

File Number:
HR10-D-H

RECEIVED APR 08 2019

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

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 01/18/2019. As a result of such hearing, it has been determined that the decision issued by the District Office should be vacated and the case remanded to the district office for further action as explained in the enclosed copy of the Hearing Representative's 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,

Division of Federal Employees' Compensation

PAUL FELSER, ESQ.
FELSER LAW FIRM, P.C.
7393 HODGSON MEMORIAL DRIVE
SUITE 102
SAVANNAH, GA 31406

If you have a disability and are in need of communication assistance (such as alternate formats or sign language interpretation), accommodation(s) and/or modification(s), please contact OWCP.

Washington DC, April 04, 2019

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.*

The issue for determination is whether a claim should be expanded to include an additional condition of lymphedema.

The claimant, date of birth _____ is employed as a _____ by the
On _____ the claimant filed a timely claim of
traumatic injury, claiming multiple injuries on _____ when she fell forward after
her shoe got caught in the groove of an elevator. The office accepted the claim for cervical
and rotator cuff sprains as well as contusion of the left elbow. They subsequently expanded
the claim to include left wrist, knee and ankle sprains, as well as a tear of the left lateral
meniscus. The claimant returned to limited duty but stopped work in _____ when
her employer was unable to accommodate her restrictions. She underwent left knee surgery
on _____

In _____ the claimant requested that her claim be expanded to include lymphedema of
the left leg, chest pain due to stress, as well as hip and thigh pain. Medical evidence dated
_____ suggested the possibility of deep vein thrombosis (DVT) in the left lower
extremity. A subsequent medical report indicated the claimant was also complaining of right
thigh pain. However ultrasound on both lower extremities was found to be normal with no
evidence of DVT in either lower extremity.

By letters dated May 24, and June 1, 2018, the office advised the claimant of the evidence
needed to support additional expansion of her claim.

Medical evidence received in the claim essentially indicated the claimant asserted a
relationship of bilateral lymphedema to her injury and surgery. However no definitive finding
was made to establish a causal relationship. The claimant underwent multiple tests and
procedures regarding the symptoms. She was advised on _____ that compression
stockings should be used but it was unlikely any other treatment would be of help.

By decision dated August 13, 2018, the office denied expansion of the claim advising that
the evidence of record did not establish a firm diagnoses or causal relationship to the injury.

The claimant disagreed with the decision and requested an oral hearing before an OWCP representative.

Hearing was held on January 18, 2019. The claimant was represented at hearing by Paul Felser. The claimant was not present.

At hearing, Mr. Felser advised he was addressing the lymphedema claimed. He argued that the claimant's physician had indicated he was still pursuing a lymphedema diagnosis through additional medical evaluation. Mr. Felser indicated that ongoing evidence continued to assert lymphedema due the claimant's injury.

A transcript was provided to the employer and the claimant's attorney. Both were afforded 20 days to respond to the transcript.

In addition, the case record was held open for 30 days in order to allow the claimant time to submit any additional evidence.

A medical report was received on _____ from _____ MD, an Internal Medicine specialist, opining the claimant developed lymphedema due to her knee surgery. He provides no reasoning for the assertion, other than to indicate she didn't have the condition prior to the injury and had no risk factors. He does not explain the usual etiology of the condition, nor does he indicate a thorough review of the medical evidence.

Medical records pertaining to gastrointestinal bleeding were received.

On February 14, 2019, the office referred the claim to second opinion evaluation regarding the claimant's medical conditions and disability due to the injury.

On March 12, 2019, the office expanded the claim to include gastrointestinal hemorrhage.

Multiple duplicate medical records were received as were ongoing medical records. The second opinion medical report has not been received.

Based upon a thorough review of the written evidence of record, I find that the decision of the district office dated August 13, 2018 should be set aside.

The medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹

¹

41 ECAB (1989).

Further, an award of compensation may not be based on surmise, conjecture, speculation or upon appellant's own belief that there is a causal relationship between his claimed injury and his employment.² To establish a causal relationship, appellant must submit a physician's report, in which the physician reviews the employment factors identified by appellant as causing her condition and, taking these factors into consideration as well as findings upon examination of appellant and her medical history, state whether the employment injury caused or aggravated appellant's diagnosed conditions and present medical rationale in support of his or her opinion.³

The Board has held that the mere fact that appellant's symptoms arise during a period of employment or produce symptoms revelatory of an underlying condition does not establish a causal relationship between appellant's condition and his employment factors.⁴

In the present case, the claimant provided medical evidence asserting a causal relationship between the claimant's lymphedema and her knee surgery in the claim. While the report was not sufficiently rationalized to establish causal relationship, the office subsequently referred the claimant to a second opinion physician regarding all conditions found to be causally related to the injury. I thus find that the office's decision should be aside for completion of that development, along with any other development the office deems necessary. The office should then issue a de novo decision.

Consistent with the above findings, the decision of the District office dated August 13, 2018 is set aside and the claim remanded for the action described above.

ISSUED
WASHINGTON, D.C.

Hearing Representative
For
Director, Office of Workers'
Compensation Programs

² .41 ECAB (1989).

³ *Id.*

⁴ .32 ECAB (1981); 30 ECAB (1979).