

File Number:  
HR12-D-H

RECEIVED SEP 17 2013

U.S. DEPARTMENT OF LABOR

OFFICE OF WORKERS' COMP PROGRAMS  
PO BOX 8300 DISTRICT 50  
LONDON, KY 40742-8300  
Phone: (202) 693-0045

SEP - 9 2013

Date of Injury:  
Employee:

Dear Mr. :

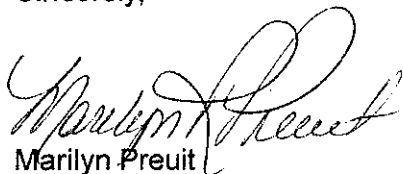
This is in reference to your workers' compensation claim. Pursuant to your request for a hearing, the case file was transferred to the Branch of Hearings and Review.

A hearing was held on 06/28/2013. Based upon that hearing, it has been determined that the decision of the District Office should be reversed as outlined in the attached decision.

Your case file has been returned to the Washington, D.C. District Office. You may contact that office by writing to our Central Mail Room at the following address:

US DEPARTMENT OF LABOR  
OFFICE OF WORKERS' COMP PROGRAMS  
PO BOX 8300 DISTRICT 25 WAS  
LONDON, KY 40742

Sincerely,



Marilyn Preuit  
Hearing Representative

PAUL H FELSER  
FELSER LAW FIRM, P.C.  
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.*

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 Case  
No. A telephone hearing was held on JUNE 28, 2013.

The issue for determination is whether the claimant has submitted sufficient medical evidence to support a work injury on

The claimant, born is employed by the as  
a On the claimant filed notice of traumatic injury claiming an  
injury on that day when a roll of fabric fell off a rack, striking his right shoulder, resulting in  
bilateral shoulder and neck pain. The agency advised that the claimant did not initially  
stop work as a result of the incident.

Along with this claim for injury form, the Office received various medical forms indicating that the claimant received treatment on July 19, 2012 and diagnostic tests were prescribed. A medical report dated July 19, 2012 from Dr. indicated that the claimant returned following a work injury on when he was assisting a co-worker with a roll of fabric weighing approximately 30 pounds which fell striking him on the back of the head and base of the neck. This noted that the claimant continued to work but had increasing neck pain, headaches, and radiating pain into his bilateral arms. This discussed findings on examination and diagnosed signs and symptoms consistent with cervical disc herniation and cervical radiculopathy. MRI's were recommended. On August 3, 2012 Dr. noted that the cervical MRI showed disc bulging and small herniation at C4-5 and C5-6. Lumbar MRI was reported to show disc degeneration at L4-5 and L5-S1. A brain MRI was normal. Various medical forms discussing the claimant's work ability were also received by the Office.

The claimant's attorney wrote the Office and opined that the information was sufficient to accepted lumbar disc displacement, cervical disc displacement and brachial neuritis. He noted that although the case was initially accepted under the "short form closure" policy, the claimant was currently disabled from work. He requested this case be formally adjudicated.

Dr. began treating the claimant on August 24, 2012 for neck, mid back, and lower back pain into the bilateral legs. She noted that the claimant had previously been treated for lumbar pain but subsequently had presented for treatment following a work injury on when a 30-pound roll of fabric fell onto his shoulder and neck from

about 20-30 inches above, flaring his neck and shoulder pain. She discussed his complaints, summarized the results of the MRI's, reported lumbar fusion had been performed by Dr. [redacted] in 2010, discussed her findings on examination and diagnosed neck pain with post work injury with mild multilevel disc bulges with occasional left upper extremity radicular symptoms, mid to lower thoracic pain, and worsening lumbar pain with radicular symptoms into the right and now into the left post work injury.

The Office requested the claimant provide additional medical evidence in support of a new work injury within thirty days of their letter. A letter from the claimant's attorney requested clarification of what information was required.

On December 19, 2012 the Office found that the claimant had not submitted sufficient medical evidence to support he sustained a work injury on [redacted]. The claimant disagreed with the Office's decision and through his attorney requested a hearing before an OWCP representative.

The claimant was not present but was represented by attorney Paul Felser during a telephone hearing held on June 28, 2013. The claimant's attorney argued that the claimant was denied due process as he was not provided a copy of the development letter nor did the agency receive a copy of this letter from the Office requesting additional information. He further noted that he did not receive a copy of the denial issued in the case. He advised that the incident which the claimant is claiming resulted in injury is not being disputed by the agency. The attorney stated that the claimant was claiming an cervical, mid back and lower back injury as a result of being hit by a bolt of cloth falling off a rack and landing on his right shoulder.

The attorney noted that the claimant did have a prior lumbar condition and had undergone surgery three years prior to the incident. He was advised that there would need to be additional information from the claimant discussing when he first experienced lower back symptoms, and if and how these symptoms were different from the previous symptoms. The claimant was also asked to clarify other questions such as when he stopped work, what was his condition between the date of injury and the date of initial treatment, and how or if this neck, shoulder, mid and lower back conditions different from his condition prior to the incident. Medical evidence between September 13, 2012 and June 26, 2013 was also requested since this information was not on file.

A copy of the transcript was submitted to the agency following the hearing for review and comment. The agency commented in July 25, 2013 stating that they did not disagree with any of the information presented. A copy of this was provided to the claimant and his attorney. No response was received.

Following the hearing, the Office received a statement from the claimant discussing the mechanism of injury on [redacted] when a roll of vinyl weighing approximately 30-40 pounds fell approximately 3 feet landing on his head, neck and shoulder resulting in immediate neck, shoulder and lower back pain as well as numbness in his legs. He

noted that the pain progressively worsened throughout the day so he scheduled an appointment with Dr. [redacted] on July 19, the first available appointment. He further noted that he also had a previously scheduled appointment with Dr. [redacted] a pain management physician, for his lower back condition. He advised that he continued to work because his supervisor was out of the Office and he was left in charge. He discussed the medical treatment received and noted that he was having increased lower back pain as well as neck, shoulder and mid-back symptoms.

The Office also received additional medical evidence including copies of information previously submitted and hand written treatment notes for treatment from September 4, 2012 to November 9, 2012 for neck, mid-back and lower back pain. The Office also received a statement from the clinical manager indicating that the treating physician, Dr. Medic was currently on maternity leave and was not scheduled to return until August 12, 2013. This advised the claimant had an appointment for that day.

The claimant's attorney requested an extension until August 21, 2013 to provide the additional information requested during the hearing. This was granted.

A medical report dated August 18, 2013 was received from Dr. [redacted] which noted that the claimant had initially been evaluated on September 1, 2011 for chronic low back pain. She advised that the claimant had numerous on-the job injuries and had undergone L3-4 laminectomy/ fusion in June 2010 performed by Dr. [redacted] for progressive lumbar pain and leg weakness. She indicated that the claimant continued to have symptoms and a subsequent MRI on August 3, 2011 found stable minimal retrolisthesis of L3 on L4, stenosis due to disc bulge, and small L5-S1 disc protrusion with annular tear. Dr. [redacted] indicated that on July 20, 2012 during a follow up visit, the claimant reported that he had another work injury and while she was unable to treat him for this, she did increase his pain medication due to his increased pain. She noted that the claimant had seen Dr. [redacted] the day before and imaging studies were pending. She reported she continued to treat the claimant who reported worsening pain. Dr. [redacted] advised that on August 24, 2012 she treated the claimant for the work injury at which time he reported new neck pain, midback pain, and increased lumbar pain with numbness in his legs. She listed an accurate history of injury, discussed the reported symptoms, summarized her findings on examination, discussed the results of the July 24, 2013 MRIs, listed continued symptoms, and opined that based on her observations and findings prior and subsequent to the work incident of [redacted] she believed with reasonable medical certainty that the claimant cervical and thoracic symptoms and the worsening of his lumbar and leg symptoms were related to this incident. She diagnosed cervical strain, cervical disc injury with herniation, thoracic strain, lumbar strain, lumbar disc injury with herniation, and lumbar radiculopathy. She opined that the cervical and thoracic injuries were new but the lumbar conditions were aggravations of the claimant's pre-existing conditions. The claimant's attorney also submitted a letter discussing Dr. [redacted] report and opining it was sufficient to establish the work injury.

An employee seeking benefits under the FECA has the burden of establishing the

essential elements of his or her claim including that the claim was timely filed within the applicable time limitation period of the Act, the fact that the individual is an "employee of the United States" within the meaning of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury. These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>1</sup>

In this case, it is accepted that the claimant is an employee of the United States and timely filed a claim under the Act. To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the "fact of injury" has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place, and in the manner alleged.<sup>2</sup> Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.<sup>3</sup> The term "injury" as defined by the Act, refers to some physical or mental condition caused by either trauma or by continued or repeated exposure to, or contact with, certain factors, elements or conditions.<sup>4</sup>

The claimant has alleged that he sustained a cervical, thoracic, and lumbar condition when he was struck by a 30-40 pound roll of vinyl which fell approximately 3 feet landing on his neck and shoulder on \_\_\_\_\_ while performing his work duties. The agency has not disputed that this occurred in the time, place and manner alleged, and the claimant's actions have been consistent with this incident occurring in the manner described. Therefore I find that the claimant has established the first component of fact of injury. Further the claimant has now provided medical evidence with a diagnosis of cervical strain, cervical disc injury with herniation, thoracic strain, lumbar strain, lumbar disc injury with herniation, and lumbar radiculopathy which is sufficient to establish a personal injury. Therefore I find that fact of injury has been established.

Once fact of injury has been established, the Office must review the medical evidence to determine if it is sufficient to support a causal relationship between the work incident and the diagnosed conditions. An award of compensation may not be based on surmise, conjecture, speculation or the claimant's belief of causal relationship.<sup>5</sup> The claimant must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship.<sup>6</sup> The mere manifestation of a condition during a period of employment does not raise an inference of causal relationship between the condition and the employment.<sup>7</sup> To show causal relationship, the claimant must

<sup>1</sup> James B Bowers, 44 ECAB 121 (1992)

<sup>2</sup> Julie B Hawkins, 38 ECAB 393 (1987)

<sup>3</sup> John J Carlone, 41 ECAB 354 (1989)

<sup>4</sup> Elaine Pendleton, 40 ECAB 1143 (1989)

<sup>5</sup> William Nimitz, Jr., 30 ECAB 567, 570 (1970); Miriam L Jackson Gholikely, 5 ECAB 537, 538-39 (1953)

<sup>6</sup> Mary J Briggs, 37 ECAB 578, 581 (1986); Joseph T. Gulla, 36 ECAB 516, 519 (1985)

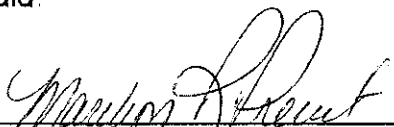
<sup>7</sup> Edward E Olson, 35 ECAB 1099, 1103 (1984)

submit a physician's report in which the physician reviews the factors of employment identified by the claimant as causing his condition and, taking these factors into consideration as well as findings upon examination of the claimant and his medical history, states whether these employment factors caused or aggravated the claimant's diagnosed condition.

The claimant has now submitted medical reports from Dr. \_\_\_\_\_ and Dr. \_\_\_\_\_ which have an accurate history consistent with the claimant's description, discuss his prior medical condition and surgery, list findings on examination, summarizes the diagnostic test results, and diagnoses cervical strain, cervical disc injury with herniation, thoracic strain, lumbar strain, lumbar disc injury with herniation, and lumbar radiculopathy. Further, Dr. \_\_\_\_\_ opined that the claimant's cervical and thoracic conditions were directly caused by the work incident and his pre-existing lumbar condition was aggravated by the incident. She discussed how she arrived at this conclusion noting the claimant had no significant symptoms or findings in the cervical or thoracic region prior to the incident but following the incident demonstrated an injury. Further she noted that the claimant's lumbar condition significantly worsened following the incident requiring increased medication and the objective findings supported a worsening of his condition. Since Dr. \_\_\_\_\_ offered a well reasoned opinion and a firm diagnosis related to the work incident, I find that this is now sufficient to establish work injuries as a result of the work incident. However prior to accepting cervical disc herniation, the Office should clarify if this condition exists. The cervical MRI completed on July 24, 2012 found disc bulging at several levels but did not report any lesion or herniation.

Consistent with the above findings, the decision of the District Office dated December 9, 2012, although correct at the time it was issued, is now **reversed** based upon the new factual and medical evidence provided during the hearing. The file is returned to the District Office for acceptance of cervical strain, thoracic strain, lumbar strain, aggravation of lumbar disc injury with herniation, and aggravation of lumbar radiculopathy. Appropriate benefits should be paid.

Dated: **SEP - 9 2013**  
Washington, D.C.

  
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Marilyn R. Preuit  
Hearing Representative  
for  
Director, Office of  
Workers' Compensation Programs