

August 24, 2020

File Number:
Merit Review4-D-RECO

U.S. DEPARTMENT OF LABOR

OWCP/DFEC, PO Box 8311
LONDON, KY 40742-8311
Phone: (904) 366-0100

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August 24, 2020

Date of Injury:
Employee:

Dear

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,

Tonya T.
Division of Federal Employees' Compensation

PAUL H FELSER
FELSER LAW FIRM, P.C.
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.

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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: On , you filed a claim for Occupational Disease indicating you sustained an injury or medical condition on because of your employment as an with the while in You stated you spend more than 50% of your shift typing, taking visits and assisting providers with procedures as needed.

Following proper development, on a formal decision was issued in your case finding that the factual component of Fact of Injury had not been met. The documentation upon which the decision was based included a position description, your statement dated . Attending physician's report for case file dated signed by MD, medical report dated signed by DO, diagnostic test dated medical reports dated , and signed by Dr. , medical report dated and signed by Dr. , FMLA notice dated and your statement dated The reason for the decision was that the evidence failed to establish the events occurred as alleged. The decision noted that you did not respond to the questionnaire to determine exactly how the injury occurred.

You disagreed with the decision and requested reconsideration by letter/appeal request form received on . On a copy of your reconsideration request along with your factual statement was sent to your employing agency for review and comments. No response received.

DISCUSSION OF EVIDENCE: The non-medical evidence reviewed in support of your reconsideration request includes.

- Your authorized representative, Mr. Paul Felser letter dated explaining the basis for the request in which he stated you contends your claim was denied unfairly and the new evidence and argument warrants a merit review of the claim in its entirety. He submitted additional medical evidence from several physicians, misc records from a prior work related claim and notice of proposed removal letter. He discussed the statement of facts, causal relationship and his conclusion with references to ECABs.
- Notice of Proposed Removal Letter dated

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- Your 10-page statement from the questionnaire dated _____ in which you outlined the events dating from _____ to _____ and your employment as _____ with the _____ Medical Center and at _____ and the medical treatment received from the various physicians. You stated you was stable for a while until on _____ you had severe pain and spasms in your neck, right shoulder and right hand pain. You stated the excessive typing, working at a work area that is not ergonomically and have to reach up to get forms from your work station. You stated you are the only nurse and screens 20 patients per day. You stated you do not have a mouse or gel pad for your computer keyboard to rest your hands/wrists and increased stress on your neck, upper extremities.

The factual and medical evidence supports your claim. Your statement describing the job activities you believed contributed to your condition is sufficient to establish fact of injury and the medical evidence of record contains several diagnoses from several providers.

The medical evidence of record consisted of medical reports and diagnostic tests from documents under separate case files _____ and _____ for right shoulder and wrist conditions.

You sought treatment on _____ and _____ with _____ MD in which he noted a follow up for hypertension and workers comp pain in right wrist/hand. He noted wrist pain since 5/7 injury at work, while typing, worse with writing. He offered exam findings and indicated a diagnosis of right wrist pain, right shoulder joint pain, cervical radiculopathy, hypertension and hyperthyroidism. He referred you to Dr. _____ for cervical radiculopathy.

On _____ Dr. _____ noted in _____ you developed a right cervical and shoulder strain while working at the _____. He stated you went out on disability because of the pain in the right trapezius right shoulder right neck region. He noted you changed jobs where you do a quite a bit of typing and developed pain in your right posterior thumb and wrist region. His impression was right posterior wrist and hand tenosynovitis. No evidence of radial neuropathy or median neuropathy wrist and right increasing cervicalgia radiating question cervical radiculitis. He requested MRI cervical spine and to follow up with orthopedic about the wrist and hand pain.

MRI performed on _____ revealed C4-5 large right paracentral/lateral herniation with moderate canal and moderate to severe right recess/foraminal stenosis and C5-6 moderate right paracentral herniation with moderate canal stenosis.

You followed up with Dr. _____ on _____ and _____ in which he noted you presented for neurological evaluation. He offered exam findings and indicated a diagnosis of C5 cervical radiculopathy and that you remain with C5 radiculitis severe pain in the shoulder region and tenosynovitis of the forearm posteriorly from work related activities on computer. He noted additional information to include right C5 radiculopathy herniated disc C4-5.

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You continued to follow up with Dr. _____ and _____ on _____ and _____ Dr. _____ then referred you to _____ MD for right shoulder neck and right arm pain and he evaluated you on _____. In his report dated _____, Dr. _____ noted a long history of shoulder and neck problem from lifting a patient in _____ and strained your right arm and shoulder. He noted you had workup and underwent surgery. He discussed the MRI findings of _____ and he performed x-ray of the right shoulder on this visit. He offered exam findings and indicated a diagnosis of right shoulder pain and body mass index 40+ severely obese. Pain is not a diagnosis under the FECA.

Dr. _____ referred you to Dr. _____ and he evaluated you on _____. He noted a work related evaluation for right sided neck and arm pain. He offered exam findings and indicated a diagnosis of prolapsed cervical intervertebral disc, cervical radiculopathy, shoulder pain, pain of right wrist and body mass index +40. He stated, he feel like repetitive motions from your job have exacerbated neck pain, shoulder pain and know ganglion cyst in the right wrist and likely contributed to your de quervain's. He noted you may continue to follow up with Dr. _____ as needed for your right wrist and hand pain and recommended reasonable accommodations at work at your desk to set up ergonomically as well as limit repetitive lifting, pushing or pulling to 15 pounds or less and frequent change positions as needed. Dr. _____ completed the medical questionnaire dated _____ and he indicated that he feel the condition is related/exacerbated by work.

You followed up with Dr. _____ on _____, and _____ and he indicated a diagnosis of cervical radiculopathy. He noted you improving with physical therapy and injections. He noted he reviewed the requirements to your job and stated you very easily capable of taking care of these with some minimal accommodations. He stated as soon as surgery on your hands can be done will result in significant improvement in your symptomatology and the use of a headset is a minor accommodation to maintain medical professional to treat patients in this pandemic situation. He stated he feel after this is resolved you will likely benefit only from the hand surgery but potentially from further physical therapy injections into the neck and/or surgery in your neck. After appropriate treatment for these will result in you being fully capable of doing your activities required of your job without these accommodations.

In summary, the evidence lends support to substantiate that you sustained C5 cervical radiculopathy, herniated disc C4-5 because of repetitive typing, taking vitals and assisting providers with procedures as needed.

The medical evidence from Dr. _____ supports the date of injury of _____ when you alleged pain and swelling in the 3rd, 4th, and 5th fingers and wrist/forearm conditions and case file number _____ assigned to this claim. By formal decision dated _____ this claim was denied. If you disagree with this decision, you should exercise the appeal rights attached.

BASIS FOR DECISION: The evidence in its totality is sufficient to modify the decision dated _____ because it supports your claim. The case file now clearly contains sufficient medical documentation to demonstrate that you suffered an injury in the performance of duties, and that the injury is causally related to your work duties.

CONCLUSION: Therefore, the decision dated _____ is vacated.

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Your case is now accepted for C5 cervical radiculopathy; herniated disc C4-5

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