

File Number:  
HR11-D-H

RECEIVED DEC 15 2006

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

DEC - 5 2006

Date of Injury:  
Employee:

Dear Mr.

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.

Future correspondence should be addressed to: U.S. Department of Labor, Office of Workers' Compensation Programs.

US DEPARTMENT OF LABOR  
EMPLOYMENT STANDARDS ADMINISTRATION  
OFFICE OF WORKERS' COMP PROGRAMS  
PO BOX 8300 DISTRICT 6 JAC  
LONDON, KY 40742-8300

Sincerely,

Hearing Representative

DEPARTMENT OF THE NAVY  
MARINE CORPS-STATIONS BASES  
HRO-MARINE CORPS LOGISTICS BASE  
814 RADFORD BOULEVARD, SUITE 20319  
ALBANY, GA 31704

PAUL H FELSER  
ESQ.  
FLESER LAW FIRM, P.C.  
POST OFFICE BOX 10267  
SAVANNAH, GA 31401

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 No. \_\_\_\_\_

Merit consideration of the case file was completed in Washington, D.C. Based on this review, the decision of the District Office dated \_\_\_\_\_ is set aside and the case file is remanded for the reasons set forth below.

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The issue for determination is whether the claimant's bilateral arm condition is consequentially related to the accepted third degree burn to the left arm.

The claimant, born \_\_\_\_\_, is employed as a Heavy Mobile Equipment Mechanic for the \_\_\_\_\_. On \_\_\_\_\_, he filed timely notice of a traumatic injury sustained on \_\_\_\_\_ when he leaned against a hot transmission on an M60 and burned his arm.

The Office accepted the claim for a burn to the left arm.

On \_\_\_\_\_ he underwent a split thickness skin graft of third degree burns of the left arm.

He returned to regular duty work on \_\_\_\_\_.

On \_\_\_\_\_ Dr. \_\_\_\_\_ submitted a report stating that the claimant has had problems with his neck and low back for a number of years.<sup>1</sup>

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<sup>1</sup>On \_\_\_\_\_, a lumbar myelogram revealed a possible left lateral protrusion of the L5-S1 disc; degenerative L5-S1 disc with reactive sclerosis of the end plates of L5 and S1. A post myelogram cervical CT scan revealed a left sided posterior hypertrophic spurs from C4-7. A post myelogram lumbar CT scan revealed a degenerated L5-S1 disc and spondylosis with mild L5-S1 neural foraminal stenosis.

On \_\_\_\_\_, the claimant filed form CA-2a to claim a recurrence. He claimed that after the injury he felt pain and numbness in the left arm and hand but was able to continue working.

On \_\_\_\_\_ Dr. \_\_\_\_\_ stated that the claimant has persistent distal sensory impairment in the left ulnar nerve "probably related to a major burn that he sustained and had to have skin grafts to his left lower arm years ago."<sup>2</sup>

On \_\_\_\_\_ the claimant filed Form CA-7 to claim a schedule award.

On \_\_\_\_\_, the Office requested an impairment rating from the claimant's physician.

On \_\_\_\_\_, Dr. \_\_\_\_\_ submitted a report from referral from Dr. \_\_\_\_\_. He noted the prior history and examined the claimant. He diagnosed ulnar nerve chronic irritation. Dr. \_\_\_\_\_ stated that the claimant does not have clear entrapment and that his joints are unremarkable. He did not have anything to offer the claimant.

On \_\_\_\_\_, the Office's District Medical Advisor (DMA) reviewed the file and determined that the claimant did not sustain impairment as a result of his accepted condition.

On \_\_\_\_\_, the Office denied the claim for a schedule award.

On \_\_\_\_\_ Dr. \_\_\_\_\_ noted the prior burn injury with resulting chronic weakness and paralysis. He diagnosed left ulnar neuropathy with combined sensory and motor involvement chronically, secondary to burn injury and cervicolumbar radiculopathy.

The claimant disagreed with the schedule award decision and requested a review of the written record. The Hearing Representative remanded the case for further development of whether the claimant has any ongoing residuals of the work injury and whether he sustained any impairment as a result.

On \_\_\_\_\_, the claimant underwent a second opinion examination with Dr. \_\_\_\_\_ a board certified orthopedic surgeon. He examined the claimant and diagnosed

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<sup>2</sup>On \_\_\_\_\_, NCV studies revealed neuropathy of the ulnar nerve distal to the cubital tunnel.

post-op cervical fusion for cervical stenosis with residual C7 and C8 dermatome deficits with decreased sensation, intrinsic weakness of the fourth and fifth fingers, and post-op repair of burned tissue, left upper extremity, with split thickness skin graft on the volar aspect of the mid-forearm measuring 10 x 5 cm. and dorsal aspect of the distal forearm measuring 3 x 1 cm. and 3 x 3 cm. He opined that the cervical and left shoulder dermatome deficits are not related to the work injury.

On \_\_\_\_\_, the Office denied the claim for a schedule award.

On \_\_\_\_\_, a physician's assistant, submitted a report stating that Dr. \_\_\_\_\_ has treated the claimant for cervical radiculopathy and cervical surgery. He stated that Dr. \_\_\_\_\_ opined that the major burn resulted in numbness and tingling due to damaged nerves from that injury.

The claimant disagreed with the schedule award decision and requested an oral hearing before an OWCP representative. On \_\_\_\_\_, the Hearing Representative remanded the case for further development based on a conflict in medical opinion between the attending physician and Dr. \_\_\_\_\_.

On \_\_\_\_\_ the claimant underwent a referee examination with Dr. \_\_\_\_\_. He examined the claimant and diagnosed double crush syndrome and pain syndrome consistent with a cervical problem involving the C8 nerve root.

On \_\_\_\_\_ the Office denied the claim for treatment of the arms and neck as a result of the accepted left arm burn. The Office found that the weight of the medical evidence rested with Dr. \_\_\_\_\_.

The claimant disagreed with the decision and requested an oral hearing before an OWCP representative. I find that this case is not in posture for a hearing. Based on my review of the file, the decision of the District Office dated \_\_\_\_\_ should be set aside and the case file remanded for further development.

When a case is referred to an impartial medical specialist to resolve a conflict in medical opinion, the opinion of such specialist, if sufficiently well-rationalized and based on a proper factual and medical background, must be given special weight.<sup>3</sup>

<sup>3</sup>Juanita H. Christoph, 40 ECAB (1988) [88-1260 issued December 23]; Jason C. Armstrong, 40 ECAB (1989) [89-0224 issued May 11].

In a situation where the Office secures an opinion from an impartial medical specialist for the purpose of resolving a conflict in the medical evidence and the opinion from such specialist requires clarification or elaboration, the Office has the responsibility to secure a supplemental report from the specialist for the purpose of correcting the defect in the original report.<sup>4</sup>

I do not find that the Office properly developed the claim such that a conclusive opinion could be presented. In the present case, the prior Hearing Representative remanded the case to obtain a rationalized medical opinion concerning whether the claimant's neurological disorder of his left upper extremity is due to his work related burn injury or conversely due to his non-work-related cervical condition. If the specialist found that it was due to the work related burn injury, he was to rate the claimant's impairment of the left arm in accordance with the Fifth Edition of the A.M.A. Guides.

Dr.                    examined the claimant and determined that he has double crush syndrome stemming from a cervical condition. However, Dr.                    never addressed what effect, if any, the accepted burn condition had in the development of his neurological disorder. The Office included the Questions for Determination on the referral sheet for the referee physician, but he did not specifically address those questions in his report. Since Dr.                    is a referee physician, he must address the issues posed to him and fully explain his opinion. Therefore, further development is needed.

Upon return of the file, the Office should contact Dr.                    and request his opinion on whether the claimant's neurological disorder of the left upper extremity is due to the burn injury or to the cervical condition. He agreed that permanent impairment resulted, but he did not provide his opinion on whether the impairment resulted from the accepted work related condition. This, too, should be clarified.

Following completion of any further development the Office deems necessary, it should issue a *de novo* decision on the claim.

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<sup>4</sup>Annabelle Shank, 39 ECAB (1988); Ramon K. Farrin, Jr., 39 ECAB (1988).

Consistent with the above findings, the decision of the District Office dated \_\_\_\_\_ is set aside and the case file is REMANDED for further action as described above.

DATED: DEC 5 2006  
WASHINGTON, D.C.

Hearing Representative  
For  
Director, Office of Workers'  
Compensation Programs