

U.S. Department of Labor

Employment Standards Administration
Office of Workers' Compensation Programs
Division of Federal Employees' Compensation
Washington, D.C. 20210



JAN 28 2002

File Number:

(202) 693-0045

File Number: 06-0651416

Employee: VERDELL E. HAMER

VERDELL E. HAMER
3350 CLEARWATER DR
CLARKSVILLE, TN. 37042

Dear Ms. HAMER:

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, 214 North Hogan Street, Suite 1006, Jacksonville, FL 32202.

Sincerely,

A handwritten signature in dark ink, appearing to read "Paula J. Strange".

PAULA J. STRANGE
Hearing Representative ext 30987

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 §101 et seq. of VERDELL HAMER, Claimant; Employed by the U.S. Postal Service in Louisville, Kentucky; Case No. 06-651416.

Merit consideration of the case file was completed on JANUARY 17, 2002 in Washington, DC. Based on this review, the June 28, 2001 decision of the District Office is vacated for the reasons set forth below.

The claimant, Verdelj Hamer, born July 4, 1955, has been employed by the U.S. Postal Service as a clerk. On April 15, 1995 she sustained an injury in the performance of her duties when she bumped her right elbow. She filed a timely workers' compensation claim, and the District Office of Workers' Compensation Programs accepted the claim for epicondylitis, right elbow.

Subsequently, the claimant sought compensation benefits for the condition of reflex sympathetic dystrophy [RSD]. By Decision dated November 20, 1996 the Office determined that the claimant did not have RSD causally related to her April 15, 1995 injury.

Ultimately, the case arrived at the Employees' Compensation Appeals Board. The Board ruled on May 4, 2001 that the Office must further develop the claim.¹ The Board directed the District Office to develop a new Statement of Accepted Facts and refer the claimant to a Board-certified neurosurgical specialist for a second opinion.

Accordingly the Office referred the claimant to Dr. Warren McPherson, MD, neurosurgeon, on June 18, 2001. The Office's asked Dr. McPherson to explain how and why the claimant developed RSD. The Office also requested that he state whether the condition was causally related to the claimant's April 15, 1995 injury or the effects of epicondylitis.

In his report dated June 18, 2001 Dr. McPherson described the claimant's history and current symptoms. He affirmed that RSD is "an improvable diagnosis either negative or positive." He stated that it is a diagnosis often given to patients who complain of pain after minor injuries. He stated that "no one can explain to you how or why someone develops RSD." His final opinion: "If you don't know what it is it is very difficult to assign with great certainty something as the causal agent. However, most people who describe the this pain describe some type of incident that can be as minor as bumping an elbow such as Ms. Hamer describes."

On June 28, 2001 the Office denied the claim on the basis that the medical evidence did not demonstrate that the claimant had RSD causally related to her April 15, 1995 injury.

The claimant requested an oral hearing. She also submitted a medical report dated July 6, 2001

After reviewing the case record I find that the case is not in posture for a Hearing.

¹ The Board's Decision provides a thorough discussion and analysis of all evidence submitted to the record at that time. The Decision has been made a part of the record.

Since the Office referred the claimant for an examination, it has the responsibility to obtain an evaluation that will resolve the issue involved in the case. See Mag Z. Hackett, 34 ECAB 1421 (1983); Richard L. Blacet, 33 ECAB 1591, (1982).

In the instant case Dr. McPherson did not respond to the Office's questions. He merely mused on the difficulty of determining whether or how someone developed RSD. In addition, the July 6, 2001 report from Dr. Ok Yung Chung, MD, anesthesiologist, states that the claimant has signs of RSD as follows: atrophy of the hair, nails, and other soft tissues; alterations in hair growth; loss of joint mobility; impairment of motor function; and sympathetically maintained pain. He also provided a rationalized explanation for concluding that her condition was related to the 1995 injury or its effects.

On remand, the Office should write to Dr. McPherson and request that he respond to the Office's questions. He should also review Dr. Chung's report and comment on it.

When Dr. McPherson's report is received, and after any other case development that may become necessary, the Office should issue a de novo decision.

DATED: JAN 28 2002
WASHINGTON, DC



PAULA J. STRANGE
Hearing Representative
For
Director, Office of Workers'
Compensation Programs