

File Number:
HR12-D-H

RECEIVED 08/31/2018

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 . 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

Signed electronically,

Division of Federal Employees' Compensation

PAUL H FELSER
QUEENSBOROUGH BANK BUILDING
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, August 27, 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 Mr. _____
Claimant; Employed by the _____ in _____ Case No. _____
Telephone Hearing held on _____*

The issue to be determined is whether the Office's _____ termination of the claimant's entitlement to compensation and medical treatment benefits was correct and appropriate.

Mr. _____, born _____ worked as a _____ (Casual) for the _____
in _____ Mr. _____ filed a Traumatic Injury claim for a Motor Vehicle
Accident (MVA) from _____

An initial report is from Dr. _____ (Orthopedic surgery, dated _____ Mr. _____
is seen after having been in a motor vehicle accident the day prior. He was the
belted driver of his _____ Chevrolet van when a car turned the wrong way and struck his van
head-on. At the time, Mr. _____ had been on medication for a _____ MVA (per case
_____) and he had been under Dr. _____ care for that accident. Other medical
history is significant for a _____ auto accident from which Mr. _____ made a full recovery
and a _____ fall injury from which Mr. _____ made a full recovery. In _____ he was
involved in an automobile-bus accident, suffering injuries to his neck and back which left him
with a degree of permanency. (No claim was filed for the _____ accident.) Mr. _____ does
not recall his rating. Mr. _____ continued to be symptomatic following the _____ workers'
compensation injury and had recently returned to work when injured on _____ X-rays
showed normal bony articulations about the hip. Lumbar spine x-rays were also taken
where vertebral bodies and interspaces were normally maintained. There were minimal
changes of arthritic nature compatible with Mr. _____ age. Dr. _____ assessment
was that of a flexion extension injury of the spine with aggravation of pre-existing lumbar
spine injury and a new injury in the form of a jamming injury of the right groin.

His claim under case _____ was accepted per decision issued _____ for the
following:

- CERVICAL SPINE SPRAIN
- LUMBAR SPINE SPRAIN
- CONTUSION TO RIGHT GROIN OR RIGHT ABDOMINAL WALL
- SPINAL STENOSIS, AGGRAVATION
- DEGENERATIVE DISK DISEASE, AGGRAVATION

Following his MVA, Mr. returned to sedentary work on for 6 hours per shift with restrictions to include a 10 pound lifting limit along with pushing, pulling, and reaching limitations. He continued to work for 6 hours per shift until his termination effective

A decision to terminate Mr. compensation and medical treatment benefits was reversed on after Mr. filed an appeal through the Branch of Hearings and Review. The directive was for Mr. compensation to be reinstated for 2 hours per shift for

Entitlement to compensation for more than 2 hours per shift beyond was denied per decision issued based on a second opinion report from Dr. Mr. appealed and his case was reviewed by the Employees' Compensation Appeals Board (ECAB) which affirmed the denial per decision issued

Mr. has been in receipt of compensation consistent with disability for 2 hours per shift and an ability to work for 6 hours per shift since

Mr. has performed other work since leaving the USPS, including work as a locksmith, a Wal-Mart Greeter, and a bus driver.

Mr. has undergone the following:

- MRI scan of lumbar spine on
- Second opinion examination at the request of the District Office with Dr. on Mr. complaints are to his low back radiating to his mid back. There's also cervical pain on the right side radiating to his right shoulder. Mr. relates his pain to MVA's (motor vehicle accidents) from and The MVA resulted when another driver ran a red light and struck Mr. vehicle. The MVA occurred under similar circumstances. The report includes a summary of Mr. complaints and of his medical history. Findings from a physical examination are documented. MRI findings from showed either a small protrusion or a herniation at L5. There were also findings at the L4 level. However, Dr. did not see any findings resulting from the 2 accidents, but his back condition may have been aggravated by them. At the time of the examination, Mr. was believed to have reached MMI (maximum medical improvement).
- MRI scan of lumbosacral spine on
- Second opinion examination at the request of the District Office with Dr. (Orthopedics) on There's a history of MVA's from (x2). Per the most recent MVA, Mr. was the restrained driver who was hit head-on by another vehicle. At the time, he was working as an express mail carrier. Injuries were to his right hip, neck and back. Dr. report includes a chronology of treatment and developments which have transpired in Mr. case. The MRI scan showed stenosis and degeneration at L4-5 and L5-S1. The MRI scan appeared to show some continued mild spinal stenosis. The

report reflects that a physical examination was performed. In responding to the District Office's questions, Dr. [redacted] felt that Mr. [redacted] need for restrictions should be permanent. He did feel that Mr. [redacted] accepted strain conditions had resolved, but that his [redacted] work injury did aggravate pre-existing spinal stenosis and degenerative disk disease. The aggravation was considered ongoing. Dr. [redacted] concluded that MMI had been reached.

- MRI scan of lumbar spine on [redacted]
- MRI scan of lumbar spine on [redacted]
- Second opinion examination at the request of the District Office with Dr. [redacted] (Orthopedics) on [redacted]. Dr. [redacted] acknowledged Mr. [redacted] history of [redacted] MVA resulting in cervical and lumbar strains as well as a right groin contusion. He documented that Mr. [redacted] returned to work in a restricted duty capacity where he remained until [redacted]. Dr. [redacted] documented that Mr. Johnson has worked for the prior 7 years as a locksmith. His treatment is limited to exercise. Mr. [redacted] complaints of back pain have been present since his accident. Dr. [redacted] report reflects that an examination was performed and MRI results reviewed, revealing multilevel spinal stenosis. Dr. [redacted] impression was that Mr. [redacted] had ongoing symptoms of an underlying problem—spinal stenosis and degenerative disk disease. The accepted strain conditions were felt to have reached MMI within a few months after the [redacted] work injury. Dr. [redacted] did not feel that Mr. [redacted] stenosis or degenerative conditions were related to his [redacted] MVA. He explained that such conditions are predominately developmental.
- Second opinion examination at the request of the District Office with Dr. [redacted] (Orthopedic Surgery) on [redacted]. He acknowledges a history of MVA injury from 9/2/96 (obviously, mis-dated) which resulted in several months of time-loss from work before returning in a light duty capacity. Mr. [redacted] postal employment did not continue beyond [redacted]. He worked as a locksmith's apprentice, and then went to locksmith's school, finishing in 2004. Mr. [redacted] began working as a locksmith in [redacted]. He has a history of umbilical hernia repair. The [redacted] MRI scan revealed significant multi-level spinal stenosis. X-rays from [redacted] also revealed multi-level spinal stenosis, but no evidence of acute bony injury. In responding to questions from the District Office, Dr. [redacted] position was that the conditions related to the initial injury (lumbar strain and right groin contusion) had "cleared," noting that his opinion was consistent with those of Dr. [redacted] and [redacted]. He also opined that Mr. [redacted] could not resume his date of injury job due to his spinal stenosis and lumbar spondylosis which were not considered injury-related. Dr. [redacted] concluded that Mr. [redacted] accepted conditions had resolved and that intermittent symptoms he experiences are due to underlying disease.
- Second opinion examination at the request of the District Office with Dr. [redacted] (Orthopedics) on [redacted]

The case record includes a [redacted] medical narrative from Dr. [redacted] which is in response to a [redacted] letter from the District Office seeking an updated assessment of Mr. [redacted] medical condition. Dr. [redacted] documents a history of the [redacted] MVA which has resulted in ongoing problems with Mr. [redacted] neck and back with pain radiating in to his [redacted]

lower extremities. Diagnostic testing has revealed lumbar spondylosis with compression of the nerve roots and lumbar disk disease at the L5-S1 level. Since his injury, Mr. [redacted] has not returned to baseline and Mr. [redacted] injury is felt to have had a permanent effect. Dr. [redacted] stated that his position is based on radiographic studies.

Per outgoing letter from the District Office dated [redacted], Mr. [redacted] was asked to have his doctor provide an updated assessment of his condition. On [redacted], the treating Dr. [redacted] faxed his responses written directly onto the letter. Mr. [redacted] was reported to have spasms and limited range of motion with respect to his back. He also has limited walking ability and is unable to return to his date of injury position as a letter carrier.

Dr. [redacted] second opinion report documents an account of Mr. [redacted] MVA from [redacted]. It was noted that he worked in a modified capacity until he was terminated effective [redacted]. He has since worked as a locksmith, but at the time of Dr. [redacted] examination, had been working as a bus driver for the prior 8 months. Mr. [redacted] has undergone MRI testing on multiple occasions and has been treated conservatively by Dr. [redacted]. There has been no surgery. A long-standing history of multiple degenerative disks is evidenced by X-rays and MRI results. Dr. [redacted] report reflects that a physical examination was performed.

When responding to the District Office's questions, Dr. [redacted] opines that the accepted conditions of right groin contusion, cervical sprain, and lumbar sprain have resolved. There were no findings suggestive of a hernia aggravation. There were no objective findings of the lumbar spine to substantiate any chronic condition. There was a pre-existing lumbar spondylosis or lumbar disk degeneration which was not felt to be a cause of any long term problems if aggravated. Mr. [redacted] complaints were not substantiated by any residuals or objective criteria for any chronic back pain from his [redacted] work injury. Nor were Mr. [redacted] complaints sufficient to substantiate any impairment or disability status.

Based on the [redacted] second opinion report from Dr. [redacted], the District Office issued a [redacted] proposed termination of entitlement to further compensation and medical treatment benefits. Mr. [redacted] was afforded 30 days to arrange for submission of evidence to refute the proposed termination.

Evidence received beyond the date of the [redacted] proposed termination notice consists of:

- Notice of representation by Paul Felser (dated [redacted])
- The results of lab tests are dated [redacted]

Termination of Mr. [redacted] entitlement to compensation and medical treatment benefits was finalized effective [redacted]. No evidence was received considered sufficient to refute the proposed termination notice.

Evidence received beyond the date of the termination decision consists of the following:

- Encounter report from Dr. (dated)
- Encounter notes from Dr. are dated Mr. is seen for re-evaluation of low back pain. The most recent lumbar facet injections were done on and were to be repeated. There is an assessment of low back pain and lumbar spondylosis. A procedure report was included with the encounter notes.

Mr. and Mr. Felser disagree with District Office's termination decision. Per timely submission dated and received Mr. Felser requested a hearing on the claimant's behalf in appealing the termination of compensation and medical treatment benefits. In keeping with the request for appeal, a telephone hearing was held on Mr. was not present for the hearing. In his absence, he was represented by attorney Paul Felser.

At the hearing Mr. Felser was asked whether Mr. was working. To the best of Mr. Felser's knowledge, Mr. was not working, but he could not verify his non-working status. Nor was Mr. Felser aware of what Mr. sources of income were.

When the hearing was opened for discussion, Mr. Felser was invited to provide the basis for the appeal of the termination decision.

Mr. Felser raised several issues. He did not feel that proper emphasis had been made on any prior history of injury. It was noted that Mr. has 3 retired claims under case #'s , and Mr. Felser made specific reference to a motor vehicle accident (MVA) for which a claim had been filed under case : and which had been referenced in the SOAF (statement of accepted facts). The MVA resulted in sprains to the cervical spine, shoulder and lumbar spine. Per case : Mr. missed work beginning , and returned on to the rehab position of Express Mail Carrier. Though it was noted that Mr. had spinal stenosis and degeneration, a determination as to whether these conditions had been affected or aggravated by any MVA (from or) had not been made. Mr. Felser did feel that Dr. second opinion report provided sufficient basis for acceptance of spinal conditions over and above mere sprains. He pointed out that Dr. had acknowledged both the and the MVA's when he submitted his second opinion report and that he did not feel that there was any difference in his condition between the and injuries.

Mr. Felser also did not feel that the SOAF had been properly updated at the time that Mr. was seen for the appointments with Dr. or any other second opinion examiner after Dr. Mr. Felser pointed out that Dr. report included a determination that Mr. sustained permanent impairment. With such an assessment having been made, Mr. Felser reasons that the aggravation of any protrusion, herniation or other underlying condition should be considered permanent. Since Dr.

report does not reference Dr. report, he questions whether it was part of any referral.

Mr. Felser also references Dr. submission where Mr. has had ongoing problems since his work injury and Dr. considers the effects of having been injured as permanent. Dr. Felser suggests that MRI evidence of a disk herniation could be an acute finding which stems from the MVA because Mr. was on limited duty from that injury when injured in another MVA on . The report from Dr. documented that Mr. Johnson underwent MRI testing, but he did not have the actual MRI scans and he did not discuss the initial MRI scan. Mr. Felser's position is that Dr. made a conclusory statement regarding the resolution of Mr. injury without sufficient proper reliance on objective findings, a sufficiently complete history, or a proper SOAF.

In relying on Dr. report in issuing the decision, Mr. Felser's position is that Mr. was denied due process and that his benefits were terminated without sufficient attention to the details surrounding his claim.

At the close of the telephone hearing, Mr. Felser was advised that if the compensation and medical treatment decision is to be reversed or remanded there needed to be evidence or argument which establishes that it was erroneous or that further consideration should now be given. The case record was held open for 30 days beyond the date of the hearing to allow for the receipt of any additional evidence to be considered when a decision was made. Nothing was received beyond the date of the telephone hearing.

Mr. Felser's arguments at the telephone hearing are evaluated in light of the evidence of record and request for appeal. The determination is made that the 1 denial of medical benefits and wage loss compensation should be REVERSED.

The District Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment. The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.¹

The Employees' Compensation Appeals Board reviews the medical evidence to determine whether the medical report was based on incomplete information, and it looks at such factors as the opportunity for and thoroughness of examination performed by the physician; the accuracy and completeness of the physician's knowledge of the facts and medical history; the care of analysis manifested; and the medical rationale expressed by the physician on the medical issues addressed to him or her by the Office.²

¹ *Jaja K. Asaramo*, 55 ECAB (Docket No. 03-1327, issued January 5, 2004).

² *James T. Johnson*, 39 ECAB (1988).

In assessing medical evidence, the number of physicians supporting one position or another is not controlling. The weight of such evidence is determined by the reliability of the medical report obtained; its probative value; its convincing quality; the care of analysis manifested; and the medical rationale expressed in support of the doctor's opinion.³

The weight of medical evidence is determined by 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 manifested, and the medical rationale expressed in support of the opinion.⁴

In the present case, Mr. _____ claim for compensation and medical treatment benefits under case _____ was denied based on the _____ second opinion report from Dr. _____ Dr. _____ opinion was that Mr. _____ accepted sprain and contusion conditions resulting from his _____ MVA had resolved.

The arguments presented by attorney Paul Felser are considered in light of the request for appeal and are considered valid.

Any effects of Mr. _____ MVA would've seemingly been superimposed on those from the _____ MVA for which a previous claim had been filed and for which restrictions were in place when the _____ MVA occurred. Dr. _____ opinion that Mr. _____ has no injury related residuals does not reflect sufficient consideration of his prior medical history (specifically the _____ MVA) and, as such, does not provide a sufficiently well-reasoned basis for termination of benefits.

Significantly, other office-directed examiners have diagnosed pre-existing spinal stenosis, degenerative disk disease, and either a small protrusion or a herniation at L5. Per his _____ report, Dr. _____ speculates that Mr. _____ underlying spine problems could've been aggravated by his 2 MVA's. As the claimant's attorney noted, there was no formal determination as to whether any stenosis, degeneration or protrusion conditions were aggravated by the _____ or _____ MVA's. Per his _____ report, Dr. _____ actually did opine that the _____ work injury aggravated pre-existing spinal stenosis and degenerative disk disease. The 3 subsequent second opinion doctors concurred that Mr. _____ does have pre-existing spinal stenosis and degenerative disk disease. None of the 3 feels that these conditions are injury-related. However, it appears that their opinions pertain only to the 1 _____ MVA without giving sufficient consideration to Mr. _____ pre-existing medical status as affected by the (_____ MVA which warranted the restrictions under which he had been working at the time it occurred. Thus, termination of benefits based on the most recent report (from Dr. _____ dated _____ must be considered erroneous.

³ John A. Ceresoli, Sr., 40 ECAB 305 (1988).

⁴ Anna C. Leanza, 48 ECAB 115 (1996).

Upon return of the case record to the District Office, Mr. _____ entitlement to compensation and medical treatment benefits should be reinstated retroactive to the date of termination.

The claim under case # _____ should be retrieved from the FRC (federal records center) and doubled with case # _____. The SOAF should be updated and expanded to include an account of testing, treatment and developments which have transpired under the 2 combined cases. It should be mentioned as well that Mr. _____ was in a 1992 MVA for which no claim was filed. A position description for Mr. _____ job as a Casual City Carrier should be included with the SOAF.

Mr. _____ should be scheduled for a new second opinion examination with a physician of the appropriate medical specialty. A report from the specialist should reflect consideration of Mr. _____ history and the developments which have transpired under his newly combined cases. A report from the specialist should reflect having reviewed the medical records in Mr. _____ combined case files to include the reports of other examiners.

The specialist should provide an assessment of Mr. _____ low back condition. The doctor's assessment should be based on the results of a physical examination and consideration of diagnostic test results. The specialist should cite any clinical findings and test results which support any diagnosis made. The specialist should specifically indicate whether Mr. _____ has any stenosis, lumbar spondylosis, degeneration, protrusions, or herniations.

Most importantly, the second opinion doctor should indicate whether there's currently a medical connection between Mr. _____ letter carrying job and any spinal or other medical condition diagnosed. The doctor should indicate whether the effects of either MVA (from (_____ or _____) are ongoing or have resolved. The doctor's opinion is to be supported by well-reasoned rationale. A definition of causal relationship sheet should be included with the referral for reference purposes.

If warranted, the district office may wish to have the second opinion doctor comment on the claimant's capacity to work and forward form OWCP-5c for the specialist's completion.

If warranted, the district office may wish to have the second opinion doctor offer treatment recommendations.

Upon receipt of a second opinion report and after any further development deemed necessary, the District Office should determine whether or not there's entitlement to compensation and medical treatment benefits. A new proposed termination notice should be issued if appropriate.

Consistent with the above findings, the decision of the District Office dated 12/26/17 is REVERSED, and the case file is returned for actions consistent with this decision.

Issued:
Electronically Signed:
Washington, D.C.

Hearing Representative
for
Director, Office of Workers'
Compensation Programs