

U.S. DEPARTMENT OF LABOR

OWCP/DFEC, PO Box 8311
LONDON, KY 40742-8311
Phone: (202) 693-0045

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Date of Injury: _____
Employee: _____

Dea

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
OWCP/DFEC, PO Box 8311
LONDON, KY 40742-8311

Sincerely,

Division of Federal Employees' Compensation

PAUL FELSER
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, September 01, 2020

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 _____ Case No. _____

An Oral Hearing was held on _____. As a result, the decision of the District Office dated _____
has been set aside, and the case has been remanded for additional actions, for the
reasons set forth below:

The issue for determination is whether the evidence of record is sufficient to establish that the claimant sustained a work-related injury in the performance of duty, in the manner alleged.

The claimant is an employee of the _____ where she works as a _____. She filed form CA-1 "Notice of Traumatic Injury" on _____ alleging she was injured at work on _____ due to a motor vehicle accident when she was stopped on Drive in front of _____. _____ turned on her left turn signal and was rear-ended. The claimant indicated she sustained a severe concussion, pain in the left side of her neck, shoulder pain, severe pain in the lower back and left knee. On the back of form CA-1, _____ advised that his knowledge of the facts was consistent with the claimant's statements and the claimant was in the performance of duty at the time of the incident. Also, medical care was received on the date of the incident.

In a written statement dated _____ the claimant provided additional discussion of the injury and surrounding circumstances. On _____ she was at work driving on Drive finishing her route for the day. Around 4:15 pm, she arrived at the front of the post office. She put her left turn signal on and came to a stop. While stopped, she looked for oncoming traffic. Before she had a chance to turn in to the post office driveway, she was hit very hard by another car in the rear end. She was pushed into the post office parking lot and ended up on the edge of the woods. She did not feel like she could get out of her car. Someone said they thought her car was on fire and she needed to get out. Someone else helped her out and sate her down. _____ the Clerk in the _____ came out to comfort her until the ambulance arrived. The woman that hit her asked if she was alright and the claimant told her no. Someone else asked if she was alright and she said yes. She stated she only looked down for a second and when she looked up, she saw the claimant's brake lights. The ambulance arrived. She was checked out and taken to the _____

Medical records received with the initial claim included _____ discharge instructions from _____ for cervical sprain and concussion, noting the claimant underwent CT of the brain, CT of the cervical spine and received medications. A prescription from Dr. _____ of _____ Family Practice dated _____ referred the claimant for x-rays of the lumbosacral spine. A disability note from Dr. _____ dated _____ indicated the claimant was unable to work through _____

On _____ the District Office issued a letter to the claimant advising that additional information was needed to support the claim. The claimant was asked to provide a copy of the accident report and a narrative report from her physician discussing the claimed injury, including _____

dates of examination and treatment, history and date of injury, detailed description of findings, results of all x-ray and laboratory tests, diagnosis, clinical course of treatment and physician's opinion supported by a medical explanation as to how the reported work incident caused or aggravated a medical condition. The claimant was advised she would be allowed an additional 30 days to provide evidence in support of the claim.

A copy of the accident report dated _____ was received to the record, as requested. A letter from _____ dated _____ confirmed that the claimant was involved in a motor vehicle accident on the job on _____. He advised that police cited the other driver and the claimant was taken to the hospital by ambulance. He gave the claimant additional information about authorization for medical treatment and filing a claim. He was advise the claimant would be off work through _____.

He had difficulty reaching her by phone despite several attempts and had not received any paperwork from her doctor visits.

The following additional medical documents were received to the record within the allowed period:

- Undated OWCP-5 "Work Capacity Evaluation" form by Dr. _____ indicating the claimant was disabled from work for at least one month due to back pain, neck pain and radiculopathy.
- _____ work excuse through _____ from _____ Healthcare signed by _____ PA-C.
- CA-16 form completed by the employing agency on _____ (front side only) authorizing emergency medical treatment.
- _____ work excuse through _____ by _____, PA-C of _____ Family Practice.
- _____ OWCP-5 "Work Capacity Evaluation" form by Dr. _____ advising the claimant would be unable to work for 6 to 8 weeks due to severe muscle, arm and lower back pain.
- _____ physical therapy referral by Dr. _____

On _____ the District Office released a formal decision denying the claim with a finding that the medical evidence of record was insufficient to establish Fact of Injury. Although the work incident of _____ was found factual, no medical evidence had been received from a physician providing a firm diagnosis in connection with the accident. Lacking a diagnosis, the medical evidence was insufficient to establish the claimant sustained an injury, as defined by the Act. Additionally, to meet the burden of proof, medical evidence was required to establish that a diagnosed medical condition was causally related to the established work incident. No medical evidence of that nature had been received.

The claimant disagreed with this decision and requested an appeal in the form of an Oral Hearing before the Branch of Hearings and Review. A Hearing was held by telephone on _____. The claimant did not attend the Hearing. The claimant's authorized representative,

Attorney Paul Felser, attended the Hearing and offered argument on the record on behalf of the claimant. There was no representative from the employing agency present to observe the proceedings.

At the Hearing, Attorney Felser argued that the facts of the claim were clearly established. The claim was denied based on the medical evidence, which had not yet caught up with what certainly appeared to be a very clear-cut and straightforward on-the-job injury in the course of employment due to a motor vehicle accident. The standard for the claim was to establish a firm diagnosis and a causal connection to the work incident. The claimant was taken to the Emergency Room. According to the ER report by Dr. _____, the chief complaint was motor vehicle accident. The claimant was at the end of her route pulling into the post office when she was hit from behind. She was unrestrained as she does not wear a seatbelt for her job. The airbags deployed and she hit trees on the side of the road. She was mostly complaining of head and cervical neck pain. She was in a C-collar denying any alcohol or drug use that day. She was not complaining of other back pain, chest pain, shortness of breath or abdominal pain. She was ambulating on the scene afterward. She was hysterically crying in the room with severe pain in the back of her head and cervical spine.

Attorney Felser argued the jarring whiplash motion of such an event with force sufficient to deploy airbags, and the airbags themselves, would have been enough to cause injuries. The associated diagnosis in the ER report with respect to the accident was concussion and sprain of the trapezium. She was given literature regarding concussion and cervical sprain. Additional medical documents were also provided by Dr. _____ noting she was suffering from radiculopathy and placing her in a no-work status. Attorney Felser argued this was ample evidence to accept the claim for the conditions identified by the ER physician following the injury directly attributed to the work event, without any dispute over the accident or evidence of a pre-existing injury. The claim could have been accepted easily for a bump, bruise, sprain, strain or contusion rather than denied outright. Additional conditions may be accepted in the future based on new medical evidence.

Attorney Felser indicated that he had encountered difficulty obtaining medical evidence in support of the claim due to the COVID19 pandemic, but he was attempting to do so. He asked that the record remain open for 30 days after the conclusion of the Hearing to allow for the submission of additional medical evidence for the appeal. The request was granted and the record held open. Copies of the transcript were released to the claimant, her representative and the employing agency. Their comments were invited. As of this date, no comments on the transcript have been received.

The following additional medical documents were received to the record in connection with the appeal:

- _____ progress notes from the Emergency Room signed by PA-C and _____ DO.
- _____ CT cervical spine, no evidence of fracture or malalignment of cervical vertebrae.
- _____ CT of the head and brain, no evidence of acute intracranial pathology or injury.

