

File Number:
HR10-D-H

U S. DEPARTMENT OF LABOR

RECEIVED JUN 2 0 2006
EMPLOYMENT STANDARDS ADMINISTRATION
OFFICE OF WORKERS' COMP PROGRAMS
PO BOX 8300 DISTRICT 50
LONDON, KY 40742-8300
Phone: (202) 693-0045

JUN 16 2006

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:

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

US POSTAL SERVICE
PITTSBURGH PERFORMANCE CLUSTER
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5315 CAMPBELLS RUN ROAD
PITTSBURGH, PA 15277

Paul Felser
Attorney at Law
P.O. Box 10267
Savannah, GA 31401

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 _____
Case No. _____ Oral hearing was conducted on _____
in Atlanta, GA.

The issue for determination is whether the medical evidence establishes a causal relationship between the claimed medical condition and the identified factors of employment.

The claimant, _____, born _____, was retired from the _____ in _____ when he completed form CA-2, Notice of Occupational Disease on _____. The claimant alleged that the heavy lifting of mail following the holiday rush in _____ and _____ caused pain in his neck and a ruptured cervical disc. The claimant also indicated that he was suffering from a recurrence of his original injury in _____. On the CA-2 form, the employing agency confirmed that the claimant retired on _____.

The employing agency challenged the claim for the reason that the claim was not filed within 3 years after becoming aware that his condition was related to his employment.

In response to the Office's request for additional information, the claimant described the lifting, twisting, and handling of trays of cased mail and parcels, as well as casing overhead daily for 4 hours a day, as the employment-related activities that he believed contributed to his condition. The claimant maintained that his only outside hobby was deer hunting for about 2 weeks each year and occasional target practicing. The claimant

further wrote in a statement dated _____ that the pains in his neck and arms started in _____ and were aggravated by prolonged sitting, standing, driving, working overhead, lifting, stooping, bending, turning, and twisting activities associated with his job as a _____. The claimant noted that he had surgery on his elbow in _____ and cervical surgery in _____.

No medical evidence was submitted with the claim.

In a decision dated _____, the Office denied the claim for the reason that the evidence failed to establish that the claimant sustained a work-related injury, as claimed.

The claimant disagreed with the Office's denial decision and through his attorney, requested an oral hearing that was held on _____.

On the day of the hearing, the claimant appeared with his attorney, Paul Felser. The claimant's wife, _____ was also present.

Both the claimant and his attorney pointed out the claim form should have reflected that the claimed employment factors identified as the cause of the claimant's condition began in _____ not _____ as shown.

The claimant's attorney acknowledged that the claimant had a pre-existing cervical condition that was not disabling until the claimant sustained a significant work-related injury on _____. The claimant's attorney argued that the work injury caused a permanent aggravation of the claimant's pre-existing condition. The claimant's attorney also noted that the claimant returned to work, with restrictions, but had to perform his regular duties as the employing agency did not accommodate his restrictions. As a result, the claimant suffered further worsening of the condition. The attorney also pointed out that the claimant underwent cervical surgery on _____ and was unable to bend or flex his neck when he returned to work.

¹ The denial decision was amended and reissued on _____ after it was discovered that the first decision included evidence submitted in support of another unrelated claim.

During his testimony, the claimant also referred to the agency's failure to accommodate his restrictions. The claimant described his inability to perform the job activities after he was released to return to work. The claimant maintained that before the work injury, he had no restrictions or limitations and was able to perform his job adequately. The claimant testified that he returned to work after the surgery but had to stop working again after he underwent a triple bypass procedure. The claimant testified that after he returned to work in he was required to twist, turn, lift, and reach overhead and eventually had to stop working on

The claimant confirmed that he was granted disability retirement. The claimant described his lifting and standing limitations, his difficulty sleeping, and his need for a hard chair when he sat. The claimant insisted that prior to he was able to do house and yard work without any difficulty. The claimant further insisted that he sustained no other injuries after

Post hearing, a copy of the claimant's response to the Office's request for additional information, statements from the claimant about his previous work-related injury, and a copy of the agency's letter to the claimant regarding his medical restrictions were submitted by the claimant's attorney.

Medical evidence submitted after the hearing included reports dated and and from Dr. an orthopedist; a duty status report form; a cervical spine MRI; a consultation report dated ; progress notes from and a C5-6 myelogram; and a CT scan of the cervical spine dated

I have carefully evaluated all the evidence of record; to include the claimant's testimony, the attorney's arguments, and the additional medical evidence submitted after the hearing. I find that this case is not in posture for a decision at this time.

An employee seeking benefits under the Federal Employees' Compensation Act (FECA) has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United

States” within the meaning of the Act; that the claim was timely filed within the applicable time limitation period of the Act; that an injury was sustained in the performance of duty; as alleged; and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.² These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

The fundamental prerequisite to compensation under the Federal Employees' Compensation Act (FECA) is that there be a causal connection, established by reliable, probative, and substantial evidence, between the employment and a personal injury sustained in the performance of duty or disease proximately caused by the employment. The claimant's own assertion of an employment relationship is not proof of fact.

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying the employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁴

Medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence. Rationalized medical opinion 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

² Joe D. Cameron, 41 ECAB 153 (1989); Elaine Pendleton, 40 ECAB 1143, 1145 (1989).

³ Thomas L. Hogan, 47 ECAB 323 (1996).

⁴ Luis M. Villanueva, 54 ECAB ____ (Docket No. 03-977, issued 7/1/03)

supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁵

In the instant case, the evidence of record confirms that the claimant suffered from chronic cervical spine degenerative disease and sustained a previous work-related injury, while in the performance of his duties on

The Office accepted this claim for cervical intervertebral displacement under case file

The medical evidence from the claimant's work injury case file were reviewed and revealed that the claimant continued to complain of bilateral shoulder, upper extremity, and neck pain until the cervical fusion surgery was performed on . According to Dr. , the claimant progressed well after the surgery but his degeneration progressively worsened. In his report of Dr. : referred to the radiographic documentation of a large spondylosis at C3-4 and C4-5. On

Dr. further detailed the residual discomfort that the claimant experienced in his cervical spine, along with headaches and pain and weakness in his upper extremities. On Dr. wrote that the claimant was suffering from a "multitude of problems" but primarily due to significant degenerative disc disease in his cervical spine. Dr recommended that the claimant stop working because he was unable to tolerate the lifting, stooping, twisting, bending and prolonged sitting and standing associated with his job. Dr. described the claimant's treatment after his increasing symptoms, and the X-ray findings of the disc condition at C5-6 and C6-7. Dr. again noted that the surgery provided moderate improvement until when his symptoms increased. Dr diagnosed status post cervical fusion at C5-6 and C6-7 with adjacent level degeneration at C4-5. Dr. reported that the claimant's condition was easily exacerbated by job duties that required repetitive hyperextension and hyper flexion and rotation of the cervical spine. Dr. concluded that although the claimant had a pre-existing condition prior to , his condition was asymptomatic from

⁵ Steven S. Saleh, 55 ECAB ___ (Docket No. 03-2232, issued 12/12/03).

In his subsequent report of _____, Dr. _____ detailed the claimant's work duties after his return to work in _____ and he concluded that these activities aggravated and placed stress on the claimant's cervical spine. Dr. _____ diagnosed cervical disc disease and concluded that the claimant's work activities worsened his disease and caused permanent degenerative disc disease and significant dysfunction. Dr. _____ also concluded that the claimant's employment activities aggravated his chronic condition. Dr. _____ opined that the claimant was unable to work and would remain disabled with no change possible.

After review and consideration of the evidence, I find that there is sufficient medical evidence to compel the Office towards further development of the medical evidence. In the final report submitted by Dr. _____ the physician attempts to provide a more concrete discussion of the connection between the claimant's work activities and his pre-existing condition, as prompted by the attorney. However, there is insufficient discussion of whether the permanent aggravation was solely due to the accepted work related condition. Further, the medical evidence does not fully address whether the claimant's absence from work from _____ to _____ due to his heart attack, had any impact on his cervical condition.

Despite these omissions, the medical documentation cannot be completely discounted. While the reports are insufficiently rationalized to meet the claimant's burden of proof in establishing causal relationship, they contain an accurate history of injury (consistent with the claimant's statements) to warrant further development of the medical evidence by the Office. Further, there is no opposing medical evidence or any indication that there is no connection between the claimant's employment activities beginning in _____ and the claimed aggravation of his pre-existing cervical condition.

The Appeals Board has ruled that proceedings under FECA are not adversarial in nature nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation benefits, the Office shares responsibility in the development of the evidence and has an obligation to see that justice is done.⁶

⁶ William J. Cantrell, 34 ECAB 1223 (1983).

On remand, the Office should prepare a statement of accepted facts and refer the claimant to a board-certified orthopedic specialist for a detailed, well-reasoned opinion on the causal relationship between the claimant's work factors beginning in _____ and his pre-existing cervical condition, along with a reference to the claimant's non-work related heart attack and absence from work as a result, and the extent and duration of the aggravation. Upon receipt and review of the specialist's opinion and after any other development actions deemed necessary, the Office should issue an appropriate decision on the outstanding issue in this case.

Consistent with these findings, the decision of the District Office dated _____ and amended _____ is hereby **SET ASIDE**.

JUN 16 2006

DATED:
WASHINGTON, D.C.

Hearing Representative
for
Director, Office of Workers'
Compensation Programs