. He discussed the claimant reporting to the postmaster that he wanted to take a couple days off to rest his muscles and see his doctor. Mr. Felser discussed medical evidence and noted that the claimant under surgery. He argued that the two injury claims were not duplicative but two distinct injuries.

The deficiencies in the factual and medical evidence were discussed and the case was held open for 30 days to allow the claimant an opportunity to provide additional evidence to support the claim. A copy of the transcript was sent to the employing agency for review and comment. No comments were received. A review of the file was completed.

Subsequent to the hearing, the claimant submitted an emailed statement on He described the work activities that he performed 7 days per week. He noted that there was no relief carrier for Amazon deliveries. He stated that this put a lot of abuse and stress on his body which led to the "massive explosion" to his back on at work. He provided a detailed statement explaining how often he performed the work activities and how the activities contributed to his condition. He also provided a statement concerning outside work activities.

On , medical records were provided which included a number of documents which pertained to his neck condition.

On , Dr. reported that the claimant stated he did a lot of lifting and no particular trauma. An addendum report dated indicated that the claimant did report a work injury on A CT Scan of the spine was completed on . On he was examined by Dr. and examination findings were reported. Dr. related that the claimant believed his pain complaints were from lifting packages for Amazon deliveries. Surgery was recommended.

An operative report dated was received. Follow up notes reported improvement and that he continued to have right lower extremity weakness. Progress notes dated and were signed by MD and reported that the examination was overall benign and he was intact neurologically.

A letter dated from MD reported that he reviewed his notes and Dr. summary of He stated that the claimant had a decades old history of degenerative arthritis which previously involved his knees, back and cervical spine and lumbar spine. He stated that his notes indicate a remote impression of Lumbar spondylosis with radiculopathy as an intermittent problem. He reported that he saw the claimant on with a change in symptoms, specifically back pain radiating into left leg which he believed was due to carrying too much weight at work. He discussed a separate injury at work on I He stated, "My records do not record a separate injury at work on but Mr. and Dr. subsequent histories do. This would explain the

shift in symptoms from left to right leg. On [redacted] he indicated that pain was now right leg and X-rays were taken that showed osteoarthritis but no explanation for the change in symptoms. His pain increased, and we proceeded to MRI which showed a vertebral burst fracture compatible with an injury. It also showed spinal stenosis." He referred the claimant to Dr. [redacted]. Dr. [redacted] stated that he read Dr. [redacted]'s review of pertinent notes, and he agreed entirely with his perception that this is related to a work injury (possibly a series of injuries).

Medical records in file [redacted] were reviewed. In a letter dated [redacted] Dr. [redacted] discussed the claimant's history of back pain and lifting Amazon packages at work. He reported that the claimant sought treatment with Dr. [redacted] in [redacted] and on [redacted] for back pain. He discussed treatment and diagnostic studies after [redacted]. He stated that at the time of Mr. [redacted] surgery, he was found to have severe osteoporosis. He noted that this obviously would have been more of a longstanding condition in Mr. [redacted] spine. He discussed causation and noted that he had the underlying diagnosis without really knowing it of osteoporosis. He noted that the claimant had a fairly physical job, bending and lifting on a daily basis and stated in his opinion this likely led to a relatively mild compression fracture in a staged fashion. He noted that these compression fractures in their earlier stages can be relatively mild and not the result of any single trauma but the result of repetitive microtraumas related to the bending and lifting activities.

He stated, "It would be my opinion that over a period of time with the repetitive trauma that these fractures in fact got a little worse. Beyond that, there is the clear documentation in the record that Mr. [redacted] did in fact have an injury of sorts when he fell hard against the wall in dealing with the cart at work which precipitated a much more severe exacerbation of pain. It would be my opinion that that particular injury greatly exacerbated an underlying what would be considered a more minor compression fracture that led to the burst-type of injury and subsequent development of much more severe pain to include a lumbar radiculopathy."

He discussed diagnostic findings and surgical intervention and stated, "In summary, it is my very strong and clear opinion that Mr. [redacted] onset of pain in late November and well into December are purely related to his occupation in the Postal Service. It is my further opinion beyond any reasonable doubt that the surgery was as well required for his condition and that Mr. [redacted] was unable to return to his prior occupation."

Based on review of the hearing testimony along with the review of the written evidence of record, I find that the decision of the District Office dated [redacted] should be set aside and remanded for further development.

Generally, "fact of injury" consists of two components that must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident or exposure that is alleged to have occurred. The second component is whether the employment incident or exposure caused a person injury and generally can be established only by medical evidence.<sup>1</sup>

---

<sup>1</sup>Elaine Pendleton, 40 ECAB 1143(1989).

The Office is not a disinterested arbiter but rather performs the role of adjudicator on the one hand and gatherer of the relevant facts and protector of the compensation fund on the other, a role that imposes an obligation on the Office to see that its administrative processes are impartially and fairly conducted.<sup>2</sup> Although the claimant has the burden of establishing entitlement to compensation, the Office shares responsibility in the development of the evidence.<sup>3</sup>

In the present claim, the claimant did not attend the hearing but provided an emailed statement on \_\_\_\_\_ responding to the questionnaire issued by the District Office. There is no indication that the employing agency was provided a copy of the questionnaire response for review and/or comment. In addition, the employing agency did not submit comments to the transcript. The employing agency comments are necessary to establish the federal work activity reported by the claimant. It is further noted that the established work activities are necessary for proper determination concerning the elements of performance of duty and causal relationship. Specifically, a physician must have an accurate history of exposure to offer a well rationalized causal relationship opinion. Therefore, the employing agency response is of significance in fully developing the claim.

Furthermore, as discussed above, Dr. \_\_\_\_\_ provided a letter under claim \_\_\_\_\_ which addressed causal relationship. His opinion attempts to address both the traumatic incident on \_\_\_\_\_ and work activities performed over a period of time. His opinion was not sufficient to establish the causal relationship element of the claim. He has a limited understanding of the claimant's work activities and the claimed incident on \_\_\_\_\_

However, I do find that medical evidence presented *prima facie*<sup>4</sup> evidence which requires further medical development.

While the reports of the claimant's attending physician were not completely rationalized, they were consistent in indicating that the claimant sustained an injury or disability due to the employment and were not contradicted by any substantial medical or factual evidence of record. Therefore, while the reports were not entirely sufficient to meet the claimant's burden of proof to establish the claim, they raised an uncontroverted inference between the claimed injury or disability and the accepted employment injuries, and were sufficient to require the District Office to further develop the evidence.<sup>5</sup>

The FECA Procedure Manual provides guidance on when cases should be doubled.

c. When to Double Cases. Cases should be doubled when correct adjudication of the issues depends on frequent cross-reference between files. Cases meeting one of the following tests must be doubled:

<sup>2</sup> ] *Thomas M. Lee*, 10 ECAB 175 (1958).

<sup>3</sup> *William J. Cantrell*, 34 ECAB 1233 (1983); *Gertrude E. Evans*, 26 ECAB 195 (1974).

<sup>4</sup> A *prima facie* claim is one that on first appearance demonstrates entitlement to compensation and which always requires further development if it is not accepted. *Robert P. Bourgeois*, 45 ECAB (Docket No. 93-1155, issued July 1, 1994).

<sup>5</sup> *Richard E. Konnen*, 47 ECAB (Docket No. 94-1158, issued February 16, 1996).

(1) 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. For instance, a claimant with an existing case for a back strain submits a new claim for a herniated lumbar disc.<sup>6</sup>

ECAB Docket 11-0541, L.R; The Board has duly considered the matter and concludes that the case is not in posture for a decision. OWCP procedures provide that cases should be doubled when a new injury is reported for an employee who previously filed an injury claim for a similar condition and further indicates that the cases should be doubled as soon as the need to do so becomes apparent.<sup>7</sup>

While the reports of the claimant's attending physician were not completely rationalized, they were consistent in indicating that the claimant sustained an injury or disability due to the employment and were not contradicted by any substantial medical or factual evidence of record. Therefore, while the reports were not entirely sufficient to meet the claimant's burden of proof to establish the claim, they raised an uncontroverted inference between the claimed injury or disability and the accepted employment injuries, and were sufficient to require the District Office to further develop the evidence.<sup>8</sup>

The District should provide the employing agency a copy of the hearing transcript and claimant statement for review and comment. The employing agency should also provide a statement concerning whether they concur with the claimant statement in claim received. He hand wrote on the development letter that he stated that a damaged cart with exposed broken steel rod catching/jerking him suddenly as he walked by when entering the post office. The employing agency should be advised that a response is necessary to provide a physician an accurate factual basis when rendering a medical opinion concerning causal relationship. A reasonable period of time should be allowed for the agency to respond.

Upon receipt of the employing agency statement, the Office should combine the two cases noted above in accordance with procedure. The District Office should prepare a Statement of Accepted Facts (SOAF)<sup>9</sup>, and refer the claimant for a second opinion examination with an appropriate specialist for an opinion regarding whether the claimant has a lumbar condition causally related by his federal work activities. The specialist should address the work incident and specify what diagnoses are due to the work injury claimed and to explain how the work activities contributed by direct cause, aggravation, precipitation or acceleration to the claimant's current condition and disability from work since the work injury. The Office should provide the specialist with the definitions of the types of causal relationship<sup>10</sup>. The Office should ask the specialist to specify what evidence supports any opinion given and to offer an opinion concerning whether the surgery was medically warranted as a result of the work injury claimed.

<sup>6</sup> FECA Procedure Manual, Part 2 Chapter 2-0400 8.(c)(1).

<sup>7</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Doubling Case Files*, Chapter 2.400.8(c)(1) (February 2000).

<sup>8</sup> *Richard E. Konnen*, 47 ECAB (Docket No. 94-1158, issued February 16, 1996).

<sup>9</sup> Part-2-0809 of the FECA Procedure Manual.

<sup>10</sup> Part 2-0810-3c of the FECA Procedure Manual.

Following completion of any further development the District Office deems necessary, the District Office should issue a *de novo* decision on the claim.

Consistent with the above findings, the decision of the District Office dated \_\_\_\_\_ is set aside and REMANDED for further action as described above.

ISSUED:  
WASHINGTON, D.C.

*Electronically Signed*

---

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