

File Number:  
Merit Review#4

RECEIVED AUG 21 2017

U.S. DEPARTMENT OF LABOR

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

August 16, 2017

Date of Injury:  
Employee:

Dear

This concerns your compensation case and your request for reconsideration received on 06/12/2017.

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 dated 01/11/2017. Based on the information received, the decision is now vacated.

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

Sincerely,

Senior Claims Examiner

PAUL FELSER  
ATTORNEY  
7393 HODGSON MEMORIAL DR  
SUITE 102  
SAVANNAH, GA 31406

***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.***

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**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 01/11/2017.

**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 01/27/2015 you filed a claim for Traumatic Injury indicating you sustained an injury or medical condition on \_\_\_\_\_ as a result of your employment as an \_\_\_\_\_

You stated the injury or medical condition occurred when you fell from second step landing on back, hip and elbow. Your claim was accepted for neck sprain. Your claim was expanded and accepted for spondylosis without myelopathy or radiculopathy, lumbosacral region. You stopped work on \_\_\_\_\_ and returned to work on 03/16/2015. You lost intermittent time from work and subsequent periods of temporary total disability until you stopped work on 11/11/2015 and underwent an approved lumbar spine surgery. You returned to work part time 4 hours a day on 03/14/2016, 6 hours a day on 03/21/2016, and 8 hours full time full duty on 03/23/2016.

On 11/07/2016, you filed Form CA-7, claim for compensation accompanied with CA-7a, time analysis form, for intermittent leave without pay compensation for the period 08/01/2016 to 10/25/2016. The medical evidence of record indicated that you were capable of working regular duty with a 5 minute break after 1 hour of sitting.

By letter dated 12/08/2016, you were advised compensation was not payable for the claimed period and required medical evidence establishing disability for work during the entire period claimed was needed. You were afforded 30 days to submit the required information.

On 01/11/2017 a formal decision was issued in your case finding that the evidence of record failed to support disability for the intermittent period 08/11/2016 to 10/25/2016. The documentation upon which the decision was based included a referral for physical therapy note from Dr. \_\_\_\_\_ dated 12/28/2016 and physical therapy reports dated 12/02/2016 to 12/28/2016, duplicate copies of 11/11/2015 operative report including, physical therapy notes and x-ray lumbar spine report, and subsequent form CA-7 and CA-7a for the period 11/02/2016 to 12/14/2016. The decision noted that the evidence of record failed to support disability for the claimed period.

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The reason for the decision was:

"The medical evidence is insufficient to support your claim for compensation, only listing taking opiates, you can't just stop working and suddenly decide to take an opiate medication and take yourself of work for 2 full days, we require a medical report from a physician reporting what your work status is, the diagnosis and the reasons for or causes for not being able to work for a few days at your choice, additionally, if you are over extending yourself i.e. exercising or surfing and that is at all the reason for not being able to work, then that isn't considered to be related to your work injury, and you should consider using Sick Leave. Plus the medical report only contains a diagnosis of "pain." Pain is not a valid diagnosis; rather, it is a symptom."

You disagreed with the 01/11/2017 decision and requested reconsideration by letter/appeal request form received on 06/12/2017.

**DISCUSSION OF EVIDENCE AND BASIS FOR DECISION:** Your entire medical file of record contemporaneous to the dates claimed was reviewed. This includes the new medical evidence that you submitted along with your requests for reconsideration. However, a full review of the evidence of file supports sufficient documentation to process payment for wage loss compensation for the entire period claimed.

Upon full review of your entire medical file, I find the following:

For the intermittent wage loss for 08/01/2016, you claimed 8 hours for medication (documentation on file). This date was not previously addressed by the Office; however there is medical evidence in the file to substantiate compensation claimed for this date. Specifically, letter dated 12/18/2015 from your employer,

noted that you were currently in a medically incapacitated status from performing safety related duties due to your on the job injury and the medications you are using to treat your condition are considered restricted medications which mean you cannot perform while using the medication and for a specific waiting period after completing the last dose. He discussed the medication you are taking regarding your back pain and he opined hydrocodone is a restricted medication with a 24 hour waiting period after the last dose and oxycodone has a 72 hour wait and muscle relaxants generally have 12 hour to 8 hour day waiting period depending on which muscle relaxant is used. He further noted Robaxin has a 12 hour wait and Flexeril has an 8 day wait. Therefore, the Office will process 8 hours as claimed this date.

For 08/17/2016, you claimed 4 hours for doctor's visit with Dr. The medical evidence supports that you have indeed attended office visit with Dr. on this date. Additionally, in this chart note report, Dr. noted that you continue to have significant pain and frustrated that you are unable to return to your usual activities. He stated you noted improvement in neuropathic pain to the right lower extremity since surgery but continues to have intermittent radicular pain to the left lower extremity which extends to the side of the thigh and occasionally down to the calf. He indicated that you have missed several days of work due to pain because you are not able to attend work if you had taken narcotics within 24 hours based on your job as air traffic controller. Therefore, the Office will process 4 hours as claimed for this date.

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For 09/21/2016, you claimed 8 hours for medication (documentation on file); however, as noted above, the medical evidence of record documented that you cannot perform duties while using medication and for a specific waiting period after completing the last dose. Therefore, the Office will process 8 hours as claimed for this date.

For 09/22/2016, you claimed 8 hours for doctor's visit and x-rays with Dr. The medical evidence supports that you have indeed attended office visit and x-rays with Dr. on this date. Therefore, the Office will process 8 hours as claimed for this date.

For 10/11/2016, you claimed 8 hours for doctor's visit and medication (documentation on file). The medical evidence supports that you have indeed attended office visit with Dr. on this date as well as medical evidence that establishes that you cannot perform air traffic control specialist duties while using medication and for a specific waiting period after completing the last dose. Therefore, the Office will process 8 hours for benefit for this date.

For 10/12/2016, 10/24/2016 and 10/25/2016, you claimed 8 hours (total 24 hours) for medication – documentation on file. As noted above, the medical evidence of record from your employer and treating physician supports that you cannot perform duties while using medication and for a specific waiting period after completing the last dose. Therefore, the Office will process 24 hours for benefit for these dates.

It is noted that there are other medical documents in the case record, however medical evidence that does not address disability; or support attendance at injury-related medical care contemporaneous to the specific dates claimed on the forms CA-7 and CA-7a, are irrelevant to the outcome of this decision; therefore, they were not considered.

CONCLUSION: Therefore, the Office's decision dated 01/11/2017 is vacated.

Compensation for intermittent wage loss for the entire period claimed from 08/01/2016 to 10/25/2016 is payable. You should shortly receive payment within the next two weeks.

Senior Claims Examiner