

File Number:  
HR13-D-H

RECEIVED MAY 11 2017

U.S. DEPARTMENT OF LABOR

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

Date of Injury:  
Employee:

Dear Ms.

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 was completed on the case. Based upon that review, 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 Jacksonville 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 6 JAC  
LONDON, KY 40742-8300

Sincerely,

*Electronically Signed*

David Leach  
Hearing Representative

PAUL FELSER  
ATTORNEY AT LAW  
7393 HODGESON MEMORIAL DRIVE  
STE 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.***

Washington DC, May 08, 2017

**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 8101 *et seq.*  
of \_\_\_\_\_ claimant; Employed by the \_\_\_\_\_  
Case no. \_\_\_\_\_

Merit consideration of the claim was completed in Washington, DC. As a result,  
the decision of the Office dated November 1, 2016 is hereby set aside, for the  
reasons set forth below:

---

The issue for determination is whether the evidence is sufficient to establish a  
work-related injury in the performance of duty, in the manner alleged.

The claimant is an employee of the \_\_\_\_\_ where she works as a \_\_\_\_\_.  
She filed form CA-2 "Notice of Occupational Disease" on \_\_\_\_\_  
alleging that she developed tightness and spasms in the  
lower back, pain in the lower back, right hip and right leg due to repetitive  
motions at work including lifting, bending and lifting, which caused spasms and  
pain in the lower back, hip and leg. She alleged she first became aware of this  
condition, and first realized it was work-related, on \_\_\_\_\_. On the rear of  
the form, the employer noted the claimant stopped working on \_\_\_\_\_ and  
returned to 4 hours per day limited duty work on \_\_\_\_\_ with a 10 pound  
weight restriction, no twisting, bending, standing, walking or sitting excessively.

The claimant provided a written statement with additional information about her  
work duties and the claimed injury. She noted she has a prior accepted injury  
from \_\_\_\_\_ when she went off work after she developed lower back  
pain with due to repetitive bending in a hamper. She received an epidural  
injection on \_\_\_\_\_ and returned to full duty work around \_\_\_\_\_.  
She saw her physician on \_\_\_\_\_ and they agreed the injection  
had helped. The doctor told her that her pain could re-occur in the future due to  
a bulging disk. After returning to work, she continued to perform in her regular  
job without problems for about 6 months. On \_\_\_\_\_ and \_\_\_\_\_ the  
\_\_\_\_\_ was heavy and the claimant asked her supervisor if some could be  
curtailed. The request was denied. On April 20, 2016, she was sitting on her  
bed when lower back pain began and she experienced spasm. She reported this  
to her supervisor and received a form CA-17. She went to urgent care and the  
doctor took her off work. She saw her own physician on \_\_\_\_\_ and he  
agreed her issues were coming from the prior injury of \_\_\_\_\_. He  
wanted to administer another epidural injection. Due to extreme pain, he kept  
her off work until after she had the injection. She indicated there was no other

accident or injury between the time she returned to work in \_\_\_\_\_ and the  
recurrence of pain on \_\_\_\_\_. She initially filed the \_\_\_\_\_ claim as  
a recurrence of the prior \_\_\_\_\_ injury that was accepted under file  
On \_\_\_\_\_ she was told she had to file form CA-2.

The claimant noted she sustained a prior injury in \_\_\_\_\_ when she lifted  
\_\_\_\_\_ and twisted while \_\_\_\_\_. She was seen at  
Urgent care and was referred to Dr. \_\_\_\_\_ a back specialist. She  
received epidural injections and physical therapy. These were not effective. She  
underwent spinal fusion surgery on \_\_\_\_\_ and had physical  
therapy. She returned to limited duty and was able to return to full duty with no  
issues until her injury in \_\_\_\_\_.

Medical evidence received to the file in support of the initial claim included  
\_\_\_\_\_ urgent care notes; CA-17 forms; disability slips and numerous progress  
notes from Dr. \_\_\_\_\_ a spinal surgeon.

On November 1, 2016, a formal Notice of Decision was issued, denying the claim  
with a finding that the claimant had failed to provide a medical report sufficient to  
establish a causal relationship between the claimed medical condition and her  
federal work duties, as alleged. Although medical reports had been received,  
none contained a sufficient description of the claimant's work duties or medical  
reasoning provided by the physician explaining how work activities caused or  
contributed to any diagnosed condition.

The claimant disagreed with this decision and requested an appeal in the form of  
an Oral Hearing before the Branch of Hearings and Review.

The claimant's representative submitted a letter dated February 22, 2017 in  
which he indicated that additional medical evidence had been submitted in  
support of the appeal from Dr. \_\_\_\_\_ which contained information  
that should be sufficient to meet her burden of proof or at least warrant additional  
development of the medical evidence.

Dr. \_\_\_\_\_ report provided the following diagnoses:

- a) Sciatica (right)
- b) Lumbar Disc Disease with Radiculopathy
- c) Disc Degeneration Lumbar
- d) Low Back Pain
- e) History of Spinal Fusion

---

<sup>1</sup> File 062352102 was accepted as an occupational disease when the claimant developed low back pain  
starting \_\_\_\_\_ due to repetitive bending into parcel hampers. The claim was approved for  
lumbar sprain.

<sup>2</sup> File \_\_\_\_\_ was accepted for lumbosacral sprain and L3-4 herniated disc due to a work incident of  
when the claimant was lifting \_\_\_\_\_ L3-4 laminectomy and lumbar fusion was approved  
and was performed on \_\_\_\_\_.

He explained that the claimant's job requires prolonged bending and lifting, including heavy lifting, and job requires her to bend and lift for a prolonged time. She begins her day by collecting her mail which is placed on the floor and in cases that require her to lift and bend multiple times. She then has to put the mail either case which may require her to place on the floor. This process is repeated until all mail is cased. She is required to sort through a package hamper which requires her to bend and lift packages from the hamper. This hamper is cleared of packages which have to place on the floor then picked back up to place into the hamper. She then has to pull down mail placing (lifting) it into trays and placing the trays into the same or different hamper (causes her to lift and bend again). After the hamper is loaded she then pushes the hamper to her vehicle to lift the mail trays and packages into the vehicle (same process of bending and lifting motions) Throughout the day up to 8 hours she continues to lift mail trays and packages (continuing to bend and lift) until all mail is delivered.

Dr. [redacted] opined the claimant suffered a work-related aggravation of a pre-existing condition. He explained she is required to bend for prolonged times at work while lifting packages and mail. This motion causes stress to the lower region of the back and caused aggravation to the claimant's lower injury that had been sustained on [redacted]. The symptoms had stopped for a short time, but after the prolonged motions they resurfaced due to disc herniation at the L4-5 with degeneration. She continued to have mechanical low back pain with some increasing lower extremity radicular symptoms that are referable to her on the job injury of [redacted]. Prolonged bending, lifting sitting and/or standing cause her symptoms to worsen. He noted a repeated history of these same motions causing injury to the lower back in [redacted] in [redacted] and again in [redacted]. Dr. [redacted] explained that the hoped the work-related aggravation would be temporary and would be alleviated by pain management with injections and physical therapy. If these treatments were not effective, surgical options could be considered.

Based on my initial consideration of the evidence of record, I find that the case is not in posture for a Hearing. Acceptance of the claim is warranted based on the medical evidence that is already of record.

A claimant seeking benefits under the FECA has the burden of proof to establish the essential elements of his or her claim. When the claimant alleges an injury in the performance of duty, the claimant must submit sufficient evidence to establish that he or she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. The claimant must also establish that such event, incident or exposure caused an "injury" as defined in the Act and its regulations.<sup>3</sup> The term "injury" as defined by the FECA refers to some physical or mental condition caused by trauma or repeated exposure to, or

---

<sup>3</sup> *Melissa A. Carter*, 45 ECAB 618 (1994.)

contact with, certain factors, elements, or conditions.<sup>4</sup> As part of his burden, the claimant must submit medical evidence establishing a firm diagnosis of the condition for which he seeks compensation benefits.<sup>5</sup>

In this case, the claimant is a \_\_\_\_\_ that has a history of prior accepted work-related back injuries in \_\_\_\_\_ and \_\_\_\_\_ due to bending and lifting at work. Approved lumbar surgery was performed in \_\_\_\_\_. The claimant was also treated with physical therapy and lumbar injections. Following recovery from the injury, the claimant returned to full duty work in \_\_\_\_\_ to a job that entails repetitive lifting, bending and lifting, and twisting while she \_\_\_\_\_. The claimant explained she developed recurrent symptoms in her lower back on \_\_\_\_\_ after working the two prior days with a heavy \_\_\_\_\_.

The claimant has provided a sufficiently detailed and credible description of her work duties, which were not disputed by the employer. The Office has appropriately accepted the claimant's description of her work duties as factual.

The claim was denied with a finding that the medical evidence of file was not sufficient to establish a causal relationship between the claimed medical condition and the claimant's federal work duties. No physician of record had provided a sufficiently reasoned medical opinion based on a sufficiently detailed description of the claimant's work duties, explaining how such activities caused or contributed to any diagnosed condition.

On appeal, the claimant's attending surgeon, Dr. \_\_\_\_\_ has provided a detailed narrative report that I find is sufficient to meet the claimant's burden of proof. The report signed by Dr. \_\_\_\_\_ has provided a firm diagnosis based on knowledge of an accurate history of injury, clinical findings on examination as expressed in the progress notes and consideration of objective test results. He provided his unequivocal medical opinion supporting that the claimant's work duties involving repetitive bending, lifting and twisting caused an exacerbation of underlying back conditions that were present as a result of prior accepted work injuries in \_\_\_\_\_.

A person who claims benefits under the FECA has the burden of establishing the essential elements of his claim, including the fact that he sustained an injury while in the performance of duty. Although compensation awards must be based on reliable, probative and substantial evidence, the evidence required is only that necessary to convince the adjudicator that the conclusion drawn is rational and sound; it is not necessary that the evidence be so conclusive as to establish causal connection beyond all possible doubt. Where the relative circumstances

---

<sup>4</sup> *Christine S. Hebert*, 49 ECAB \_\_\_\_ (Docket No. 96-812, issued August 4, 1998.)

<sup>5</sup> *Patricia Bolleter*, 40 ECAB 373 (1988).

strongly suggest a causal relationship and where the medical evidence also supports a causal relationship, appellant has met his burden of proof.<sup>6</sup>

In the current case, the circumstances surrounding the claim and medical evidence of record strongly supports a causal relationship between the diagnosed medical condition and the work incident described by the claimant. There is a logical connection that can be made between the work duties performed by the claimant and the diagnoses identified by Dr. Dr.

has provided convincing medical reasoning explaining how he arrived determined that the identified conditions are causally related to the specific work duties that were performed by the claimant prior to stopping work on

He has based his opinion on a complete and accurate history of injury. There is no physician of record to offer an opinion contrary to that of Dr. and there is no evidence of record that would support the claimant's injury is the result of some non-occupational cause.

For the reasons set forth above, the decision dated November 1, 2016 is hereby reversed. The case is returned to the District Office for actions consistent with this decision, including acceptance of the claim for the following work-related medical conditions: aggravation of lumbar degenerative disc disease with radiculopathy/sciatica.

Also, the current file should be administratively combined or "doubled" with the claimant's prior related files that were also accepted for work-related back injuries, identified by OWCP file numbers and OWCP procedures provide that cases should be combined when correct adjudication of the issues depends on frequent cross-reference between files. If a new injury case is reported for an employee who previously filed an injury claim for a similar condition or the same part of the body, doubling is required.<sup>7</sup>

Issued:  
Washington, D.C.

*Electronically Signed*

---

DAVID S. LEACH  
Hearing Representative  
for  
Director, Office of Workers'  
Compensation Programs

<sup>6</sup> *John P. Broll*, 42 ECAB \_\_\_ (Docket No. 90-2001, issued February 22, 1991).

<sup>7</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8(c) (February 2000); *T.D.*, Docket No. 07-2331 (issued June 19, 2008).

PAUL FELSER  
7393 HODGESON MEMORIAL DRIVE  
STE 102  
SAVANNAH, GA 31406