

File Number:
HR10-D-H

RECEIVED JUL 03 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

JUN 26 2007

Date of Injury:
Employee:

Dear Ms. PAUL:

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

UNITED STATES POSTAL SERVICE
PITTSBURGH PERFORMANCE CLUSTER
SHARED SERV CNTR-1 MARQUIS PLAZA
5315 CAMPBELLS RUN ROAD
PITTSBURGH, PA 15277

PAUL H FELSER
FELSER LAW FIRM
PO BOX 10267
SAVANNAH, GA 31401

UNITED STATES 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
Hearing was held on

Case No:

, in Atlanta, Georgia.

The issue is whether the claimant sustained injuries to her back, left leg, and foot in a motor vehicle accident of

The claimant, date of birth, is employed by the in
as a Rural Carrier. She filed the Form CA-1, Notice of Traumatic Injury, on
stating she was involved in a motor vehicle accident while in the performance
of her postal duties on She stated she was servicing a mailbox and was struck in the
rear by a truck. She stated she sustained injuries to her left lumbar spine, left leg and left foot.
The Postal Service controverted the claim, stating it was not filed on the appropriate form within
30 days of the injury.

Along with the Form CA-1, the claimant submitted the Form CA-17. Duty Status Report. This
report provided a diagnosis of herniated disc and was dated from Dr
specialist in family practice. Also received was an statement from
Dr. neurosurgeon, stating the claimant should be on light duty.

On the District Office sent a letter to the claimant requesting additional medical
evidence. The Office did not ask any questions concerning fact of injury or why the claim was
filed over four months after the injury.

A copy of a Modified Mail Clerk position was submitted dated The claimant
signed the job offer, stating she accepted the position.

The Postal Service submitted a copy of its accident report. This report is dated
states, "Rural Carrier was stopped at the mailbox when she was hit from behind. Other party was
sited. The car slid over 70 feet before he hit her."

Additional medical reports were received on The first report was
dated from Dr The claimant was seen for a blood pressure check and also
stated she was having lower back pain. The history was, "accident while working - hit
from behind. Now with pain in her lower back and down her left leg to her foot." The diagnosis
was lumbago. Lumbar x-rays were performed that showed advanced degenerative disc disease.
The x-rays stated the claimant had prior films taken in She was seen again on
with a complaint of hip pain. Dr. was the treating physician. He stated,
"The onset of the hip pain has been gradual following no specific incident and has been occurring
in a persistent pattern for 3 weeks. The course has been worsening. The hip pain is described as a
dull aching." The pain radiated down the entire hip and leg. The diagnoses were lumbago and
degeneration of lumbar or lumbosacral intervertebral disc.

She saw Dr. _____ again on _____. He stated she had leg pain that "began gradually over time and has been occurring for 3 months." Dr. _____ stated the claimant "saw Dr. _____ in _____ and he gave her a hip injection but symptoms have not improved." He ordered an MRI of the lumbar spine. The MRI showed a left L4-5 disc herniation, along with lumbar spondylosis and scoliosis. Dr. Pollack referred the claimant for neurological consultation after reviewing the MRI results.

She was seen by Dr. _____ on _____ for neurological evaluation. Dr. _____ stated the claimant presented with pain in the back and left leg. "She does tell me that she was involved in a motor vehicle accident while in her mail truck. This was on _____. She was rear ended. She did not feel any pain immediately but then developed, over the next several weeks, pain in the left and back. She also had some paresthesias in the same distribution." He diagnosed a left L5/S1 radiculopathy secondary to left L4-5 HNP. He scheduled her for a nerve block and held her off work for two weeks. On _____ Dr. _____ ordered another injection and stated the claimant could return to light duty. She was to be re-evaluated in six weeks.

She saw Dr. _____ on _____ for continuing back pain, stating the injections had not helped. She underwent a left microdiscectomy, performed by Dr. _____, on _____. A letter from Dr. _____ dated _____ was received from Dr. _____. He stated the claimant was involved in a motor vehicle accident on _____. "Shortly after the accident she presented to the office with complaints of back pain. She had not previously had this problem." He stated she had undergone unsuccessful conservative therapy and then a microdiscectomy. He stated he believed her back problems "were precipitated by her accident based on the time course of her symptoms."

The District Office denied the claim on _____ finding a causal relationship between the back problems and the motor vehicle accident was not established. The claimant disagreed with this decision and, through her attorney, Paul Felser, requested an oral hearing with an Office of Workers' Compensation Programs' Hearing Representative.

The hearing was held _____ in Atlanta, Georgia. The claimant did not appear for the hearing, but was represented by Mr. Felser.

It was explained to Mr. Felser that there were issues concerning fact of an injury that had not been developed by the District Office and additional information would be needed from the claimant. He stated he felt the case should be remanded for the Office to request this information. He stated he felt the injury was reported in a timely fashion since the law states a claim is timely if filed within three years of the date of injury. He stated the Postal Service was aware of the injury. He stated he felt the District Office had considered the issue and was satisfied with the issue and it should not be pursued at hearing.

Mr. Felser stated the claimant had a pre-existing back injury and had a "significant whiplash injury."¹ He stated he felt a *prima facie* claim existed and the claim should have been accepted for a back strain or temporary aggravation of a pre-existing condition. He stated the claimant denied symptoms prior to the accident. He stated she did not feel back pain immediately after the accident "but then developed over the next several weeks pain in the leg and back. She also complained of paresthesias in the same distribution."² She received conservative treatment and

¹ Hearing transcript, page 7.

² Transcript, page 10.

the herniated disc was diagnosed sometime later. He stated the claimant had surgery in November but continued have left leg pain. She had another MRI in _____ which revealed a recurrent herniation and stated she was a candidate for another microdiscectomy at L4-5 with foraminotomy at L5-S1. She was scheduled for that surgery on _____. Mr. Felser stated he would be submitting additional medical evidence and the record was held open for 30 days to allow for receipt of this evidence. He was also asked to furnish the police report concerning the accident. Mr. Felser stated he would obtain a statement from the claimant concerning the factual component of the case and why she delayed filing the claim.

A copy of the hearing transcript was sent to the Postal Service on _____ for review and comment. There has been no response from the Postal Service.

Additional evidence accompanied a post-hearing brief submitted by Mr. Felser, who summarized his arguments in this brief. The claimant's statement was received. The claimant stated she was seen by Dr. _____ on _____ and he did x-rays of her spine. She stated that is when her back pain began. She saw Dr _____ on _____ for back pain extending down into her left leg. She was told it was sciatica and treated her for that condition.

She stated the reason she delayed filing a claim "was that I really didn't want to file a claim." She stated she had been to doctors, taken medicine and had nerve blocks but nothing seemed to work. She stated she was working on light duty but the pain increased and she had to stop working. She stated she saw Dr. _____ who scheduled her for surgery. She filed a claim at that time. She stated she had completed her second course of physical therapy and had not returned to work as of _____. A copy of the police accident report was submitted.

Also submitted was a copy of an e-mail message sent from the claimant to Mr. Felser on _____. In this message, the claimant stated she had one other motor vehicle accident during her postal service. The date of this accident is unknown that there is no record of it in the OWCP data base. She stated on _____ she was involved in her second traffic accident when she was rear-ended by a truck. She stated she filed an accident report upon returning to the post office that day. "At first, I thought I was not injured and filed my accident report saying so. Management informed me that I had three years to file on this, if I started to have medical complications from the wreck later. At first, all seemed to be okay." She stated as the days were by, she started to have tightness in her left leg below the knee. She continued working with discomfort. The tightness turned into pain and she started having numbness in her left foot. She saw Dr. _____ in August. He diagnosed sciatica and prescribed medication. This did not relieve the pain and she sent to Dr. _____ who ordered the MRI. She went through a series of nerve blocks but the pain worsened. By _____ the pain was so severe she had to leave work. She ended up having the first surgery on _____ and the second on _____.

A _____ report from Dr. _____ was received. This report stated the claimant presented to his office with back and leg pain after being involved in an automobile accident while at work on _____. "Ms. Paul is clearly stating that she had no symptoms prior to the accident. She did not feel any pain immediately, but then developed over the next several weeks pain in the leg and back. She also complained of paresthesias in the same distribution. She underwent conservative management which included nerve root blocks and prescription pain medication." She was diagnosed with a herniated disc at the L4-5 level. Surgery was performed in _____ but the claimant continued to have left leg pain post surgery and another MRI was performed on _____ which revealed a recurrent disc herniation at the L4-5 on the left and stenosis at L5-S1 on the left. She was to undergo redo microdiscectomy at L4-5 with a foraminotomy at L5-S1. This was scheduled for _____.

An employee seeking benefits under the Federal Employee's Compensation Act has the burden of establishing the essential elements of his or her claim.³ In order to determine whether an employee has sustained a traumatic injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. The first component to be established is whether the employee actually experienced the employment incident at the time, place and in the manner alleged.⁴ The second component is whether the employment incident caused a personal injury and that generally can be established only by medical evidence. To establish a causal relationship between the claimed condition, as well as any attendant disability claimed, and the employment incident or event, the employee must submit rationalized evidence, based on a complete factual and medical background, supporting such a causal relationship.⁵

In this case, I find fact of an injury has been established. The claimant has stated she was in a motor vehicle accident on _____ while on her mail route. This is corroborated by the police report and the Postal Service's accident report. While she did delay filing her claim by four months, she has stated that she felt no pain at first and the pain developed gradually. Once she began to feel the pain, she sought medical treatment. I find there is a medical report containing a diagnosis in this case. Drs. _____ have both stated the claimant had a herniated disc and Dr. _____ has stated this was precipitated by the accident of _____. However, while none of the medical reports provide rationale sufficient to establish a causal relationship, they do establish a *prima facie* claim. A *prima facie* claim is one that on first appearance demonstrates entitlement to compensation and which always requires a further development if it is not accepted.⁶

The claimant has stated she had a prior motor vehicle accident. She does not state if her back was injured in that accident, nor does she provide any other details concerning this incident. In addition, there is some indication the claimant was treated for back problems in the past. There is reference to _____ lumbar spine x-rays in the medical records. There is also some conflict about when the claimant was first treated by Dr. _____. The records stated she was seen in _____ but the claimant stated she did not see him until _____.

Therefore, upon REMAND the Office should write the claimant and ask for a statement describing the first motor vehicle accident: when it occurred, what happened to her, if she sustained injuries, and if so, to what part of the body. She should also be asked to clarify if she was treated by Dr. _____ in _____. The claimant should submit all medical records concerning her back prior to the instant injury, including the _____ lumbar spine x-ray report and all medical records after _____, since there are no records in the file after that date and the claimant did undergo back surgery later that month.

Once this information has been received, the Office should prepare a Statement of Accepted Facts and refer the claimant and the complete medical record to an appropriate specialist for a second-opinion physician to determine if the claimed back condition is causally related to the motor vehicle accident of _____. The physician should be asked for a medical history, objective findings present on examination, firm diagnosis, and the doctor's opinion as to the relationship between the _____ accident and the diagnosed condition(s). He or she should also be asked if the

³ Elaine Pendelton, 40 ECAB 1143 (1989).

⁴ John J. Carlone, 41 ECAB 354 (1989).

⁵ John A. Ceresoli, Sr. 40 ECAB (1988).

⁶ Robert P. Bourgeois, 43 ECAB ____ (Docket No. 93-1155, issued July 1, 1994).

performed surgeries were indicated for the diagnosed condition(s). Any diagnostic testing the doctor feels is necessary should be authorized. All medical opinions should be rationalized. Once this report has been received, and after completion of any additional development the Office deems necessary, a *de novo* decision should be issued concerning causal relationship.

Therefore, for the reasons set forth above, the decision of the District Office dated [redacted] is being SET ASIDE and the case REMANDED for additional development.

DATED: JUN 26 2007

WASHINGTON, D.C.

Hearing Representative
For
Director, Office of Workers'
Compensation Programs