

File Number:  
HR10-D-H

RECEIVED NOV 30 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 Boston 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 1 BOS  
LONDON, KY 40742-8300

Sincerely,

Division of Federal Employees' Compensation

PAUL H. FELSER, ESQ  
FELSER LAW FIRM, PC  
7393 HODGSON MEMORIAL DR., SUITE 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 26, 2018

U.S. DEPARTMENT OF LABOR  
Office of Workers' Compensation Programs

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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  
 A telephone hearing was held on

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The issue is whether the claimant has established left shoulder osteoarthritis and rotator cuff tear causally related to factors of her federal employment.

The claimant, born , was employed as an  
 by the in . On , she filed an occupational  
 disease claim alleging accelerated degenerative disease of left shoulder including severe  
 osteoarthritis of the glenohumeral joint and partial thickness tear of rotator cuff. The  
 claimant referenced an attached statement for details on the relationship to her  
 employment. No such attachment was included. The employing agency indicated that the  
 claimant stopped work on

Following development of the record, by decision dated , the Office  
 denied the claim on the grounds that causal relationship was not established. The  
 claimant disagreed and, through her attorney, requested an oral hearing.

After a preliminary review, by decision dated , an OWCP hearing  
 representative remanded the case for further development. She noted that the claimant  
 never described the specific employment related exposure or work activities she actually  
 performed and it was not clear whether she was claiming work exposure prior to  
 only or to ongoing work exposure up to when the employing agency noted she  
 had stopped work.

By letter dated , the Office asked the claimant to respond to a series of  
 questions posed in the attached questionnaire.

In response, the claimant submitted her response to the questionnaire, a report dated  
 (pages 4 through 8 and a work capacity evaluation) from Dr. who  
 had performed a second opinion evaluation under file number letters dated  
 ; and from the attorney, and a progress note dated  
 by a clinical assistant.

The claimant stated that she was promoted to a global account specialist in , often  
 flew to Canada for days at a time, spending overnight(s), several times per month from  
 to drove from Canadian border across Vermont, Massachusetts, New  
 Hampshire, Connecticut, Rhode Island, and New York, on average 2 to 3 times per week,

and from 2011, she was required to have a minimum of 5 customer visits per week. She attributed her condition to frequent travel requiring extensive manual driving/steering/parking in often rural areas, frequent scraping of windshields in winter months, occasional shoveling prior to indoor parking access in 2013, carrying of laptop and luggage, bending, lifting, twisting motions in and out of vehicles, overhead lifting with air travel, repetitive arm and hand movements for data entry, web searching/customer research, data mining, emails, text/email messaging mobile phone use, preparing and scheduling Webinar presentations, and inconsistent work station ergonomics.

On [redacted], the Office forwarded the factual evidence submitted by the claimant to the employing agency for review and comment and also requested additional information regarding the claimant's tasks.

By decision dated [redacted] the Office denied the claim on the grounds that causal relationship was not established. The claimant disagreed and, through her attorney, requested an oral hearing.

The Office subsequently received the employing agency's response, a position description of international sales representative, and qualification standards and basic activities lists.

In a letter dated [redacted], district sales manager, stated that the claimant applied for and was awarded the position of international sales representative. He disagreed with the claimant's exaggerated characterization of the activities. He noted her description of the traveling requirements, repetitive arm and hand movements for entry of data and extreme weather factors were overstated. "Every employee is provided the appropriate training, tools and more than ample time to perform these tasks in a safe manner. The fact that the Northeast Area of the country gets snow is unavoidable and can't be addressed and/or prevented by the Postal Service." He also noted that all of her other work activities listed are simple, safe and not unlike basic life activities, driving, sitting, traveling, etc. He stated that the international sales representative is a management position in an office environment setting where each employee has a cubicle with ergonomically designed state of the art computer, chair and desk set ups. There were no requirements for undue or sustained physical exertion such as lifting, pushing, pulling, bending and stooping.

At the telephone hearing held on [redacted] the claimant was not present and she was represented by her attorney, Paul Felser. The attorney requested that the claimant's prior claim (file number [redacted]) be combined with this claim. He contended that Dr. [redacted] who had performed a second opinion evaluation for her prior injury specifically addressed that the claimant's work duties as outlined in the statement of accepted facts caused aggravation of her arthritic condition. He also noted that as far back as Dr. [redacted] had identified the same activities as aggravating factors.

Following the hearing, he submitted his letter dated [redacted] a statement dated [redacted] from the claimant, and various documents including CA-110, letters,

progress notes, physical therapy notes, emails, a position description for global account specialist, and job postings.

The attorney contended that this claim should be doubled with file number [REDACTED] and Dr. [REDACTED] provided an unequivocal opinion regarding causal relationship of the claimed conditions. He cited several decisions of the Board in support of his contention that the Office should further develop the claim.

The claimant stated that she is cross-dominant, crosses between using left and right arms more than most people. She prefers her right hand for dexterity/fine motor skills and her left arm for strength/loading. The claimant detailed time worked as an international sales representative and activities using her left arm.

Based upon a review of the evidence of record and the hearing transcript, I find that further development is necessary.

An employee who claims benefits under the Act has the burden of establishing the essential elements of his claim. The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of the employment. As part of this burden, the claimant must present rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, establishing causal relationship.<sup>1</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.<sup>2</sup> Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors.<sup>3</sup> The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.<sup>4</sup>

The claimant has a prior work injury accepted for bilateral carpal tunnel syndrome and left shoulder impingement under file number [REDACTED]. The record indicates that the claimant accepted a detail assignment to work for the international business unit in Montreal, Canada from [REDACTED] through [REDACTED]. The claimant underwent left shoulder arthroscopy on [REDACTED], worked in a limited duty position as a global account specialist for 4 hours per day from [REDACTED] and resumed full duty on [REDACTED]. In [REDACTED], the claimant accepted a limited duty job as a [REDACTED].

<sup>1</sup> See *Brian E. Flescher*, 40 ECAB 532, 536 (1989); *Ronald K. White*, 37 ECAB 176, 178 (1985).

<sup>2</sup> *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149 (2006); *D'Wayne Avila*, 57 ECAB 642 (2006).

<sup>3</sup> *J.J.*, Docket No. 09-27 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

<sup>4</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

global account manager with limited driving up to 2 hours per day, intermittent keyboarding with voice activation assist for 4 hours per day, and intermittent sitting up to 8 hours per day. The employing agency noted that the claimant was provided with voice activation software (Dragon), work accommodations and limited duty was in effect until [redacted] and from [redacted], reasonable accommodations were practiced to the extent the job permitted. The claimant stopped work on [redacted]<sup>5</sup> and began receiving wage loss compensation on [redacted].<sup>6</sup> She underwent left total shoulder arthroplasty with biceps tenodesis and rotator cuff repair on [redacted].<sup>7</sup>

In reports dated [redacted] and [redacted] submitted under file number [redacted] Dr. [redacted] opined that the claimant's glenohumeral arthritis was significantly exacerbated by repetitive arm activity involved with keying and driving. The Office referred the claimant to [redacted], MD, a Board-certified orthopedic surgeon, for a second opinion assessment of her work related conditions. It specifically asked Dr. [redacted] to identify which conditions were directly related to her accepted work injury by aggravation, acceleration, or direct cause. In a report dated [redacted] ( [redacted] ), in pertinent part, Dr. [redacted] stated "by reason of aggravation of glenohumeral degenerative arthritis through upper extremity work activities leading to left total shoulder arthroplasty."

In the instant claim, the claimant attributed her left shoulder osteoarthritis and partial thickness tear of rotator cuff to extensive travel required in her job as an international sales representative. The employing agency disagreed with her exaggerated characterization of the activities she performed. Based on the evidence of record, I find that the claimant's work duties involved driving from Maine across Vermont, Massachusetts, New Hampshire, Connecticut, Rhode Island, and New York, which required frequent scraping of windshields in winter months and occasional shoveling prior to indoor parking access in [redacted]. Her job also involved carrying of her laptop and luggage, bending/lifting/twisting motions in and out of vehicles, overhead lifting with air travel, repetitive arm and hand movements for data entry, and inconsistent work station ergonomics while on the road.

The next question is whether the medical evidence is sufficient to establish that her claimed left shoulder condition is causally related to her work factors. The treating physician, Dr. [redacted] opined that her left shoulder arthritis was significantly exacerbated by repetitive arm activity involved with keying and driving. The second opinion physician,

<sup>5</sup> The claimant stopped work on [redacted] and alleged an emotional condition due to factors of her federal employment, which was denied under file number [redacted].

<sup>6</sup> The claimant underwent revision right carpal tunnel release on [redacted].

<sup>7</sup> In a decision dated [redacted] the Office denied the recurrence claim finding that the medical evidence was insufficient to establish disability commencing [redacted] causally related to the accepted employment injuries. It determined that any disability during that period of time would have been attributed to the claimant's preexisting arthritis and not due to the accepted condition of shoulder impingement. It further denied her request for total left shoulder replacement surgery finding that it was not necessitated by the accepted shoulder impingement condition, but rather due to the underlying preexisting arthritis. This decision was affirmed by an OWCP hearing representative on [redacted] and the Board on [redacted]. The Office issued a merit reconsideration decision denying modification of the [redacted] decision on [redacted]. By decision dated [redacted] the Office denied the claimant's request for reconsideration as it was untimely filed and failed to demonstrate clear evidence of error.

Dr. [redacted] also opined that the claimant's left shoulder condition was aggravated by her work activities.<sup>8</sup> I find that there is sufficient medical evidence to require further development of the case. Proceedings under FECA are not adversarial in nature and while appellant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence to see that justice is done.<sup>9</sup>

Upon return of the case file, the Office should combine this claim with file number [redacted] and prepare an accurate and complete statement of accepted facts (SOAF). The Office should then refer the SOAF to Dr. [redacted] for a supplemental report. He should be asked to provide a detailed, reasoned medical opinion on whether the claimant's employment activities contributed, in any way, to her left shoulder condition(s) and necessitated left total shoulder arthroplasty on [redacted].<sup>10</sup> If a preexisting condition was aggravated, the physician should comment on the extent and degree of the aggravation. Following this and any further development deemed necessary, the Office should issue a *de novo* decision.

Accordingly, the decision of the District Office dated [redacted] is set aside and the case is **remanded** for further actions as noted above.

Issued:  
Washington, D.C.

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

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<sup>8</sup> Dr. [redacted] was provided with a statement of accepted facts that identified the claimant's work activities.

<sup>9</sup> *Phillip L. Barnes*, 55 ECAB 426 (2004).

<sup>10</sup> The Office should provide Dr. Graf with FECA definitions of causation.