

File Number:
HR13-D-H

RECEIVED OCT 12 2015

U.S. DEPARTMENT OF LABOR

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

OCT - 5 2015

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 was completed on the case. Based upon that review, 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,

Hearing Representative

PAUL H FELSER
FELSER LAW FIRM, PC
P O BOX 10267
SAVANNAH, GA 31412

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.

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 number

Merit consideration of the case file was completed on
this review, the decision of the District Office dated
reasons set forth below. Based on
is reversed for the

The issue is whether the Office properly adjudicated the claim for wage loss
compensation for the period . to ,

The claimant, born . , was employed as a nurse with the
On she sustained multiple
injuries when she was accidentally knocked to the floor by a soldier that walked into her.
The claimant fell backwards and hit her head. The Office accepted the claim for sprain
of neck, temporary aggravation of right trigger thumb, temporary aggravation of right
metacarpophalangeal joint arthritis, and anxiety. On the claimant
underwent OWCP approved right trigger thumb release.

On the claimant filed Form CA-7 claiming total wage loss compensation
from . to

By letter dated the District Office advised the claimant that no evidence
was received to support her claim. It requested that she submit additional medical
evidence supporting disability during the period claimed.

The Office subsequently received an appointment notice dated physical
therapy notes dated to and an anesthesia record dated

By decision dated the Office denied the claim for wage loss
compensation for the period to .

Subsequent to the denial of the claim for wage loss compensation, the Office received
additional medical evidence including an operative report dated reports

¹ A copy of the decision was not issued to the claimant's attorney of record.

dated _____ and _____ from _____ MD.² Dr. _____, a Board-certified orthopedic surgeon, noted on _____ that the claimant was undergoing trigger finger release on _____ and she would be out of work from that date until she was evaluated postoperatively. In a treatment note dated _____ Dr. _____ indicated that the claimant could return to work on a light duty status effective _____ with the restrictions of limited use of the right upper extremity, no lifting greater than 2 pounds, and no repetitive activities.

In _____ and _____ letters, the claimant's attorney stated that he did not receive a copy of the _____ decision.³

On _____ the Office reissued the prior decision denying the claim for wage loss compensation for the period _____ to _____.

By letter postmarked _____, the claimant's attorney requested an oral hearing before the Branch of Hearings and Review.

Based upon a careful review of the evidence of record, I find that this case is not in posture for a hearing at this time.

20 C.F.R. § 10.500 provides that "compensation for wage loss due to disability is available only for any periods during which an employee's work-related medical condition prevents him or her from earning the wages earned before the work-related injury."

A claimant has the burden of proving by the preponderance of the reliable, probative and substantial evidence that he was disabled for work as the result of an employment injury.⁵ Monetary compensation benefits are payable to an employee who has sustained wage loss due to disability for employment resulting from the employment injury.⁶ Whether a particular employment injury causes disability for employment and the duration of that disability are medical issues which must be proved by a preponderance of reliable, probative and substantial medical evidence.⁷

In the instant case, the Office accepted that the claimant sustained sprain of neck, temporary aggravation of right trigger thumb, temporary aggravation of right metacarpophalangeal joint arthritis, and anxiety on _____. On _____ the claimant underwent OWCP approved surgery and subsequently filed a claim for total wage loss compensation from _____ through _____. The record contains contemporaneous medical evidence supporting an inability to work from _____ to _____.

² Sheila Fulcher, NP dictated the _____ treatment note which was signed by Dr. _____.

³ On _____ the Office received an _____ signed statement from the claimant designating Paul H. Felser, Esquire, to represent her in proceedings before OWCP.

⁴ It does not appear that the Office reviewed additional medical evidence received after issuance of the _____ decision as it merely reissued its prior decision with a new date.

⁵ *David H. Goss*, 32 ECAB 24 (1980).

⁶ *Debra A. Kirk-Littleton*, 41 ECAB 703 (1990).

⁷ *Edward H. Horten*, 41 ECAB 301 (1989).

as evidenced by operative report of _____ and Dr. _____ reports of _____ and _____. Therefore, the evidence of record at the time of the _____ decision established the claimant's entitlement to wage loss compensation from _____ to _____. Upon return of the case file, the District Office should process compensation for leave without pay from _____ to _____ in accordance with Office procedures.

Accordingly, the decision of the District Office dated _____ is hereby *reversed* and the case file is returned to the District Office for actions consistent with this decision.

Dated: OCT - 5 2015
Washington, D.C.

Hearing Representative
for
Director, Office of Workers'
Compensation Programs