

File Number:
HR33-D-H

RECEIVED DEC 18 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

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 was completed on the case. Based upon that review, it has been determined that the decision of the District Office should be reversed as outlined in the attached decision.

Since the enclosed order provides for the reinstatement of compensation for wage loss, you must forward a completed CA7 to the District Office cited below, through your employing agency.

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 VETERANS AFFAIRS
CARL VINSON MEDICAL CENTER
CHIEF PERSONNEL SERVICE
CARL VINSON MEDICAL CENTER
DUBLIN, GA 31021

PAUL H FELSER
ESQ.
7 EAST CONGRESS ST SUITE 400
POST OFFICE 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 _____ in _____ Case No. _____

Merit consideration of the case was completed in Washington, D.C. Based on this review, the decision dated _____ is reversed for the reasons set forth below.

The issue for determination is whether the claimant has ongoing disabling residuals of her work related condition, thus entitling her to compensation for wage loss and medical benefits.

The claimant, born _____, was employed as a Nurse for the _____ in _____. On _____ she filed timely notice of a traumatic injury sustained on _____ when a confused, combative patient hit her on the left side of the head with resulting headache and pain in the neck and shoulders. She also felt nauseous and had elevated blood pressure.

The claimant stopped work on the date of injury.

The Office accepted the claim for aggravation of pre-existing cervical strain and a headache.

Compensation for wage loss commenced following the expiration of continuation of pay.

On _____ the claimant underwent a second opinion examination with Dr. _____, an otolaryngologist, hand, and neck surgeon. He found no clinical cause for her headaches or continued disability.

On _____, the claimant underwent a second opinion examination with Dr. _____, a neurologist. He diagnosed status post trauma with complaints of headaches, dizziness, and neck pain; essential hypertension; and a basically normal neurological examination. In a follow up report, Dr. _____ stated that the claimant's prolonged disability is due to hypertension and psychosomatic symptomatology. He could find no neurological explanation as to how the dizzy spells are related to the work injury.

On _____, Dr. _____, a family practitioner, completed Form CA-20 and stated that the claimant remains totally disabled from her diagnoses of post traumatic headaches, dizzy spells, and neck pain secondary to a sprain. The claimant continues to seek treatment with Dr. _____ for persistent headaches and neck pain.¹

On _____ the Office issued a Notice of Proposed Termination of Compensation Benefits for the reason that the weight of the medical evidence establishes that the claimant has no disabling residuals of her work related condition.

On _____ the Office finalized the proposal and terminated all benefits.

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 upon my review of the file, the decision of the District Office dated _____ should be reversed and the case file remanded for further development. I do not find that the Office met its burden of proof in terminating benefits due to the unresolved conflict in medical opinion between the second opinion physicians and the attending physician.

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.²

In the present case, the Office accepted the claim for an aggravation of pre-existing cervical strain and a headache. The Office paid appropriate benefits for wage loss and medical care. The Office pursued second opinion examinations with Drs. _____ and _____ both of whom could find no relationship between her ongoing disability and her work injury. Attending physician Dr. _____

¹On March 18, 2006, a cervical MRI and myelogram were negative.

²Bettye F. Wade, 37 ECAB 556 (1986).

still opines that the claimant remains disabled due to her work related conditions.

Section 8123 provides that, if there is disagreement between the physician making the examination for the Office and the employee's physician, the Office shall appoint a third physician to resolve the conflict.³

Upon return of the file, the Office should schedule the claimant for a referee examination with a board certified specialist to determine whether the claimant suffers from ongoing residuals of her accepted aggravation of pre-existing cervical strain and headache.

Since the Office did not meet its burden of proof in terminating benefits, compensation should be reinstated retroactive to the date of termination after verification of any income received since that time.

Consistent with the above findings, the decision of the District Office dated is REVERSED 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

³Robert D. Reynolds, 49 ECAB (Docket No. 96-52, issued June 15, 1998).