

U.S. DEPARTMENT OF LABOR

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October 22, 2020
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Date of Injury:
Employee:

This concerns your compensation case and your request for reconsideration received on

We have evaluated the evidence submitted and have reviewed the merits of your case under 5 U.S.C. 8128. You have provided sufficient evidence to warrant modification of the decision dated [redacted].
Based on the information received, the decision is now vacated.

The reasons for this decision are outlined in the enclosed Notice of Decision. Please see the enclosed acceptance letter for a discussion of your rights and responsibilities.

Sincerely,

Federal Employees Program

PAUL H FELSEK
ATTORNEY
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.

File Number:
Merit Review4-D-RECO

NOTICE OF DECISION

Claimant Name:
Case Number:

ISSUE:

The issue for determination is whether the evidence presented is of sufficient probative value to vacate the decision dated

REQUIREMENTS FOR ENTITLEMENT:

In accordance with the regulations set forth in 20 CFR § 10.609, if an application for reconsideration is accompanied by new and relevant evidence or by an arguable case for error, OWCP will conduct a merit review of the case to determine whether the prior decision should be modified. If sufficient evidence exists to overturn the prior decision, it should be vacated.

BACKGROUND:

You are employed as ; with the !

On you filed a claim for Occupational Disease indicating you sustained an injury or medical condition on as a result of your employment. Specifically, you stated that you developed a biotoxin illness, chronic Inflammatory Response syndrome (CIRS), due to exposure in the water damaged Postal building. You stated that you first became aware of the condition and realized that it was due to or aggravated by your employment on or around

Evidence received in support of your claim includes the following:

- CIRS overview, diagnoses of treatment memorandum
- 2 Memorandums from USPS Challenging claim dated
- Indoor Air Quality Mold Observation Report dated
- Medical Evidence from Dr. which is undated but received on
- Statement from you which is also undated but received or

On this office advised you of the deficiencies in your claim and provided you the opportunity to submit additional evidence. You were provided 30 days to submit the requested information.

In response to our development letter, we received the following evidence:

- Memorandum Copy Request & Authorization of appointing from Attorney Felser dated
- CA-17 Duty Status Report dated
- Medical Memorandum from Dr. not dated received
- Attachment 1 Indoor Air Quality and Mold Observation Report dated report no air quality issues or mold issues.
- Position Description and letter from dated
- Memorandum Challenging Claim from Post Master
- 24 Photos not dated received and 1 received and letter dated

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- Memorandum from [redacted] dated [redacted]
- Memorandum from [redacted] dated [redacted]
- Memorandum from [redacted] dated [redacted]
- Memorandum from Attorney Felser dated ([redacted]) requesting extension until [redacted] which was granted.
- Memorandum from you dated ([redacted]) and [redacted]

On [redacted] a formal decision was issued in our case finding the evidence is not sufficient to establish that the event(s) occurred as you described. The reason for this finding is that you are claiming exposure to water damaged building causing CIRS, however, based on all the documentation received to date including the Indoor Air Quality and Mold Observation Report dated [redacted] report no air quality issues or mold issues, there are no evidence to support your exposure.

You disagreed with the [redacted] decision and requested a hearing with the Branch of Hearings and Review. You submitted the following evidence in support of your hearing request:

- Witness statement from [redacted] dated [redacted]
- Requisition for ceiling tiles purchase and a picture of area damage dated [redacted]
- two-page statement dated [redacted]
- Dr. [redacted] report, [redacted]
- Witness statements from [redacted] dated [redacted] and [redacted]
- Environmental inspection report dated [redacted] regarding a [redacted] microbial inspection and fungal air samples collection of the you condominium.

On [redacted] a telephonic hearing was held between your attorney and the hearing representative. By decision dated [redacted] the Hearing Representative found that while it was argued that the presence of mold could not be discounted based on an observation only, you did not provided evidence to establish the presence of such to question the results of the agency's inspection report. The reason for this decision was the evidence was insufficient to establish a water-damaged building as claimed to further consider an exposure to such in the workplace as argued and addressed in Dr. [redacted] report.

You disagreed with the [redacted] hearing decision and requested reconsideration by letter/appeal request form received on [redacted] You submitted the following evidence in support of your request for reconsideration:

- attorney's argument that the indoor air quality and mold observation report was incomplete,
- Report from [redacted] dated [redacted]
- Photo Documentation of the work site,
- Medical report from [redacted] dated [redacted]
- Letter to Mr. Felser dated [redacted] from Dr. [redacted]
- Statement from [redacted] dated [redacted]
- Witness Statement from [redacted] dated [redacted]

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On a formal decision was issued in your case finding the evidence is sufficient to modify the decision dated from a denial based on one of the 5 basic elements for FECA coverage to a denial based on another basic element. Specifically, the factual evidence of record is sufficient to establish that you were exposed to a building that was exposed to leaks and water damages. The witnesses provided statements concurring about the water damage over the years prior to and after the hurricane in 2016. The evidence does not provide that you were exposed to mold or any other bio toxins however the evidence does provide that the building had issues with standing water and damaged ceiling tiles which is sufficient to establish fact of injury factual.

The decision also found that Dr. noted that she evaluated you on and prior to your appointment she reviewed your prior medical history. Your respiratory condition is considered pre-existing since you had a similar problem to your respiratory system prior to filing your claim. Causal relationship requires additional evidence when a medical condition is pre-existing or to the same part of the body.

You disagreed with the decision and requested reconsideration by letter/appeal request form received on You submitted the following evidence in support of your request for reconsideration: handwritten note dated from St. Johns Express Care; Emergency room note dated by Dr. operation report dated from Dr. medical note dated by Dr. CT scan dated right ankle MRI dated handwritten note dated by Dr. operation report dated by Dr. medical note dated by Dr. neck CT scan dated medical note dated by Dr report dated by Dr. ; gynecology note dated by Dr. medical note dated by ARNP; operation report dated by Dr. medical note dated from Dr. cervical spine MRI dated right ankle MRI dated ; medical note dated from Dr. ; CT scan dated medical note dated and from Dr. ; operation report dated lab test results dated medical note dated and by Dr. letter dated by Dr. MRI study dated ; laboratory tests on ; medical note dated from Dr. nasal culture dated

Thus, in accordance with 20 CFR § 10.609(a,) a copy of your application for reconsideration was forwarded to your employing agency via letter dated In the letter, your agency was advised that while they were being notified of your application for reconsideration, the pending issue is of a medical nature, and thus, the Office would proceed with a merit review of the decision issued on

DISCUSSION OF EVIDENCE:

In the handwritten note dated from St. Johns Express Care, however the physician is illegible. You were seen for a status post rhinoplasty and had symptoms of sinus pressure and cough and diagnosed with sinusitis.

