

U.S. DEPARTMENT OF LABOR

**RECEIVED MAY 14 2013**

OFFICE OF WORKERS' COMP PROGRAMS  
PO BOX 8300 DISTRICT 6 JAC  
LONDON, KY 40742-8300  
Phone: (904) 366-0100

May 10, 2013

Date of Injury:  
Employee:

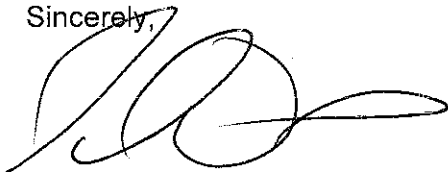
Dear Ms :

This concerns your compensation case and your request for reconsideration received on 02/22/2013

We have evaluated the evidence submitted and have reviewed the merits of your case under 5 U.S.C. 8128. You have provided sufficient evidence to warrant modification of the decision 02/23/2012. Based on the information received, the decision is now vacated.

The reasons for this decision are outlined in the enclosed Notice of Decision.

Sincerely,



Darryl Waters  
Senior Claims Examiner

PAUL FELSER  
ESQ.  
P O BOX 10267  
SAVANNAH, GA 31412

***If you have a disability (a substantially limiting physical or mental impairment), please contact our office/claims examiner for information about the kinds of help available, such as communication assistance (alternate formats or sign language interpretation), accommodations and modifications.***

**NOTICE OF DECISION**  
**Claimant Name:**  
**Case Number:**

**ISSUE:**

The issue for determination is whether the evidence presented is of sufficient probative value to vacate the decision dated 02/23/2012.

**REQUIREMENTS FOR ENTITLEMENT:**

In accordance with the regulations set forth in 20 CFR § 10.609, if an application for reconsideration is accompanied by new and relevant evidence or by an arguable case for error, OWCP will conduct a merit review of the case to determine whether the prior decision should be modified. If sufficient evidence exists to overturn the prior decision, it should be vacated.

**BACKGROUND:**

On \_\_\_\_\_ you filed a claim for Traumatic Injury indicating you sustained an injury or medical condition on \_\_\_\_\_ as a result of your employment.

Your claim was accepted for CONTUSION FACE, SCALP AND NECK EXCEPT EYE(S), 920; CLOSED FRACTURE OF SCAPULA, UNSPECIFIED PART, RIGHT, 81100; COMPLETE ROTATOR CUFF RUPTURE, RIGHT, 72761.

On 02/23/2012 a formal decision was issued in your case finding that the medical evidence of record established that your condition had improved to the point that you could return to your original position as a rural carrier without medical restrictions. The documentation upon which the decision was based included a medical note dated 11/10/2011 from your former treating physician Dr. \_\_\_\_\_. The reason for the decision was based on Dr. \_\_\_\_\_ opinion that you could return to work without restrictions. He based his opinion on a video and photographs of you obtained by investigative surveillance.

You disagreed with the 02/23/2012 decision and through your authorized representative requested reconsideration by letter/appeal request form received on 02/22/2013.

**DISCUSSION OF EVIDENCE:**

The evidence reviewed in support of your reconsideration request includes Dr. \_\_\_\_\_ dated 08/10/2012 and 11/29/2012 and the hearing decision dated 01/07/2013.

In the report dated 08/10/2012 Dr. \_\_\_\_\_ stated that he reviewed your medical records, he provided an accurate medical and factual history of your injury, reviewed the diagnostic studies and the second opinion report, obtained a MRI Arthrogram of your right shoulder and provided a rationalized medical opinion about your condition and work restrictions. Dr. \_\_\_\_\_ further opined that your current condition was a continuation of your original 07/24/2009 injury and not a new injury.

In the report dated 11/29/2012 Dr. [redacted] stated that he reviewed your investigational video. He discussed what he saw in the video and concluded that he saw no convincing evidence in the October 2011 video that would depict any activity which would strain your torn supraspinatus tendon, much less cause a new injury. He then stated, "I see no convincing evidence in the video that would suggest Ms [redacted] was using her arm in a manner that would be contrary to what is customarily assigned as shoulder limitations from an FCE standpoint."

The reports listed above were sufficient evidence to reverse a decision dated 05/22/2012 which denied authorization for surgical intervention. The hearing decision dated 01/07/2013 ordered the office to authorize surgery.

After reviewing the evidence of record, I find that the decision dated 02/23/2012 should be vacated because at the time of the decision there was a conflict of medical opinion that existed. Dr. [redacted] your former treating physician opined that you could return to work without restrictions after viewing an investigative video and Dr. [redacted] opined that you could return to work but only with restrictions. He also provided a clarification of your restrictions in a supplemental report 08/23/2011 as well as he opined that you continued to suffer from residuals of your injury. Dr. [redacted] was not giving an opportunity to review the investigative video and provide comments on your work ability. The conflict of medical opinion is a moot point since your surgical procedure has been authorized and you are currently on temporary total disability.

**BASIS FOR DECISION:**

The evidence is sufficient to vacate the decision dated 02/23/2012 because the office failed to consider the conflict of medical evidence between your former attending physician Dr. [redacted] and your second opinion physician Dr. [redacted]. Dr. [redacted] felt that you could return to full regular duty after reviewing surveillance tapes and Dr. [redacted] felt that you could only work with restrictions and that your condition needed further surgical intervention.

**CONCLUSION:** Therefore, the decision dated 02/23/2012 is vacated and you are entitled to compensation benefits from the date of termination to the present.

Darryl Waters  
Senior Claims Examiner