

File Number:  
HR13-D-H

RECEIVED AUG 31 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,

Division of Federal Employees' Compensation

PAUL H FELSER  
ATTORNEY  
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 28, 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 in , Case  
No. |*

*Merit consideration of this claim was completed in Washington, D.C. Based on this review, the  
District Office's decision, dated has been reversed for the reasons below.*

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The issue for determination is whether the Office appropriately denied the claim for compensation for the period of to

The claimant was born on and was employed as a or the in , when she filed a Form CA-1, Notice of Traumatic Injury, claiming an acute left ankle sprain after slipping on leaves while delivering parcels on . The claim was initially allowable for limited medical expenses only and formally accepted on for a left ankle sprain. The record reflects that the claimant stopped work on the date of injury.

On the COP Nurse spoke with the claimant's supervisor, who advised that the Post Office was unable to accommodate the claimant's work restrictions because she is on crutches. Mr. indicated that the claimant stopped work on the date of injury and that her restrictions at that time included 90% seated work, no climbing, no squatting, no walking on uneven surfaces, and must wear splint and use crutches. On the claimant was noted to have some improvement of her symptoms. The seated work restriction was lifted to 50%. The claimant was still directed to wear a splint/brace constantly and an MRI of the left ankle was ordered. On , the MRI was noted to reveal a partial thickness tear of the ATF ligament of the left ankle. At that time, the claimant was restricted to seated work 75% of the time, no squatting, no kneeling, no walking on uneven terrain, no climbing stairs, and no climbing ladders. The claimant was directed to wear a walker boot.

On the claimant filed a Form CA-7, Claim for Compensation, claiming temporary total disability wage loss for the period of through . On the CA-7 Form, the employing agency indicated that COP had not been paid. They stated that no work was available within the claimant's restrictions.

On the District Office requested additional information from the employing agency as to the period of COP paid and the claimant's proper pay rate. On , the Office received a call from the employing agency advising that the CA-7 was not correctly completed, the claimant did receive COP, and a corrected form would be submitted.

On the claimant was referred for consultation with VID, who diagnosed a left ankle strain, recommended that the claimant be moved from a boot to an ankle air cast, allowed to change positioning from sit to stand, and restricted from walking on uneven surfaces.



On \_\_\_\_\_, the employing agency submitted a revised Form CA-7 claiming temporary total disability wage loss for the period of \_\_\_\_\_ through \_\_\_\_\_. They indicated that the claimant was a temporary employee who had entered on duty on \_\_\_\_\_. The agency reported that COP was paid from \_\_\_\_\_ through \_\_\_\_\_.

By letter dated \_\_\_\_\_, the claim for compensation was developed as if the claimant sustained a medical worsening of her condition. The claimant was advised that she needed to submit a comprehensive, narrative medical report thoroughly explaining how her condition worsened to the point that she could no longer perform the duties of her position when she stopped work. This was improper, as the claimant had been off work since the date of injury and no worsening of her condition was at issue.

On \_\_\_\_\_, Dr. \_\_\_\_\_ advised that the claimant had returned to a regular shoe earlier that week, but felt fatigue after walking short distances. The claimant had mild tenderness over the ATL. She was directed to continue physical therapy for 3 weeks and to continue the sit-stand as needed restriction at work until \_\_\_\_\_ at which point she was to be released to full duty.

On \_\_\_\_\_, the District Office received a claim Form CA-7, claiming temporary total disability wage loss for the period of \_\_\_\_\_ through \_\_\_\_\_. On the form, the employing agency advised that the claimant returned to work on \_\_\_\_\_ modified job offer signed by the claimant or \_\_\_\_\_ They submitted a copy of a restriction of sit-stand as needed. \_\_\_\_\_ for 6 hours per day reflecting the \_\_\_\_\_.

On \_\_\_\_\_, the District Office received a Physician Activity Status Report from Dr. \_\_\_\_\_ dated \_\_\_\_\_, stating that the claimant can return to her full, regular duties effective \_\_\_\_\_.

On \_\_\_\_\_, Dr. \_\_\_\_\_ placed the claimant at MMI, assigned a permanent partial impairment rating of 0%, continued her at full duty, and released the claimant from care on an as needed basis. Dr. Foster noted that he advised the claimant that she can seek a second opinion if she so wishes.

By decision dated \_\_\_\_\_, the claim for compensation for the period of \_\_\_\_\_ was denied for the reason that the claimant's physician neglected to explain why she is still temporarily totally disabled for her left ankle sprain.

The claimant disagreed with the \_\_\_\_\_ denial and requested an oral hearing through her attorney by letter dated \_\_\_\_\_.

Based on my preliminary review, the \_\_\_\_\_ decision is reversed for the reasons set forth below.

OWCP procedures note that 20 C.F.R. § 10.500(a) provides the basic rules governing continuing receipt of compensation benefits and return to work as follows: (a) Benefits are available only while the effects of a work-related condition continue. Compensation for wage loss due to disability is available only for any periods during which an employee's work-related medical condition prevents him or her from earning the wages earned before the work-related injury. For example, an employee is not entitled to compensation for any wage-loss claimed on a Form CA-7 to the extent that evidence contemporaneous with the period claimed on a Form CA-7 establishes that an employee had medical work restrictions in place; that light duty within those work restrictions was available; and that the employee was previously notified in writing that such duty was available. Similarly, an employee receiving continuing periodic payments for disability was not prevented from earning the wages earned before the work related injury if the evidence establishes that the employing establishment had offered,

