

File Number:
HR14-D-H

RECEIVED APR 03 2020

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.

Your case file has been returned to the District Office at:

US DEPARTMENT OF LABOR
OFFICE OF WORKERS' COMP PROGRAMS
PO BOX 8300 DISTRICT 6 JAC
LONDON, KY 40742-8300

If you disagree with the decision attached to this letter, you have the right to submit new evidence to the Office of Workers' Compensation Programs and request reconsideration of the case or, if you have no additional evidence to present to the Office of Workers' Compensation Programs, you may appeal the decision to the Employees' Compensation Appeals Board.

Electronically Signed

Division of Federal Employees' Compensation

PAUL H FELSER
FELSER LAW FIRM
QUEENSBOROUGH BANK BLDG
7393 HODGSON MEMORIAL DR 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, March 30, 2020

File Number: 1
HR14-D-H

RECONSIDERATION: If you have additional evidence, not previously considered, which you believe is pertinent, you may request, in writing, the OWCP reconsider this decision. Such a request must be received within one year of the date of the attached decision, clearly state the grounds upon which reconsideration is being requested, and be accompanied by relevant evidence not previously submitted, such as medical reports or affidavits, or a legal argument not previously made. Your request for reconsideration and the new evidence you are submitting should be sent to the

US DEPARTMENT OF LABOR
OFFICE OF WORKERS' COMP PROGRAMS
PO BOX 8300 DISTRICT 6 JAC
LONDON, KY 40742-8300

In order to ensure that you receive an independent evaluation of the evidence, your case will be reconsidered by persons other than those who made this determination.

APPEALS: If you believe that all available evidence has been submitted, you have the right to appeal to the Employees' Compensation Appeals Board (ECAB) (20 C.F.R. 10.625). The ECAB will review only the evidence received prior to the date of this decision (20 C.F.R. Part 501). Effective November 19, 2008, ECAB has changed its Rules of Procedure on the time limit to appeal and has eliminated its practice of allowing one year to file an appeal. **Request for review by the ECAB must be made within 180 calendar days from the date of this decision.** More information on the new Rules is available at www.dol.gov/ecab.

To expedite the processing of your ECAB appeal, you may include a completed copy of the AB 1 form used by ECAB to docket appeals available on the Department of Labor Web Site at www.dol.gov/ecab. You must mail your request to:

**Employees' Compensation Appeals Board
200 Constitution Avenue NW, Room S-5220
Washington, DC 20210**

Washington DC, March 30, 2020

A USDA report dated _____ stated that a _____ surveillance of the claimant disclosed that she participated in running events including a triathlon and the Boston Marathon. Video footage of the claimant was included.

In a supplemental report of _____ Dr. _____ noted review of the surveillance video. Dr. _____ concluded that there were no residuals of the _____ injury and that the claimant could resume full duty.

By a decision of _____ the Office terminated entitlement to compensation and medical benefits effective _____ based on Dr. _____ opinion. By a decision of _____ an Office hearing representative affirmed the _____ decision.

In a _____ report _____ MD, the claimant's attending physician, opined that the accepted injuries limited the claimant's use of her right hand/arm such that she could not perform the full duties of a veterinary medical officer. Dr. _____ opined that the accepted injuries did not limit the claimant's ability to participate in recreational activities such as running.

In a _____ statement the claimant stated she had been approved for disability retirement.

The claimant requested reconsideration of the _____ decision. On reconsideration the Office determined that a conflict existed between the opinions of Drs. _____ and _____ as to injury-related disability and work capacity. In order to resolve such conflict the Office referred the claimant to _____, MD, for a referee medical examination.

Dr. _____ conducted a physical examination, reviewed the claim file and Statement of Accepted Facts (SOAF) and submitted a report dated _____. Dr. _____ stated an accurate history and provided findings of severe pain on palpation of the right elbow, diminished right hand/wrist motion, and normal sensation. Dr. _____ opined that CRPS associated with the _____ injury had resolved, but such condition remained active with regard to the _____ injury. Dr. _____ noted that on examination the claimant told him she felt she was "pretty much where she was on _____." Dr. _____ concluded based on examination findings and the claimant's statement that there were no residuals of the _____ injury, while the _____ injury remained active. Dr. _____ opined that the claimant could not performed full duty as a veterinary medical officer due to continuing right upper extremity RSD/CRPS. The doctor noted that limitations on right hand pronation restricted the claimant's capacity to use mouse or computer keyboard. On a form OWCP-5 Dr. _____ stated restrictions of lift/push/pull up to 10 pounds for ½ hour, and repetitive wrist/hand movement for up to ½ hour. In a supplement report of _____ Dr. _____ noted review of the _____ surveillance video. Dr. _____ stated that the surveillance video did not change any of the conclusions stated in his _____ report.

On [redacted] the Office denied modification of the [redacted] decision. The Office accorded weight to Dr. [redacted] opinion. The claimant requested review by the Employees' Compensation Appeals Board (ECAB).

By a decision of [redacted] the ECAB set aside the [redacted] decision and remanded the case to the Office. The ECAB instructed the Office to merge the two claim files, conduct any additional development deemed necessary, and issue a *de novo* decision.

On remand the Office on [redacted] merged the files. By a decision of [redacted] the Office terminated entitlement to compensation and medical benefits effective [redacted] based on Dr. [redacted]'s opinion. The claimant disagreed and requested an oral hearing.

Accordingly, said hearing was scheduled and held by telephone conference on [redacted]. Paul Felser, Esq., represented the claimant. Based upon the hearing testimony, together with the written evidence of record, I find that the Office's decision of [redacted] should be modified and affirmed.

The claimant did not attend the hearing. Counsel argued that inasmuch as Dr. [redacted] opined the claimant could not work full duty, the claimant was entitled to compensation pending any offer by employing agency of suitable modified duty work.

Post hearing the record was held open for 30 days to allow for the submission of additional written evidence. A copy of the hearing transcript was provided to the employing agency and 20 days allowed for the submission of written comments. No comments or additional written evidence were received.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation.¹ To terminate entitlement to medical benefits the Office must establish a claimant no longer has residuals of an employment-related condition that require further medical treatment.²

The Federal Employees' Compensation Act (FECA) provides for the appointment of a referee (also called impartial) physician to examine the claimant and resolve a conflict of medical opinion in a case.³ A referee examination is needed when the Office determines that a conflict exists between medical opinions of approximately equal value. A conflict exists when there is a disagreement between the opinions of an attending physician and a physician designated by the United States (e.g. a second opinion specialist).⁴

¹ T.F., 58 ECAB 128 (2006)

² C.C., Dkt. No. 19-1062, issued February 6, 2020

³ 5 U.S.C. §8123(a)

⁴ Federal (FECA) Procedure Manual, Part 3—Medical, *Directed Medical Examinations*, Ch. 3-500-4(a) (July 2011)

When a referee medical specialist is asked to resolve a conflict in medical evidence, his opinion, if sufficiently well rationalized and based on a proper factual background, must be given special weight.⁵

The Office properly accorded special weight to Dr. [redacted] opinion. Dr. [redacted] provided an accurate history, physical examination findings, and rationale in support of his opinion. Dr. [redacted] reviewed the case file and SOAF and considered both accepted injuries. Dr. [redacted] report encompassed the complete factual and medical background to the subject claim, as well as the claimant's history of workplace injuries and medical history, including reports by Drs. [redacted] and [redacted]. Consequently Dr. [redacted] opinion was properly accorded special weight. As a result the Office properly terminated entitlement to compensation and medical benefits with regard to the [redacted] injury.

However, the record does not support complete termination of entitlement to wage loss compensation and medical benefits. The claim files are merged. Dr. [redacted] opined that right upper extremity CRPS remains active with regard to the [redacted] injury and disables the claimant from full duty as a veterinary medical officer. The employing agency has not provided a suitable modified duty assignment.⁶ Consequently the claimant is entitled to wage loss compensation and medical benefits with regard to the [redacted] injury.

For the reasons set forth above, the Office's decision of [redacted] is hereby MODIFIED and AFFIRMED, and the case file is returned to the district office for actions consistent with this decision.

The claimant is entitled to restoration of compensation and medical benefits for the injury covered by claim number [redacted] retroactive to [redacted]. However, as the claimant is receiving benefits for disability retirement she will have to make an election for FECA benefits instead of disability retirement.

Issued:
Washington, D.C.

Electronically Signed
Hearing Representative
for
Director, Office of Workers'
Compensation Programs

⁵ *James R. Driscoll*, 50 ECAB 146 (1998)

⁶ An offer of modified employment must be consistent with medically prescribed restrictions. See Federal (FECA) Procedure Manual, Part 2—Claims, *Job Offers and Return to Work*, Ch. 2-814 (June 2013)