

File Number:  
HR20-D-H

RECEIVED AUG 19 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 Review of the Written Record, the case file was transferred to the Branch of Hearings and Review.

The review was completed on 08/13/2019. As a result of such review, 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 H FELSER  
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, August 14, 2019

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 the Case  
number

*Examination of the written record was completed on August 13, 2019. Based on the review, the decision of the district office dated February 15, 2019 is set aside for the reasons set forth below.*

The issue for determination is whether the claimant suffered a work-related Traumatic Injury as defined by the Federal Employees' Compensation Act (FECA).

born is employed as a with the  
in Ho filed Form CA-1 for a Traumatic Injury alleged to have  
occurred on On this date, he was responding to a staff assistance call for a  
fight on the compound. While responding, he placed an on the ground to gain control of him.  
While doing this, he landed in a fire ant pile. He claimed an injury to the back and lower extremity.

A "Staff Injury Assessment and Followup" form dated was received. The  
claimant reported low back pain after restraining an on the ground. He complained of low  
back pain and burning on the right arm from exposure to "O.C." The assessment was low back pain.  
This report was signed by a nurse practitioner.<sup>1</sup>

On the claimant was evaluated by M.D. of  
He was seen as a new patient with a 2½ year history of constant stabbing, burning, and  
aching low back pain. This radiated down the posterior aspect of the left leg. The pain was so  
severe that he underwent microdiscectomy at the L4-5 level in . However, his pain did  
not resolve following this procedure. He sought chiropractic treatment, used a TENS unit and took  
medication. He underwent lumbar MRIs in and The assessment was  
lumbar radiculopathy, low back pain, post-laminectomy instability and a recurrent disc herniation (L4-  
5). Dr. stated, "The pain began in earnest about two months ago and now is associated with  
weakness and numbness down the left leg where it is interfering with his ability to work." Treatment  
options were discussed including surgical intervention.

Another form report was received from the employing agency health unit dated October 3, 2018. The  
claimant was noted to have been breaking up a fight on the compound. He had to bring an inmate  
down to the ground and he twisted his back in the process. The assessment was left-sided  
tenderness of the left lower back. This report was signed by a nurse.

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<sup>1</sup> Lay individuals such as physician assistants, nurse practitioners and social workers are not competent to  
render a medical opinion. , 53 ECAB (Docket No. issued ).

Mr. [redacted] file a new CA-1 form for a Traumatic Injury alleged to have occurred on [redacted]. File number [redacted] was assigned. On that date, he was responding to a call for assistance due to a fight on the compound. He placed an inmate on the ground to gain control of him. He experienced pain in his low back secondary to this. This claim was denied following development and it has been appealed to the Branch of Hearings and Review.

The claimant returned to Dr. [redacted] on [redacted]. He stated, "When I saw him on [redacted], he was having severe pain down his leg. He relates to me today that he was actually injured on two occasions this fall, once on [redacted] and again a second time on [redacted]. Both of these involved working at the [redacted] as a [redacted] and then being called to break up an altercation between [redacted] both of which involved him having to pull the [redacted] or lift them when he felt sharp and increased pain." Dr. [redacted] stated that there were symptoms of a recurrent disc herniation and he believed that this likely contributed to a worsening of this condition. A lumbar epidural steroid injection was recommended on this date.

By letter dated January 7, 2019 the Office advised the claimant of the factual and medical evidence necessary to prevail in his claim for benefits. Thirty days were afforded for a reply.

A response was received to the medical questions posed in the Office's development letter, although there is no date or signature on this document therefore the author is unknown. According to this, the claimant saw Dr. [redacted] on [redacted] and [redacted]. He was said to have been injured on [redacted] and again on [redacted]. Both incidents occurred at work while breaking up altercations between [redacted]. A discussion was supplied relative to the physical findings on exam and the assessment was post-laminectomy instability with recurrent disc herniation, lumbar radiculopathy and low back pain. Mr. [redacted] was said to be a candidate for fusion-based surgery. With regard to causation, this note reads,

" [redacted] works at the [redacted] as a [redacted] and was called to break up an altercation between [redacted] both of which involved him having to pull the [redacted] or lift them when he felt sharp and increased pain. [redacted] does have signs and symptoms of recurrent disc herniation, and I do believe most likely that these incidents have contributed to the worsening of his condition."

By decision dated February 15, 2019 the Office formally denied the claim on the basis that there had been no medical evidence received which contained a diagnosis in connection with the claimed work event.

The claimant disagreed with this decision and requested an oral hearing. A telephone hearing was scheduled to take place on June 11, 2019 at 12:45pm. Prior to the proceeding Mr. [redacted] attorney contacted the Office and asked that the appeal be converted to a review of the written record. In accordance with this request, the appeal record was changed to a record review. Additionally, a letter was sent to the employing agency on June 10, 2019 requesting comments or documents believed to be relevant and material to Mr. [redacted] claim. The claimant and his attorney were copied on this correspondence. No comments were submitted for consideration. Accordingly, the Branch now conducts the review of the record.

I have carefully reviewed all the evidence of record and find that the decision of February 15, 2019 should be *SET ASIDE and REMANDED* for the reasons set forth below.

An employee seeking benefits under the Federal Employee's Compensation Act<sup>2</sup> has the burden of establishing the essential elements of her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period 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>3</sup>

In order to determine whether an employee actually sustained a traumatic injury in the performance of duty, the Office begins with an analysis of whether "fact of injury" has been established. There are two components involved in establishing fact of injury which must be considered. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged. Second, the employee must submit sufficient evidence, generally in the form of medical evidence, to establish that the employment incident caused the personal injury.<sup>4</sup>

Mr. [redacted] filed Form CA-1 for a Traumatic Injury alleged to have occurred on [redacted]

Following development, the claim was denied on the basis that the medical evidence failed to provide a diagnosis that could be connected to the work event. This is the issue on appeal. As outlined above, the claimant also filed a claim for a Traumatic Injury alleged to have occurred on [redacted]

Following development, this case was denied. It has been appealed to the Branch of Hearings and Review and will be addressed under separate cover.

On review, I find that the Office's decision must be set aside. At the time of the denial, they stated that a diagnosis had not been supplied in connection with the claimed work event. However, I find this assessment to be erroneous. Prior to the denial, the file contained a [redacted] report from Dr. [redacted] within which he diagnosed lumbar radiculopathy as well as post-laminectomy instability and a recurrent disc herniation at the L4-5 level. These are all considered valid diagnoses for purposes of the FECA.<sup>5</sup> Based upon this, I find that the medical component of the Fact of Injury element has been established. The evidence also supports that the claimed event occurred within the Performance of Duty. Therefore, the remaining element that must be proven is Causal Relationship.

Causal relationship is a medical issue,<sup>6</sup> and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established factors of employment. The opinion of the physician must be based on a complete factual and medical background, 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 established factors of employment.<sup>7</sup> The mere concurrence of a condition with a period of employment does not raise an inference of causal relation between the two.<sup>8</sup>

<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> 51 ECAB (1999)

<sup>4</sup> [redacted], 51 ECAB (2000).

<sup>5</sup> Mr. [redacted] was also noted to have back pain, however pain is not a valid diagnosis for purposes of the FECA.

<sup>6</sup> 37 ECAB (1986).

<sup>7</sup> 41 ECAB (1989).

<sup>8</sup> 27 ECAB 1975.

