

File Number:  
HR11-D-H

RECEIVED APR 09 2007

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

APR 03 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 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 the case returned for further action as explained in the attached remand order.

Future correspondence should be addressed to:

US DEPARTMENT OF LABOR  
EMPLOYMENT STANDARDS ADMINISTRATION  
OFFICE OF WORKERS' COMP PROGRAMS  
PO BOX 8300 DISTRICT 10, CHI  
LONDON, KY 40742-8300

Sincerely,

Hearing Representative

DEPARTMENT OF AGRICULTURE  
FSIS-ALL OTHER FSIS  
WCB-BUTLER SQUARE WEST, SUITE 420-C  
100 NORTH 6TH STREET  
MINNEAPOLIS, MN 55403

PAUL H. FELSER  
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 file: Merit review of the case record was  
completed on in Washington, DC.

---

On the claimant filed Form CA-2, notice of occupational disease, for a  
left arm condition which she attributed to the performance of her duties as a  
compensation claims technician with the  
and The claimant has a prior right shoulder  
injury claim, accepted by the Office under case file for which she underwent  
open decompression and rotator interval repair of the shoulder on On  
the claimant returned to restricted duty for 4.5 hours a day working;  
alternately, two days a week and then three days a week. The claimant stopper work on

On the Office issued a decision accepting the claim for left carpal tunnel.

On under case the Office referred the claimant to  
, M.D., board-certified orthopedic surgeon, for a referee examination  
addressing both the right and left upper extremity conditions.

On the Office issued a decision stating that the weight of the  
medical evidence has been determined to rest with Dr. , who found that the  
claimant did not have any work-related injury to her left upper extremity. The Office  
denied the claim on the basis that the requirements had not been met for establishing  
that the claimant sustained an injury as defined by the FECA.

The claimant disagreed with the decision and requested an oral hearing. I find,  
however, that the case is not in posture for a final decision.

In its decision, the Office denied the claim on the basis that the requirements had not  
been met for establishing that the claimant sustained an injury as defined by the FECA.  
However, the Office had previously accepted the claim left carpal tunnel. Since the  
Office had accepted the claim, it cannot now make a finding that the requirements had  
not been met for establishing that the claimant sustained an injury as defined by the  
FECA. The Office states that Dr. found that the claimant did not have any work-  
related injury to her left upper extremity. Thus, the decision is, in  
essence, a rescission of the accepted condition of left carpal tunnel.

The Office has the authority to reopen a claim at any time under the review power granted by section 8128(a) of the Federal Employees' Compensation Act. This section vests the Office with the discretionary authority to review a claim at any time on its own motion or any application by the claimant. The Office's review power under section 8128(a) is not limited to reconsideration of final decisions which awarded, terminated, increased or decreased compensation. Under Section 8128(a), the Office may at any time on its own initiative open a claimant's case for review and, where supported by the evidence, set aside or modify a prior decision and issue a new decision. It is noted, however, that while the Office may set aside or modify a prior decision, where the Office has accepted a claim and paid benefits, it has the burden of proof to establish that any such acceptance and payment were in error.<sup>1</sup>

It is also noted that in its decision, the Office did not notify the claimant that it was contemplating rescission or actually rescinding the accepted condition. It is well-established that the Office must correctly inform a claimant as to the grounds on which a rejection rests.<sup>2</sup>

The decision dated \_\_\_\_\_ is hereby set aside and the case remanded to the District Office for further action consistent with the present decision.

DATED: APR 03 2007  
WASHINGTON, D.C.

Hearing Representative  
For  
Director, Office of Workers'  
Compensation Programs

---

<sup>1</sup> Federal (FECA) Procedure Manual, Part 2, 2-1400-3.f

<sup>2</sup> *Supra*, note 1, 2-1400-2.c