

File Number:  
HR10-D-H

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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 21 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 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

DEPARTMENT OF THE AIR FORCE  
81 MSS-DPC  
CIVILIAN PRSNL INJ COMP OFFICE  
500 FISHER STREET ROOM 213  
KEESLER AFB, MS 39534

PAUL H FELSER, ESQ  
P O 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.C. Code 8101 et seq. of  
claimant; Employed of the  
Case no.

Hearing was held on in Atlanta, GA. Based on this Hearing, the decision of the  
District Office dated is hereby set aside for the reasons explained below:

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The issue for determination is whether the claimant sustained a work-related injury in the performance of duty, as alleged.

The claimant, born is employed as a Maintenance Mechanic for the  
On the claimant filed form CA-1 "Notice of  
Traumatic Injury" alleging that he had sustained a work-related back injury earlier that day while  
installing a heavy compressor. The claim was initially denied. The claimant appealed before  
the Branch of Hearings and Review, who set aside the prior denial and accepted the claim for  
"lumbago" in connection with the work incident described above.

The claimant had back surgery in August of On , the claimant filed a form  
CA-2a "Notice of Recurrence" alleging that he began experiencing symptoms of his work injury  
on

On the District Office issued a formal denial of the recurrence claim. The  
basis for this decision was a finding that the medical evidence of record did not sufficiently  
support a connection between the claimant's back injury of and the accepted  
work injury of The Office also noted that the claimant had undergone a  
microdiscectomy at L4/5 in 2002, and advised that the evidence of record suggested that the  
claimant had sustained an intervening, non-occupational injury, and that the claimant's surgery  
had not been approved as work-related.

The claimant disagreed with the decision of the Office dated and, on  
through his attorney, requested an appeal in the form of an  
Oral Hearing before the Branch of Hearings and Review. A Hearing was scheduled and held  
on I At the Hearing, the claimant was represented by his attorney, Paul Felser.  
The claimant's wife, I also attended the Hearing. The employer did not send a  
representative to observe.

At the Hearing, Attorney Felser argued that when the claimant filed the form CA-2a "Notice of Recurrence" he had intended to file a claim for aggravation of a pre-existing condition due to repetitive work duties, and thus would have more appropriately filed a form CA-2 "Notice of Occupational Disease" instead. Attorney Felser also argued that the medical documentation of record was sufficient to accept the claim for occupational disease, and the claimant should not be penalized for filing the wrong form, and pointed to medical documentation submitted by the physician at the Naval Base who had been treating the claimant.

A brief chronology of the development of the claimant's condition was presented by Attorney Felser. He advised that, prior to the work injury of \_\_\_\_\_ the claimant did not have issues with his back. Following that injury, the claimant worked his way back up to his regular full duty job, but still had pain and was assisted with some of the heavier tasks by his coworkers. In early \_\_\_\_\_ the claimant was told he needed to have a diskectomy, which was performed in \_\_\_\_\_. The surgery seemed to be successful for six or seven months, and the claimant again returned to his regular work. In early \_\_\_\_\_, his back began hurting again. The more of his job responsibilities he took on, the worse it got. He could tell it was the same problem because the pain was the same, and was in the same area. The claimant's condition at that time was an aggravation of his pre-existing condition by his regular job duties that he had been performing. Attorney Felser also noted another injury to the claimant's back at work, having occurred in March of \_\_\_\_\_ due to a pushing incident. The claimant has been working modified duty since that time.

The claimant's testimony contained a detailed description of his regular job duties that he performed prior to his work injury of \_\_\_\_\_ and how that injury had occurred, and the progression of his condition afterward.

Attorney Felser argued that the claimant's work injury of \_\_\_\_\_ aggravated and accelerated the claimant's underlying medical condition, degenerative disc disease and herniated disc. He noted the claimant's regular job duties consisted of extended periods of standing, sitting, walking, climbing, lifting, twisting, pushing, pulling, crawling, stooping, and other physical duties related to repairing mechanical equipment. Attorney Felser indicated that these duties had also caused a worsening of the claimant's underlying medical conditions.

At the conclusion of the Hearing, Attorney Felser requested that the record be held open so that he would have an opportunity to submit additional materials pertinent to the appeal. The request was granted, and the record held open for 30 days. Following the conclusion of the Hearing, copies of the official transcript were sent to the claimant and the employer, and their comments were invited.

Following the Hearing, Attorney Felser submitted a memorandum summarizing the arguments he presented at the Hearing. Also, several new pieces of medical documentation were "received to the file.

Upon careful consideration of the documents of record, along with the claimant's Hearing testimony and the arguments presented by the attorney of record, I find that the decision of the Office dated \_\_\_\_\_ should be set aside, and the case remanded for further medical development.

Because the claimant and his attorney have indicated that the claimant did not intend to file for a recurrence of injury, but rather, wished to claim that he sustained an aggravation of his pre-existing spinal condition due to the nature of his overall work duties, the Office is bound to consider this claim in a new light. As argued by the attorney at the Hearing, the claimant cannot be penalized for mistakenly filing an incorrect form.

I find the evidence of record at this time is sufficient to establish a *prima facie* claim for occupational disease, as alleged by the claimant.

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 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. The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's 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 upon a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>1</sup>

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<sup>1</sup> *Victor J. Woodhams*, 41 ECAB \_\_\_\_ (Docket No. 89-1717 issued December 20, 1989); *Frederick H. Coward, Jr.*, 41 ECAB \_\_\_\_ (Docket No. 90-0016 issued July 17, 1990).

In the instant case, the claimant has given a detailed account of the work duties he performed that contributed to his back injury. It is established by the evidence of record and has been accepted by this Office as factual that the claimant sustained a significant injury to his back at work on \_\_\_\_\_. Also, before and after this date, he performed the duties of a maintenance mechanic, a physically demanding job described in detail at the hearing by the claimant and his attorney. The medical evidence of record contains concrete diagnoses from qualified physicians, which led to the claimant's surgery in August of \_\_\_\_\_ and additional treatment and periods of total and partial disability from work. The medical evidence of record also contains statements from physicians, and notably \_\_\_\_\_, the Naval Base physician, in a report dated \_\_\_\_\_ indicates that the claimant's pre-existing spinal conditions were aggravated by his work injury of \_\_\_\_\_. Dr. \_\_\_\_\_ also suggested in his report that the claimant's accepted work injury contributed to the need for surgery in \_\_\_\_\_.

Even though Dr. \_\_\_\_\_ statement does not contain the level of rationale that would be required to accept this occupational disease claim, I find that his statement, along with the evidence of file, establishes a *prima facie* claim that requires further development of the medical evidence by the Office.<sup>2</sup> The Board has held that proceedings under the FECA are not adversarial in nature nor is the Office a disinterested arbiter; that while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence and has the obligation to see that justice is done.<sup>3</sup> In this instance, given the strength of the evidence provided by the claimant thus far in support of the claim, including an uncontested medical opinion from a specialist supporting that his medical condition is work-related, it would be appropriate at this time for the Office to seek an opinion from an independent medical examiner specifically addressing the issue of causal relationship, and supplying the medical rationale required by the Office for adjudication of the claim.

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<sup>2</sup> While the testimony of appellant's physician was not sufficient to discharge her burden of proof, this testimony, together with the findings of fact accepted by the Office constituted a sufficient basis to require further development of the evidence. The Board noted that there was no medical evidence of record refuting causal relationship. Appellant's case was therefore remanded for further development. *Udella Billups*, 41 ECAB (Docket No. 89-1561 issued November 29, 1989)

<sup>3</sup> *Lauramae Heard*, 42 ECAB \_\_\_\_ (Docket No. 91-0276, issued June 5, 1991).

In this instance, the claimant has alleged a work-related aggravation of a pre-existing condition, and the burden of proof concerning the medical evidence that must be provided is very specific: the 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>4</sup>

Furthermore, it must be noted that it is not necessary for the employment injury, by itself, to have caused appellant's condition, in order for it to be compensable. It needs only to have contributed to it. Where a person has a preexisting condition which is not disabling but which becomes disabling because of aggravation causally related to the employment, then regardless of the degree of such aggravation, the resulting disability is compensable. It is not necessary to prove a significant contribution of factors of employment to a condition for the purpose of establishing causal relation. If the medical evidence reveals that an employment factor contributes in any way to the employee's condition, such condition would be considered employment related for purposes of compensation under the Act.<sup>5</sup>

In conclusion, the claimant has submitted evidence sufficient to warrant further development of the claim before a decision concerning entitlement can be reached. Upon return of the case record to the District Office, in accordance with established Office procedures, a Statement of Accepted Facts should be prepared, and the claimant referred for a directed examination with a Board-Certified independent medical examiner in the appropriate specialty. This examiner should be specifically asked to address whether the claimant's established federal work duties and/or the claimant's established occupational incident of \_\_\_\_\_ aggravated the claimant's pre-existing spinal conditions. The examiner should also be asked to address whether these occupational factors contributed to the need for surgery. It should be made clear to the independent examiner that it is not necessary for the employment duties alone to have caused the claimant's medical conditions for them to be work-related. In order for these conditions to be compensable, the work duties need only to have contributed to these conditions

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<sup>4</sup> *Newton Ky Chung*, 39 ECAB \_\_\_\_ (1988).

<sup>5</sup> *Arnold Gustafson*, 41 ECAB \_\_\_\_ (Docket No. 89-0438 issued October 30, 1989).

in some meaningful way. The independent examiner should also be advised that his opinion should include rationale to support any conclusions given, and this 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 the claimant's removal from the employment environment and, if not, at what point would such symptoms or changes have resolved; and whether any aggravation of the claimant's underlying conditions caused by factors of his employment caused disability during or subsequent to his employment.


If the independent examiner opines that the claimant's work duties did not contribute to his underlying spinal conditions, or the need for surgery, then medical rationale should also be supplied to support this opinion.

Once the independent medical examiner's report is received and reviewed, the Office should undertake any other development of the case it deems necessary, and issue a *de novo* decision on the issue of whether the evidence establishes that the claimant sustained a work-related occupational disease due to federal work duties, as alleged. If so, the claim should be expanded to include applicable additional medical conditions, and appropriate compensation benefits should be authorized.

For the reasons set forth above, the Office's decision of \_\_\_\_\_ s hereby SET ASIDE, and the case file is REMANDED to the District Office for actions consistent with this decision.

Dated: JUN 21 2006

Washington, D.C.

  
Hearing Representative  
for  
Director, Office of Workers'  
Compensation Programs