

File Number:  
HR13-D-H

RECEIVED AUG 26 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 preliminary review was completed on the case. Based upon that review, it has been determined that the decision of the District Office should be reversed as outlined in the attached 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,

Electronically Signed

Division of Federal Employees' Compensation

PAUL FELSER  
ESQ  
FELSER LAW FIRM  
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 21, 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.

*Merit consideration of the case file was completed in Washington, D.C. Based on this review, the decision  
of the District Office dated has been set aside and remanded for the reasons set forth below.*

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The issue for determination is whether the District Office met its burden of proof in terminating the claimant's entitlement to wage-loss compensation and medical benefits.

was employed as a by the  
She filed a claim for Traumatic Injury on stating that she sustained  
a work related injury on which occurred when she tripped and fell over a power cord  
striking her back on a roller table of the x-ray conveyor. The case was accepted for Contusion of Back  
and Sprain of Back, Thoracic Region. She stopped work on the date of injury and has not returned.

She was examined by second opinion specialist Dr. on to  
establish whether her work related injury had resolved. In his report dated Dr.  
provided an opinion that the claimant's accepted conditions had resolved. He stated that she  
was not capable of returning to work, but did not attribute the disability to her accepted conditions.  
Specifically, Dr. stated that her work related injury that occurred in had resolved.  
Contusions of the back and sprains typically last 2 to 3 months. He reported that the claimant's  
conditions of spondylolisthesis and spondylosis were due to normal age-related process versus genetic  
factors, not due to trauma. He discussed her foot condition with five surgeries and continuing foot  
pathology and noted that she was non-weight bearing which was currently keeping this claimant from  
working.

On , the Office issued a Notice Of Proposed Termination determining that medical  
benefits and wage loss compensation be terminated for the reason that the weight of medical evidence  
of file established that she no longer had any residuals or continuing disability from work stemming  
from the work injury or illness. The claimant was afforded 30 days to submit additional evidence or  
argument if she disagreed with the Notice of Proposed Termination. Additional factual and medical  
evidence was provided.

In a decision dated medical and compensation benefits for the accepted work injury were  
terminated effective . Medical weight of evidence was afforded to Dr.

The decision noted that the claimant's attorney Mr. Paul Felser's letter of raised  
objections to the proposed termination. He noted that Dr. report did not discuss her pre-injury  
status. The decision stated that this was not required. He also claimed that it was contradictory, was

based on an incomplete or inaccurate Statement of Accepted Facts, (SOAF), and that the referee<sup>1</sup> only discussed the strains, not subluxation.

The decision stated that the SOAF may not provide the level of detail of medical treatment history that Mr. Felser feels was required and that he did not substantiate that any errors are in the Statement. It was noted that regarding subluxation, this appears to have been added to the record only to pay for chiropractic treatment in . There were no records from a chiropractor since and no evidence that the claimant had been treated for this condition in more than ten years; therefore, it would not be considered. The decision went on to state that although Mr. Felser feels that the second opinion report contained contradictory statements, this was not the case and that a referee medical examination was not appropriate because there was no contemporaneous medical evidence from a treating physician that specifically supported that the accepted strains continue, or that additional consequential injuries should be accepted.

The decision stated that Dr. report dated opined that the conditions of Degeneration of Lumbar Intervertebral Disc, Lumbar Foraminal Stenosis, and Right Lumbar Radiculopathy were causally related to the injury in and that the report was insufficient to accept more conditions causally related to the injury and did not create a conflict of medical opinion. His rationale appears to be an increase in pain and he recommended an FCE, which was done to determine work abilities. He does not specifically state what objective evidence supports these conditions or why he feels they were caused or aggravated by the injury other than to say that pain increased after the fall in . He provided no rationale for his statement.

The claimant disagreed with the decision and requested an oral hearing by an OWCP Representative. Based on a preliminary review of the case, I find that the Office did not meet the burden of proof to terminate the claimant's medical and compensation benefits.

The most recent SOAF in file was received in file on . This SOAF indicated that it was an Amended SOAF. However, the one page document does not appear to be complete and it is not signed and dated. The previous SOAF dated noted multiple epidural facet injections through . The claimant continued to receive the authorized injections and was most recently authorized for . Her concurrent disability and medical treatment related to her non work bilateral foots conditions was not mentioned in the SOAF. Of significance is that the medical documentation in file reported that the claimant had a prior injury. However, the SOAF does not mention the additional claim.<sup>2</sup>

ECAB has ruled on the importance of ensuring that a SOAF accurately portrays the factual and medical aspects of the claim, remanding cases to the District Offices where the SOAFs were not current or accurate. In the case of Gwendolyn Merriweather, 50 ECAB 411 (Docket No. 97-2137, issued June 3, 1999), ECAB found that the referee examiner was not entitled to special weight because the doctor's opinion was not based upon a proper factual background. ECAB noted that OWCP made no findings as to whether the claimant had sustained a work-related aggravation of a preexisting condition and found that the SOAF was unclear. See also Liliana M. Martinez, 42 ECAB 517 (Docket No. 90-1944, issued March 20, 1991). ECAB found that the

<sup>1</sup> Dr. was a second opinion examiner rather than a referee.

<sup>2</sup> Additional injury claim number was sustained on when she fell over a golf bag and injured her lower back. The claim was administratively handled with minimal medical treatment. Claim number from date of injury claimed that she was working and her face became red, she fell over and began sweating. After appropriate development the claim was denied by decision dated on the basis that causal relationship had not been established.

