

File Number:  
HR11-D-H

RECEIVED JUN 01 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,

Electronically signed,  
Paula Strange  
Hearing Representative

PAUL H FELSER  
ESQ.  
FELSER LAW FIRM, PC  
7393 HODGSON MEMORIAL DRIVE  
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, May 25, 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 ; in ; 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 the claim for compensation beginning

The claimant, born has been employed with the as a . She sustained an injury in the performance of her duties on when a mailbox fell off a post and hit her upper arm. She filed a timely workers' compensation claim, and the District Office of Workers' Compensation Programs accepted the claim for right shoulder strain.

The Postal Service indicated that the claimant stopped work on . On the claimant filed a claim for wage loss compensation beginning

Medical evidence of record shows that the claimant was initially treated for a right shoulder strain. Her doctor, Dr. MD, indicated that there was concern for a rotator cuff injury. A x-ray was reported as normal. Dr. made an orthopedic referral on . A MRI scan showed full thickness tear of the supraspinatus tendon. Dr. MD, orthopedic specialist, diagnosed rotator cuff tear and prescribed surgery. He indicated that he first examined the claimant on and found the claimant to be totally disabled. In an note, the history includes an account of the claimant hitting her shoulder against a wall one week earlier.

The Office denied the claim for wage loss compensation on

On the Office denied expansion of the claim. The Office referenced in part, the account of injury in Dr. report.

The claimant's attorney, Paul Felser, requested a hearing of the decision on behalf of the claimant. Additional evidence was submitted. I find that the case is not in posture for a Hearing because the evidence compels further case development.

On Dr. s, MD, reported that the claimant presented with right shoulder pain, present for 7 months. He reported that the symptoms had been persistent since the onset which occurred when the claimant's arm went backwards from a mailbox. He reported that range of motion was severely limited; there was no weakness; sensation was intact; impingement test was

positive. He noted that MRI was consistent with small tear of the cuff. Dr. \_\_\_\_\_ recommended shoulder surgery as the claimant had seen no improvement over 7 months. On \_\_\_\_\_ Dr. \_\_\_\_\_ averred that the work injury had not resolved and the claimant required surgery. He indicated that she sustained partial tear and frozen shoulder.

Dr. \_\_\_\_\_ proffered an undated narrative. He wrote:

“Ms. \_\_\_\_\_ had a work related accident on \_\_\_\_\_ where her right arm was forcefully rotated down after a mailbox fell off a post onto her right arm. Ms. \_\_\_\_\_ saw her primary care physician Dr. \_\_\_\_\_ on \_\_\_\_\_ for right arm pain. Ms. \_\_\_\_\_ denies previous right arm pain before \_\_\_\_\_. Dr. \_\_\_\_\_ ordered an MRI of the Right Shoulder on \_\_\_\_\_ that was completed on \_\_\_\_\_. MRI of the Right Shoulder interpretation, There is a tiny full thickness pinhole tear of the supraspinatus tendon. There are also findings that would indicate partial outer surface and intrasubstance tearing of the supraspinatus and infraspinatus tendons. Ms. \_\_\_\_\_ was then referred to my office as a new patient that was seen on \_\_\_\_\_. \_\_\_\_\_ patient was treated with a steroid injection and wished to continued with physical therapy for two more weeks until her follow up appointment on \_\_\_\_\_. Ms. \_\_\_\_\_ stated that when she came back into the office that she bumped her right shoulder on \_\_\_\_\_ against a wall. Precertification request could not be processed secondary to work injury not being processed by department of labor. The rotator cuff tear was felt to have occurred on \_\_\_\_\_ from the rotational injury not from bumping her arm on the wall.”

As used in the FECA, the term "disability" means incapacity because of an injury in employment to earn wages the employee was receiving at the time of the injury.<sup>1</sup>

An Employee seeking benefits under the Federal Employees' Compensation Act<sup>2</sup> has the burden of establishing the essential elements of his claim<sup>3</sup> including the fact that the individual is an 'employee of the United States' within the meaning of the Act<sup>4</sup>, that the claim was timely filed within the applicable time limitation period of the Act<sup>5</sup>, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which

<sup>1</sup> *Shirley A. Temple*, 48 ECAB \_\_\_\_ (Docket No. 96-883, issued March 18, 1997); *Charles P. Mulholland, Jr.*, 48 ECAB \_\_\_\_ (Docket No. 96-1122, issued July 24, 1997); *Marsha K. Stanowski*, 48 ECAB \_\_\_\_ (Docket No. 95-1931, issued August 1, 1997); *Gaare R. Davis*, 48 ECAB \_\_\_\_ (Docket No. 95-2383, issued August 13, 1997); *Joseph M. Popp*, 48 ECAB \_\_\_\_ (Docket No. 95-352, issued August 14, 1997).

<sup>2</sup> 5 U.S.C. 8101-8193.

<sup>3</sup> See *Daniel R. Hickman*, 34 ECAB 1220 (1983).

<sup>4</sup> See *James A. Lynch*, 32 ECAB 2116 (1980).

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

compensation is claimed are causally related to the employment injury.<sup>6</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>7</sup>

Causal relationship is a medical issue,<sup>8</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>9</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>10</sup>

Whether a particular injury caused an employee disability for employment is a medical issue which must be resolved by competent medical evidence.<sup>11</sup> The Office is not required to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed.<sup>12</sup> The Employees Compensation Appeals Board has held that to do so would essentially allow an employee to self-certify his disability and entitlement to compensation.<sup>13</sup>

Section 8103 of the FECA provides that the United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances and supplies prescribed or recommended by a qualified physician which the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of any disability or aid in lessening the amount of any monthly compensation. These services, appliances and supplies shall be furnished by or on the order of United States medical officers and hospitals, or, at the employee's option, by or on the order of physicians and hospitals designated or approved by the Secretary. The employee may be furnished necessary and reasonable transportation and expenses incident to the securing of such services, appliances and supplies.<sup>14</sup>

<sup>6</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>7</sup> *Delores C. Ellyett*, 41 ECAB 922 (1990).

<sup>8</sup> *Mary J. Briggs*, 37 ECAB 578 (1986).

<sup>9</sup> *Charles E. Burke*, 47 ECAB 185(1995).

<sup>10</sup> *Minnie Bryson*, 44 ECAB 713 (1995).

<sup>11</sup> *Id.*

<sup>12</sup> *William Aveber*, 55 ECAB 674 (2004).

<sup>13</sup> *E.H.* ECAB Docket No. 10-1702, Issued March 24, 2011.

<sup>14</sup> *Antonio Mestres*, 48 ECAB \_\_\_\_ (Docket No. 94-2247, issued October 21, 1996); *Edward Schoening*, 48 ECAB \_\_\_\_ (Docket No. 95-2560, issued February 7, 1997).

To be entitled to reimbursement of medical expenses by the Office, however, appellant must establish a causal relationship between the expenditure and the treatment by submitting rationalized medical evidence supporting such a connection and demonstrating that the treatment is necessary and reasonable.<sup>15</sup>

In the instant case claimant sustained a shoulder injury on \_\_\_\_\_ due to a mishap with a mailbox. The Office accepted that the claimant sustained a strain; however, it has denied any additional condition. The claimant's claim for more serious injury, however, is consistent with the facts and her subsequent course of action, as well as her medical care. Moreover, Dr. \_\_\_\_\_ has addressed the intervening incident of hitting the shoulder against a wall. He noted that the claimant was seen prior to this incident, and her MRI findings were well in advance of this incident. He avers that it was the \_\_\_\_\_ rotational injury that caused the rotator cuff tear.

To avoid piecemeal adjudication, and the possibility of inconsistent results,<sup>16</sup> I find that the Office should further develop the question of disability. I observe that there is no evidence that the Postal Service offered modified duties to the claimant. I also observe that the claimant's physician found her to be totally disabled. ON REMAND, the Office should refer the case record to the District Medical Advisor (DMA) for an opinion on the request for surgery. The DMA should address, in conjunction with this, all conditions which resulted from the \_\_\_\_\_ work injury. He may also offer an opinion on the claimant's ability to work from the time of injury. Note again, that there is no evidence that the claimant was offered any modified work.

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

ISSUED:  
WASHINGTON, DC

Electronically signed,  
  
Hearing Representative  
for  
Director, Office of Workers'  
Compensation Programs

<sup>15</sup> *Dale E. Jones*, 48 ECAB \_\_\_\_ (Docket No. 95-2557, issued August 22, 1997).

<sup>16</sup> See *James Green*, ECAB Docket No. 03-1038, July 21, 2003.