

File Number:  
HR10-D-H

RECEIVED OCT 04 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 \_\_\_\_\_ 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 H FELSER  
FELSER LAW FIRM, P.C.  
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, September 30, 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 No. Hearing was  
held on by telephone in Washington, D.C.

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The issue for determination is whether the revision spinal surgery is causally related and necessary as a result of the employment injury of

The claimant, born was employed as a dental assistant by the .  
The claimant filed timely notice of a traumatic injury claim on  
indicating she was injured due to a fall on while in the performance of her job  
duties. The case was accepted for a lumbar, thoracic sprain and cervical sprain. The claim  
was expanded to include an aggravation of thoracic disc displacement.

A request for revision surgery of the claimant's thoracic spinal fusion was received. The Office  
undertook further development and referred the case to the DMA for review and for a second  
opinion examination.

By decision dated , the Office denied the surgery was necessary and causally  
related to the accepted work injury.

The claimant disagreed with the decision and requested an oral hearing by an OWCP  
representative. Accordingly a hearing was scheduled and held on by  
telephone in Washington, D.C.

The claimant was represented at the hearing by attorney Paul Felser, but was not present at  
the hearing. Mr. Felser explained the claimant's initial injury statement and discussed the  
medical treatment. He advised the treating physician had noted that x-rays performed in  
did not demonstrate a loosening of the pre-existing hardware screws and it  
was possible the work injury had precipitated the loosening. Mr. Felser argued the force and  
impact of the fall caused the loosening and that neither the DMA nor the second opinion  
physician Dr. appreciated the actual description and impact of the injury as the  
claimant previously described. He explained had Dr. reviewed the  
x-rays his opinion that the screws loosened over a period of time was not supported. He  
argued Dr. opinion was not in line with the facts and his opinion that the aggravation  
of the thoracic condition as having resolved was speculation. He argued the opinion was not  
well reasoned and could not carry the weight and in the very least there was a conflict of

medical opinion necessitating a referee opinion. He stated the aggravation of the pre-existing thoracic fusion had been accepted and it made no sense to continue to deny the revision surgery.

Mr. Felser explained the claimant did have the procedure under her personal health insurance and they were seeking retroactive approval of the procedure. He requested the record be held open for 30 days to allow for the submission of additional supporting evidence.

Attorney Felser submitted additional records, which included a statement dated [redacted] from the claimant regarding the impact of her fall, neurosurgery notes, report, operative report dated [redacted] post-operative report, treatment notes from Dr. [redacted] MRI report, MRI report, [redacted] MRI report, copy of position description, FCE dated [redacted] and a work release for medium duty dated [redacted] from Dr. [redacted] Copies of Dr. [redacted] treatment records dated in [redacted] and [redacted] of [redacted] were also received. The notes recommended the claimant proceed with the revision surgery through her personal insurance if the worker's comp was denying the procedure.

A copy of the transcript was sent to the employing agency for review and comment. No comments were received.

Based upon hearing testimony, together with the written evidence of record, I find that the decision of the District Office dated [redacted] should be vacated and the case remanded for further additional clarification from Dr. [redacted] regarding his medical opinion on the revision surgery.

I have reviewed the case record and find that Dr. [redacted] advised in his report of [redacted] that he did not have copies of the x-rays above the level of T11 and he advised these were critical. While he opines he believes the claimant's spinal aggravation was temporary he provides little medical rationale for the basis of his opinion. I find the Office must seek clarification from Dr. [redacted] and afford him copies of the thoracic x-ray films he previously noted were critical for his opinion.

When the Office develops the medical evidence by referring the case to an Office referral physician, the Office has the obligation to seek clarification from its physician upon receiving a report that does not adequately address the issues that the Office sought to develop.<sup>1</sup>

As explained above the additional medical records and the thoracic x-rays should be provided to Dr. [redacted] and the Office should advise him to provide medical rationale supporting his opinion. I note the radiologist indicates in the MRI report of [redacted] that there was no significant change since the [redacted] MRI. However, Dr. [redacted] has stated the x-rays of [redacted] did not demonstrate a loosening of the hardware and advised the x-rays did document a loosening.

<sup>1</sup> *William N. Saathoff*, 8 ECAB 769 (1956)



I find Dr. report is not sufficiently reasoned to carry the weight of medical opinion. Dr. the treating physician, advised he was dumbfounded by the orthopedic opinion and has opined and provided medical opinion that the requested surgery was necessary and causally related to the work injury. He did advise the DMA opinion made more sense, but he opined he disagreed with the DMA's conclusions. While Dr. Deriso disagreed that the revision surgery was necessary as a result of the work injury he has not provided adequate rationale, and I find his report requires clarification.

Upon return of the case record the Office should seek clarification from Dr. as explained above in accordance with FECA PM. Dr. was selected as the second opinion physician and the Office has an obligation to clarify the issue at hand.

Accordingly, the District Office's decision of is vacated and the case file **remanded**. After performing the directed action and any other development deemed necessary the Office should issue a de novo decision.

Issued  
Washington, D.C.

Hearing Representative  
Branch of Hearings & Review  
For  
Director, Office of  
Workers' Compensation Programs