

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: 10/03/2018
Employee: JONATHAN L. MONTROSE

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

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 March 1, 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
He filed Form CA-1 for a Traumatic Injury alleged to have
occurred on File number was assigned. On this date, the claimant
was responding to a staff assistance call for a fight on the compound. While responding, he placed
an inmate 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 leg. This case was denied following development and has been
appealed to the Branch of Hearings and Review.

Mr. also 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 inmate on the ground to gain control of him. A low back and leg condition
were claimed. This is the instant case on appeal.

A "Staff Injury Assessment and Followup" form dated was received from the agency
health unit. 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.¹

On October 22, 2018 the claimant was evaluated by M.D. of
He stated, "When I saw him on 9/17, 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 9/11/18 and again a
second time on 10/3/18. Both of these involved working at the as a and
then being called to break up an altercation between inmates, both of which involved him having to
pull the inmates or lift them when he felt sharp and increased pain." Dr. 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.

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

By letter dated January 25, 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.

In response, the Office received a treatment note from Dr. [redacted]. The claimant 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 Mr. [redacted] underwent microdiscectomy at the L4-5 level in February 2017. However, his pain did not resolve following this procedure. He took medication, used a TENS unit and sought chiropractic treatment. He underwent lumbar MRIs in [redacted] and [redacted]. The assessment was lumbar radiculopathy, low back pain, post-laminectomy instability and a recurrent disc herniation (L4-5). Dr. [redacted] 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.

The Office also received a response to the medical questions posed in the 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 inmates. 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 correctional institute as a [redacted] and was called to break up an altercation between inmates, both of which involved him having to pull the inmates 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 March 1, 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 the March 1, 2019 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 March 1, 2019 should be *SET ASIDE and REMANDED* for the reasons set forth below.

An employee seeking benefits under the Federal Employee's Compensation Act² 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

² 5 U.S.C. §§ 8101-8193.

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.³

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.⁴

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 which occurred on [redacted]. Following development, this case was also denied. It has been appealed 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 an [redacted] report from Dr. [redacted] within which he diagnosed lumbar radiculopathy and a recurrent L4-5 disc herniation. The file also contained a [redacted] report from Dr. [redacted] within which he diagnosed lumbar radiculopathy, post-laminectomy instability and a recurrent disc herniation at the L4-5 level. This supports that the diagnoses outlined in the [redacted] report were present *prior* to the [redacted] injury. However, they are still considered conditions that could be connected to the work event either by aggravation or acceleration.⁵ As such, I find that the medical component of the Fact of Injury element has been established. The evidence also supports that the claimed [redacted] event occurred within the Performance of Duty. Therefore, the remaining element that must be established is Causal Relationship.

Causal relationship is a medical issue,⁶ 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.⁷ The mere concurrence of a condition with a period of employment does not raise an inference of causal relation between the two.⁸

³ 51 ECAB (1999)

⁴ 51 ECAB (2000).

⁵ Mr. [redacted] was also noted to have back pain, however pain is not a valid diagnosis for purposes of the FECA. Part 2-0803-3 of the FECA states, "a medical condition, however minor or seemingly incongruous, must be stated. Findings of pain or discomfort alone do not satisfy the medical aspect of the fact of injury determination."

⁶ 37 ECAB (1986).

⁷ 41 ECAB (1989).

⁸ 27 ECAB 1975.

