

File Number:  
HR11-D-H

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U.S. DEPARTMENT OF LABOR

OWCP/DFEC, PO BOX 34090  
SAN ANTONIO, TX 78265  
Phone: (202) 693-0045

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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 has been completed, and it has been determined that the case is not in posture for a hearing at this time. The decision of the District Office has been vacated and returned to the district office for further action as explained in the attached Remand Order.

Your case file has been returned to the New York City District Office. You may contact that office by writing to our Central Mail Room at the following address:

US DEPARTMENT OF LABOR  
OWCP/DFEC, PO BOX 34090  
SAN ANTONIO, TX 78265

Sincerely,

PAUL FELSER, ESQ  
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, July 02, 2020

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 \_\_\_\_\_*

*Merit consideration of the claim was completed in Washington D.C. Based on this review, the  
decision of the district office dated \_\_\_\_\_ is set aside for the reasons set forth below.*

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The issue for determination is whether the basis of the Office's denial of the claim was appropriate.

The claimant was employed as a city carrier with the \_\_\_\_\_, when she filed a CA2a Notice of Recurrence form under claim \_\_\_\_\_, for recurrence and work stoppage on \_\_\_\_\_. On this form, the claimant stated on \_\_\_\_\_ she was delivering mail when she had neck spasms and shoulder pain.

Under claim \_\_\_\_\_ the claimant filed a CA1 Notice of Traumatic Injury form claiming on \_\_\_\_\_, she was rear ended by another vehicle while in the performance of her duties. The nature of injury claimed involved her neck, shoulder, and back. The claimant stopped work following the injury and initially sought medical attention from a chiropractor. On \_\_\_\_\_ she came under the care of Board-certified physical medicine and rehabilitation physician, \_\_\_\_\_ M.D., and was referred to physical therapy. The claimant was released to modified duty as of \_\_\_\_\_. On \_\_\_\_\_ the Office accepted the claim for lumbar strain and cervical radiculopathy. On \_\_\_\_\_, the claimant underwent a cervical MRI which was interpreted as showing straightening of cervical spine possibly related muscle spasm, central herniated disc at C3-C4 with pressure on dural sac, and mid to right paracentral herniated disc at C4-C5 with pressure on dural sac. An \_\_\_\_\_ lumbar MRI was interpreted as a normal study. The claimant later underwent electrodiagnostic testing on \_\_\_\_\_ which revealed evidence of right C5-C6 radiculopathy as well as right carpal tunnel syndrome. On \_\_\_\_\_ the Office expanded the claim for the diagnosis of right shoulder sprain.

On \_\_\_\_\_, the Office received a CA7 Claim for Compensation form claiming leave without pay from \_\_\_\_\_ to \_\_\_\_\_. By letter dated \_\_\_\_\_ the Office advised the claimant that she needed to submit a CA2a Notice of Recurrence form, which the Office received on \_\_\_\_\_ along with another CA7 form claiming disability through \_\_\_\_\_. A right shoulder MRI report was received, which noted degenerative changes; small subchondral cysts humerus head; irregularity of the supraspinatus tendon suspicious for partial tear with no retraction; subacromial spur and questionable type II acromion with borderline impingement; and fluid in the sheath of the biceps tendon with thinning of the biceps tendon.

Washington DC, July 02, 2020

In a [redacted] medical report, Dr. [redacted] advised the MRI confirmed right biceps tendon tear and supraspinatus tendon tear and cervical disc herniation sustained on [redacted]. Dr. [redacted] advised the claimant was totally disabled as any movements of lift/carry activities placed her at risk for worsening of these tendon tears. He noted the claimant was unable to work from [redacted] through [redacted] and was now a candidate for more aggressive shoulder treatment, either injections or surgery.

On [redacted], the Office issued the claimant a recurrence development letter. The Office received the claimant's [redacted] responses to the development questionnaire. She stated she was delivering mail on [redacted], when she started getting spasm in her neck and pain in her shoulder. The claimant stated her disability was from the car accident and her symptoms had always been the same, and there was no other injury.

A [redacted] narrative report from Dr. [redacted] gave a description of the injury, the claimant's symptoms, the objective findings on examination and MRI, and the diagnoses of cervical disc herniation, right rotator cuff tear, and cervical radiculopathy. He also outlined her limitations. Dr. [redacted] gave his explanation for the recurrence of disability on [redacted]. He stated the claimant attempted to return to work after the injury and there was no intervening cause, just the original trauma which damaged the components of neck and shoulder which were involved in day to day life and care. Dr. [redacted] explained that the claimant attended physical therapy while working, but had worsening pain at the neck and shoulder, more weakness at the right upper extremity, and worsening numbness at the right hand, despite continued therapy. Dr. [redacted] advised he determined it was medically necessary to remove the claimant from work as totally disabled as it was his opinion that continued repetitive work activities would result in permanent disability. He stated initially her right shoulder abduction was 100 degrees and it was now 70 degrees, she continued with positive Hawkins sign, and she would do continuous damage to the right shoulder during all work related movements. Dr. [redacted] indicated the claimant was in danger of developing frozen shoulder unless he could reverse the pattern of deterioration.

In a separate [redacted] report, Dr. [redacted] advised the claimant should be considered disabled due to a material worsening of her accepted work-related conditions. He stated this should be considered under "a recurrence of disability is defined as a work stoppage caused by 1.) a spontaneous change in the medical condition which resulted from a previous injury on [redacted], without an intervening injury". Dr. [redacted] explained the combination of cervical disc herniation, right cervical radiculopathy, and right shoulder rotator cuff tear resulted in her inability to use the right upper extremity to withstand loading pressures generated in activities of lift/carry, reaching and handling and fingering. Dr. [redacted] stated the pain, decreased range of motion, and decreased motor grade at right upper extremity prevented her from completing her job activities, and she was considered totally disabled as of [redacted].

On [redacted], the Office issued the claimant a letter advising that she had not experienced a recurrence and that she was really claiming a new traumatic injury caused by a specific event or series of events within a single work shift on [redacted], so a new traumatic injury claim was being administratively created based on her CA2a form.

Under the instant newly created case, the Office associated the claimant's CA2a form, her responses to the recurrence development, three CA7 forms, the electrodiagnostic study [redacted] and [redacted] evaluation forms from Dr. [redacted] and [redacted] physical therapy records, and Dr. Cortijo's [redacted] and [redacted] reports.

On [redacted] the Office issued the claimant an initial development letter advising the evidence was insufficient to establish the new claim. The Office requested additional factual and medical evidence to support a new injury on [redacted]. No response was received.

By decision dated [redacted], the Office denied the [redacted] traumatic injury claim for the reason the medical evidence was insufficient to establish a diagnosed medical condition causally related to work events on [redacted]. The claimant disagreed with this decision and by letter dated [redacted] through her attorney, requested an oral hearing.

Based on my preliminary review of the written evidence, the [redacted] decision is being set aside for the reasons set forth below.

An employee seeking benefits under the FECA has the burden of establishing the essential elements of his or 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.<sup>1</sup>

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components, which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident or exposure, which is alleged to have occurred. The second component is whether the employment incident or exposure caused a personal injury and generally can be established only by medical evidence.<sup>2</sup>

Causal relationship is a medical issue 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 rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion must be based on a complete factual and medical background of the claimant, 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 incident or factor of employment.<sup>3</sup>

Based on my preliminary review, the claimant had a previous work-related motor vehicle accident on [redacted] under claim [redacted], which was accepted for lumbar strain, cervical radiculopathy, and right shoulder sprain, and for which she was under active treatment with Dr. [redacted]. She returned to work in [redacted], but stopped work again as of [redacted]. The claimant filed a CA7 Claim for Compensation form and a CA2a Notice of Recurrence form under the [redacted] injury claiming this work stoppage. In [redacted] and [redacted] narrative reports, Dr. [redacted] advised that additional diagnostic testing established the diagnoses of right biceps tendon tear and supraspinatus tendon tear and cervical disc herniation, which he opined were sustained on [redacted]. Dr. [redacted] also advised the claimant's work stoppage should be considered a recurrence of disability without intervening injury, and that despite undergoing physical therapy while working, her condition had worsened.

<sup>1</sup> James B. Bowers, III, 44 ECAB (Docket No. 92-542, issued October 8, 1992).

<sup>2</sup> Gary L. Fowler, 45 ECAB [redacted] (Docket No. 92-2107, issued January 24, 1994).

<sup>3</sup> John W. Montoya, 54 ECAB 306 (2003).

