

File Number:  
HR11-D-H

RECEIVED JUN 21 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 15 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 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 9 CLE  
LONDON, KY 40742-8300

Sincerely,

Hearing Representative

UNITED STATES POSTAL SERVICE  
GREATER INDIANA PERFORMANCE CLUSTER  
INJURY COMPENSATION OFFICE  
3939 VINCENNES ROAD  
INDIANAPOLIS, IN 46298

PAUL H. FELSER  
ATTORNEY AT LAW  
7 EAST CONGRESS ST, SUITE 400  
POST OFFICE BOX 10267  
SAVANNAH, GA 31412

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  
in 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 has been remanded for the  
reasons set forth below.

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The issue for determination is whether the claimant has ongoing  
disabling residuals of her work injury.

The claimant, born was employed by the U.S.  
in as a Letter Carrier. On  
the claimant timely filed a form CA-2,  
Notice of Occupational Disease, claiming on  
she told her supervisor her back was hurting and she needed to  
see a doctor. She stated that she had strong lower back pain  
and muscle spasms. On the claimant timely  
filed a form CA-1, Notice of Traumatic Injury, claiming she was  
standing four hours a day on caused her back  
injury. In a statement accompanying her CA-1 form, she stated  
her doctor told her that her back injury was caused for standing  
for long periods of time. The District Office did not create a  
separate claim for the CA-1, but combined it with the CA-2 form.  
The claimant stopped working on

The claimant has two previous back injuries as a result of motor  
vehicle accidents in She had about five months  
of physical therapy as a result of her injuries.

The claimant sought initial medical attention on  
from Dr. completed a CA-20 form  
that diagnosed chronic lumbosacral strain, acute myositis and  
ruptured L4-5 disc as a result of long periods of standing.

The claimant told her physical therapist on her initial visit on that she felt a stabbing pain in her low back while working.

The claimant returned to modified duty in In a report from M.D., the claimant stated that she was having back pain from delivering and lifting mail due to an increase in her route in July. The claimant stopped work again on

The District Office accepted the claim for a lumbar strain without any prior development. The Office later expanded the claim to include acute myofascitis of the sacrum and ileum.

The District Office referred the claimant for a second opinion examination with M.D., orthopedist, on . The claimant gave her history of injury as on she was carrying mail for an overburdened route and had to case mail for five hours. Dr. stated there were no neurological findings on examination, and no evidence of ruptured disk on MRI. She stated the claimant could return to work, full duty.

The District Office determined there was a conflict of opinion between Dr. and the claimant's physician, Dr. and scheduled the claimant for a referee examination. The Office also denied the claim for recurrence by decision dated This decision was affirmed on reconsideration. The claimant appealed the denial to the Employees' Compensation Appeals Board (ECAB).

The referee examination was performed on by M.D. Dr. stated that according to the claimant's reports, her symptoms began on when she was carrying mail for an overburdened route. He noted the claimant stated that her pain began on but there was no specific traumatic event, but that her pain was caused by wear and tear. He stated the claimant had few objective findings. He diagnosed chronic low back pain and he stated she could return to work full duty.

The claimant changed her attending physician to M.D., her family practitioner, due to Dr. illness. EMG and nerve conduction studies were performed on that revealed no electrodiagnostic evidence for an active lumbosacral radiculopathy. Dr. disagreed with Dr. opinion and noted Dr. failed to mention the strongly positive

EMG finding by Dr. (in 2002) that is consistent with the claimant's clinical exam. He indicated while the claimant's MRI may be negative, this was not the "end-all" of her work-up. He stated the claimant has L5-S1 radiculopathy that was caused by repetitive stress. He recommended a lumbar myelogram to visualize what the MRI may have missed, as well as a discogram.

By decision dated the ECAB remanded the case back to the District Office, finding an unresolved medical conflict existed in the case at the time of the decision denying the claimant's recurrence. The ECAB ordered that a new decision be issued based on the referee examination.

The District Office again denied the claim for recurrence on based on Dr. opinion.

The claimant returned back to modified duty on

On the District Office issued a Notice of Proposed Termination, proposing to terminate the claimant's medical and wage-loss benefits. The claimant was given thirty days to provide additional evidence if she disagreed with the decision.

On the claimant stopped working again and filed a claim for compensation for wage loss. After development, the District Office denied the claim by decision dated for the reason that the medical evidence, consisting of reports from Dr. did not provide any explanation as to why she was disabled effective . The claimant disagreed with this decision and requested an oral hearing.

The District Office then referred the claimant out for another second opinion examination. This examination was performed by Dr. on Dr. noted the claimant stated at the time of she was required to lift more than what she thought was appropriate which caused her to develop back pain and that there was no specific injury. Dr. opined the claimant had a chronic myofascial strain based primarily on subjective complaints with minimal objective findings. He stated she had recovered from the initial lumbar sprain within six to twelve weeks of the injury. He stated her subjective complaints of low back pain were due to a chronic underlying condition that was not related

to any one injury event. Based on the subjective complaints, he advised she should have a lifting restriction not to exceed 30 pounds.

Dr. [redacted] advised in his [redacted] report that the claimant's objective findings were right sciatic notch tenderness on bilateral straight leg raises and protrusions seen at L4-5 and L5-S1 on discogram. He referred the claimant for a functional capacity evaluation. The evaluation found the claimant's findings were consistent with sciatic symptoms that would limit her ability to lift repetitively.

The Postal Service withdrew the claimant's modified duty job on [redacted]. The claimant was paid compensation effective [redacted] due to this withdrawal. The District Office also reissued the Notice of Proposed Termination on [redacted].

Dr. [redacted] responded to the proposed termination with a report dated [redacted]. He diagnosed the claimant with L5 radiculopathy, and right leg sciatica secondary to sacroiliitis exacerbated by repetitive work trauma. He opined these were work-related conditions, explaining that the claimant is a Letter Carrier and required to lift and carry bags of mail of not less than ten pounds continuously and up to seventy pounds intermittently. He noted the claimant has to get in and out of a truck with a mail bag she must carry for fairly long distances in the hottest of Midwest weather and in the coldest of its winters. He noted he has personal knowledge of her route, since it was in the area where one of his previous offices was located. He stated she has to lift, bend, and twist. He noted she has a thin-build, and after 23 years of full-time work with the Postal Service, has developed repetitive stress consequences in her lumbar spine and sacroiliac joints, with referred pain into the right leg. He stated that no physician that has examined her has alleged or diagnosed her with malingering or somatization and there was no other reasonable conclusion to draw but a work-related etiology. He stated while the motor vehicle traumas contributed to her condition, their contribution to her pain is not as proximate as her day-to-day work.

The claimant disagreed with the [redacted] decision and requested an oral hearing by an OWCP representative on the issue of compensation from [redacted] through [redacted]. By decision dated [redacted], the Hearing Representative affirmed the [redacted] decision.

By decision dated \_\_\_\_\_ the District Office finalized the \_\_\_\_\_ proposal and terminated medical and compensation benefits effective \_\_\_\_\_ based on Dr. \_\_\_\_\_ opinion. Specifically, the decision stated Dr. Fortson treated the claimant for conditions that had not been accepted as related to the work injury and attributed her conditions to employment factors which she did not claim. The decision stated that her examinations failed to demonstrate she had any objective findings of the soft-tissue injury that had been accepted.

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

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.<sup>1</sup>

The Board reviews the medical evidence to determine whether the medical report was based on incomplete information, and it looks at such factors as the opportunity for and thoroughness of examination performed by the physician; the accuracy and completeness of the physician's knowledge of the facts and medical history; the care of analysis manifested; and the medical rationale expressed by the physician on the medical issues addressed to him or her by the Office.<sup>2</sup>

A rationalized medical opinion must include a discussion of the nature of the underlying conditions; their natural or traditional course; how the underlying conditions may have been affected by appellant's employment as determined by medical records covering the period of employment; whether such affects, if any, caused material changes in the underlying conditions; or, if no material changes occurred, would the symptoms or changes indicative of a temporary aggravation have subsided or resolved immediately upon appellant's removal from the employment environment and, if not, at what point would such symptoms or changes have resolved; and whether any aggravation of appellant's underlying conditions caused by factors of his or her employment caused disability during or subsequent to appellant's employment.<sup>3</sup>

<sup>1</sup>Bettye F. Wade, 37 ECAB 556 (1986).

<sup>2</sup>James T. Johnson, 39 ECAB (1988).

<sup>3</sup>Newton Ky Chung, 39 ECAB (1988).

The District Office gave the weight of medical evidence to the second opinion examiner, Dr. , because he did not find any objective findings to support the claimant's symptoms; because the Office only accepted a soft-tissue injury; and because Dr. opined her injury was caused by employment factors that she had not claimed. I do not find the statement that the claim was only accepted for a soft-tissue injury in the decision to be accurate, as the record shows the claim was also accepted for acute myofascitis of the sacrum and ileum. While the claimant only implicated standing at work in her CA-1 and CA-2 forms, the evidence of record is quite consistent in reporting that the claimant did not specify any traumatic event on but rather indicated that was when her symptoms began as a result of prolonged standing and repetitive lifting, carrying, and casing mail, which she had been doing for at least 23 years.

I do not find that the weight of medical evidence can rest with Dr. for the reason that his opinion was not based on an accurate history or the factors surrounding the claim. The Office's Statement of Accepted Facts (SOAF), does not indicate what work factors that the claimant has alleged in the cause of her back pain, but gives the history of injury only as she reported her back pain to her supervisor on . The Office has established procedures for the preparation of a SOAF which include, among others, a statement of the conditions accepted by the Office as employment related.<sup>4</sup> In addition, the Office did not explain why Dr. opinion should carry the weight over Dr. opinion. It is also noted that the termination decision was based on an opinion that was nearly a year and a half old. The Board has stated that, consistent with case precedent, stale medical evidence cannot form the basis for current evaluation of residual symptomatology or disability determination.<sup>5</sup>

For these reasons, the claim should be remanded for further medical development.

Upon return of the case file, the Office should amend the (SOAF)<sup>6</sup> with a description of the work factors that the claimant has

<sup>4</sup>Liliana M. Martinez, 42 ECAB (Docket No. 90-1944, issued March 20, 1991).

<sup>5</sup>Diane M. James, Docket No. 05-1866, issued February 13, 2006; Keith Hanselman, 42 ECAB 680 (1991); Ellen G. Trimmer, 32 ECAB 1878 (1981) (Reports almost two years old deemed invalid basis for disability determination and loss of wage-earning capacity).

<sup>6</sup>See Part-2-0809 of the FECA Procedure Manual.

implicated in the cause of her condition and refer the claimant for a second opinion examination with an appropriate specialist for an opinion regarding whether the work factors of standing, lifting, casing, and carrying mail on and prior to September 20, 2002 is continuing to objectively contribute by direct cause, aggravation, precipitation or acceleration to the claimant's condition. The Office should provide the specialist with the definitions of the types of causal relationship.<sup>7</sup>

In addition, as the case file currently contains two SOAFs, the Office should be aware that Chapter 2-0809-9 of the Federal Employee's Compensation Act Procedure Manual states that "When a second statement is prepared, the Claims Examiner should clearly show whether it replaces or amends the first one. The Examiner should also note on any previous SOAFs that they are superseded, and initial and date the notation."

The District Office should reinstate the claimant's medical benefits effective

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

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

DATED: JUN 15 2007  
WASHINGTON, D.C.

Hearing Representative  
For  
Director, Office of Workers'  
Compensation Programs

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<sup>7</sup>Part 2-0805-2 of the Federal Employees' Procedure Manual.