

File Number:
HR10-D-H

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U.S. DEPARTMENT OF LABOR

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

May 23 2007

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.

Future correspondence should be addressed to: U.S. Department of Labor, Office of Workers' Compensation Programs: PO Box 8300 District #13, London, KY 40742-8300.

Sincerely,

Hearing Representative

DEPARTMENT OF JUSTICE
BUREAU OF PRISONS-ALL OTHER
FCI-DUBLIN/PLEASANTON
5701 8TH STREET CAMP PARKS
DUBLIN, CA 94568

PAUL H FELSER
FELSER LAW FIRM, P.C.
7 EAST CONGRESS ST
SUITE 400
PO BOX 10267
SAVANNAH, GA 31412

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 _____
Case No.: _____ Hearing was held on _____ in Atlanta, Georgia.

The issue is whether the claimant sustained an injury to her low back and left leg while in the performance of duty on _____

The claimant, born on _____ (presently _____ years old) was employed as a Correctional Officer on _____ when she submitted Notice of Traumatic Injury and Claim for Compensation on Form CA-1, claiming that the pain in her low back and left leg was due to an injury in the performance of duty on Saturday, _____. She described the cause of the injury as follows:

"On _____ I was the Yard Officer. I was very busy and did more walking than usual. I did three rear gate movements and stood by with hose while the inmates cleaned the trash compacter area. On _____ I asked if I could switch with Baca in control due to my back bothering me."

The employing agency advised that the claimant worked from 6:00 a.m. to 2:00 p.m., five days per week with Sunday and Monday off. The agency indicated that the claimant stopped work at 2:00 p.m. on _____ first received medical treatment on _____ and returned to work on _____

The record reflects that the claimant sustained two prior injuries to her back while in the performance of duty. On _____ an inmate was being transferred from a wheelchair to a bed when the inmate tripped forward towards the bed and the claimant leaned over in front of her with her right arm extended attempting to prevent her fall. This claim was accepted for lumbar strain under file no. _____. On _____ the claimant was pulling a refrigeration cart down a _____

hallway and claimed a recurrence of the injury. This claim was adjudicated as a new traumatic injury under file no. and was accepted for lumbar strain.

The record reflects that the claimant had been under the care of Dr. , a pain specialist, since for complaints of low back pain which first began following a car accident in : The claimant remained under his care following the work injuries on and

Prior to Dr. had last seen her on After Dr. re-examined her on and noted that she complained of a significant exacerbation of pain to the left hip and left leg. He diagnosed her condition as sacroiliac joint pain and piriformis syndrome. He prescribed an increase in duragesic and authorized her to remain off work through .

The claimant returned to work on 5 and worked through . She stopped working thereafter and never returned. Dr. re-examined her on and noted that she complained of increased left hip and leg pain. He gave her a restriction of no walking more than one mile per day at work. He prescribed a different pain medication. On he prescribed a different pain medication and authorized the claimant to stop working. On he administered a trigger point injection.

By correspondence dated the Office requested the claimant to submit a report from her physician which included a history of the injury and all prior injuries to similar parts of her body, a firm diagnosis of any condition resulting from the injury, findings, symptoms and/or test results supporting all conditions diagnosed, treatment provided, prognosis, period and extent of disability, and an opinion as to whether and why the diagnosed condition was believed to have been caused or aggravated by the claimed injury on

No additional medical evidence was submitted and by Order dated the Office rejected the claim for compensation on the basis that the claimant had failed to submit probative medical evidence establishing that she sustained an injury to her back as a result of her employment activities on

A letter dated was submitted by Dr. who stated that he had been taking care of the claimant since her

work injury on . He stated that "to the best of my knowledge, this is the original injury which has never resolved completely and has had repeated exacerbations, regardless of when and where they have taken place."

The record reflects that Dr. has continued to treat the claimant for her complaints of pain in the low back, left hip and left leg. He has prescribed pain medication and administered injections on

and . In a letter dated , Dr. made the following comments:

"It understanding is (sic) that her initial Workman's Comp claim was from 11-6-04 when an inmate fell onto her. She injured her sacroiliac joint, she was treated for this and this Workman's Comp injury was resolved. She was then thought to be permanent and stationary from that. She was subsequently re-injured in when she was pressing the shu (sic) cart which exacerbates her previous claim from 11-06-04. This injury was also treated and evaluated and she is permanent and stationary in regards to this injury.

The only Workman's Comp claim that she should have open would be the current claim for which I am treating her. Please feel free to contact for any further information."

The claimant disagreed with the Decision and requested a hearing which was held on in Atlanta, Georgia. The claimant did not appear at the hearing but was represented by attorney Paul Felser.

Counsel noted that the claimant had two prior claims which were accepted for lumbar strain and contended that the claimant suffered an aggravation of her pre-existing condition while working on . Counsel was requested to provide a detailed written description from the claimant of exactly what physical activities she performed on which she believed caused or aggravated her back condition, to include a description of how much walking she performed that day, what physical activity was involved with the three gate movements, and how long she stood by with a hose while inmates cleaned the trash compacter area. She was also requested to explain why she waited until to go to the doctor. Counsel was also requested to provide a medical opinion which contained an

accurate history of the employment activities the claimant performed on _____ and an explanation as to how those activities caused an injury to the claimant's back. Counsel was allowed 30 days from the date of the hearing to submit this additional medical and factual information.

The employing agency was allowed an opportunity to comment on the transcript of the hearing. The agency submitted no comments.

Counsel submitted a letter dated _____ and contended that the claimant suffered an exacerbation of the lumbar condition while in the course of her duties on _____. Counsel contended that the claim should be accepted or, at the least, remanded for further development of the medical evidence.

A statement dated _____ was submitted by the claimant. She stated that she worked 8 hours on _____. She described the duties she performed as the only yard officer on duty that day (they were short staffed) which included the following: conducted a perimeter fence check which required walking approximately one mile around the institution; escorted the food cart for the Special Housing Unit (SHU); pat searched inmates during approximately six open movements; made two trash compactor runs requiring her to stand on her tiptoes and reach overhead to turn the compactor on; conducted three rear gate movements which required her to pull open two "batter rams" in front of the gate (two large steel arms on hinges on posts on either side of gate) and then push them closed afterwards; on each gate movement, she inspected the vehicle inside and out and underneath for contraband; conducted approximately 5 area searches for contraband; and observed for approximately 30-40 minutes while inmates hosed down the trash compactor area where food had spilled over. She stated that she was very busy that day, that she wore a utility belt on her hips containing a radio, handcuffs, gloves and a keychain, that the utility belt weighed about 20-30 pounds, and that out of the entire 8 hour shift, she was able to sit down at different intervals for a total of about 30 minutes. She stated that the rest of the time she was on her feet, walking or standing. She stated that a yard officer normally can walk from 4 to 8 miles on one shift.

The claimant stated that she first felt pain on her lower left side down her leg during the last gate movement. She stated that when she subsequently reached up on tiptoes to turn on the trash compactor the second time, she felt a sharp shooting pain down her left leg and then spasms in her left low back and

buttock area. She stated that she told that day that she pulled her back at the trash compactor machine and that she would make an appointment with the doctor who had been treating her back condition. She stated that she was not scheduled to work on Sunday and Monday (7-23 & 7-24), that she saw Dr. on 7-25, that she worked 7-25 and 7-26, that she was on annual leave from 7-27 through 8-1, that she worked from 8-2 through 8-12, that she was off work thereafter, and that she underwent a laminectomy on

A report dated was submitted from Dr. He stated that he treated the claimant prior to for sacroiliitis and piriformis syndrome. He stated that the claimant was posted as yard officer on and was wearing a belt with weapons, keys and tools weighing about 30 pounds (1/5 of her body weight), that she walked about 5 miles that day in heavy steel toed boots, that she had only about 20-30 minutes to sit down, and that she performed the following duties: managing a SHU cart which is extremely heavy and difficult to push; performed 5 area searches requiring bending, squatting and looking over and under things; performed pat searches every hour which required bending and squatting; conducted 3 rear gate movements which included pushing and pulling large gates in order to open them and allow vehicles to enter, and squatting and bending to check underneath the vehicles; and performed 2 trash compactor runs which required standing on tip toes and extending her arms. He stated that these activities (bending, squatting, pushing and pulling) irritate sacroiliitis and piriformis syndrome. He opined that the work activities on 7-22-06 caused aggravation of the left sacroiliitis and piriformis syndrome, noting that the claimant was doing quite well in working without restrictions prior to that day. He stated that it was difficult to determine whether the aggravation is temporary or permanent. He opined that the claimant's current work restrictions due to the aggravation include no lifting over 20 pounds, only occasional bending and stooping, no carrying a heavy utility belt, no dealing with a SHU cart, and being able to sit and rest periodically during the day.

The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that her back condition was caused or adversely affected by her employment activities on As part of this burden, she must present rationalized medical opinion, based upon a complete and accurate factual and medical history, showing the causal

relation claimed.¹ Having considered the evidence of record, I find that the claimant has failed to meet her burden of proof.

Although Dr. provides an affirmative opinion that the claimant's work activities on 7-22-06 caused aggravation of the left sacroiliitis and piriformis syndrome, he provides no medical explanation for this opinion nor does he cite any objective findings showing a worsening of the claimant's pre-existing condition. Because of these deficiencies, I find that his report dated is insufficient to meet the claimant's burden of proof. However, I find that his opinion is sufficient to require further development by the office since it raises an uncontroverted inference of causal relationship between the claimant's back condition and her employment activities on

The Order dated is hereby set aside and the case is remanded to the District Office for further development. The Office should provide the employing agency with a copy of the claimant's statement dated for comments on its accuracy. The Office should request the claimant to provide copies of the medical records of the treatment she received in connection with the automobile accident in prior to the first work injury on , as well as the operative report of the surgery performed on . Thereafter, the Office should prepare a Statement of Accepted Facts which includes pertinent details concerning the motor vehicle accident, the prior work injuries on and , and a description of the physical activities the claimant performed at work on . The Office should then refer the claimant, together with the medical evidence (including the medical reports in the other two files -) and the Statement of Accepted Facts for examination by an appropriate medical specialist for a "second opinion" concerning the diagnosis of the claimant's back condition and its relationship to the physical activities she performed at work on

¹ Robert Sanford, 27 ECAB 115.

² Horace Langhorne, 29 ECAB 820.

Following receipt of the report from the medical specialist and after any additional development deemed necessary, the Office should make a de novo decision concerning the claimant's entitlement to compensation.

DATED: MAY 23 2007
WASHINGTON, D.C.

Hearing representative
For
Director, Office of Workers'
Compensation Programs