

File Number  
HR14-D-H

RECEIVED MAY 20 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.

Your case file has been returned to the District Office at:

US DEPARTMENT OF LABOR  
OFFICE OF WORKERS' COMP PROGRAMS  
PO BOX 8300 DISTRICT 6 JAC  
LONDON, KY 40742-8300

If you disagree with the decision attached to this letter, you have the right to submit new evidence to the Office of Workers' Compensation Programs and request reconsideration of the case or, if you have no additional evidence to present to the Office of Workers' Compensation Programs, you may appeal the decision to the Employees' Compensation Appeals Board.

Sincerely,

Electronically Signed

Division of Federal Employees' Compensation

PAUL H FELSER  
ESQ.  
QUEENSBORO BANK BLDG  
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.*

Washington DC, May 14, 2019

File Number:  
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**RECONSIDERATION:** If you have additional evidence, not previously considered, which you believe is pertinent, you may request, in writing, the OWCP reconsider this decision. Such a request must be received within one year of the date of the attached decision, clearly state the grounds upon which reconsideration is being requested, and be accompanied by relevant evidence not previously submitted, such as medical reports or affidavits, or a legal argument not previously made. Your request for reconsideration and the new evidence you are submitting should be sent to the

US DEPARTMENT OF LABOR  
OFFICE OF WORKERS' COMP PROGRAMS  
PO BOX 8300 DISTRICT 6 JAC  
LONDON, KY 40742-8300

In order to ensure that you receive an independent evaluation of the evidence, your case will be reconsidered by persons other than those who made this determination.

**APPEALS:** If you believe that all available evidence has been submitted, you have the right to appeal to the Employees' Compensation Appeals Board (ECAB) (20 C.F.R. 10.625). The ECAB will review only the evidence received prior to the date of this decision (20 C.F.R. Part 501). Effective November 19, 2008, ECAB has changed its Rules of Procedure on the time limit to appeal and has eliminated its practice of allowing one year to file an appeal. **Request for review by the ECAB must be made within 180 calendar days from the date of this decision.** More information on the new Rules is available at [www.dol.gov/ecab](http://www.dol.gov/ecab).

To expedite the processing of your ECAB appeal, you may include a completed copy of the AB 1 form used by ECAB to docket appeals available on the Department of Labor Web Site at [www.dol.gov/ecab](http://www.dol.gov/ecab). **You must mail your request to:**

**Employees' Compensation Appeals Board  
200 Constitution Avenue NW, Room S-5220  
Washington, DC 20210**

Washington DC, May 14, 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 Number* \_\_\_\_\_ *A telephonic hearing was held on* \_\_\_\_\_

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The issue for determination is whether the Office properly denied acceptance of additional conditions of "knee problems, a shoulder condition, coccyx fracture, sciatica, radiculopathy, lumbar spondylosis, lumbar degenerative disc disease, chronic low back pain syndrome, traumatic brain injury, and acute encephalopathy.

\_\_\_\_\_, is employed as a \_\_\_\_\_ for the \_\_\_\_\_. She filed Form CA-1 \_\_\_\_\_ for a timely notice of a Traumatic Injury which occurred on \_\_\_\_\_. On that date she was attacked in a parking lot behind the building where she worked. The claim was accepted for a concussion without loss of consciousness; post-concussion syndrome; post-traumatic stress disorder; headache; classical migraine; decubitus pressure ulcer, buttock; gluteal tendinitis, right hip; cognitive communication deficit; other disturbances of skin sensation; aphasia; dysphasia; spastic hemiplegia affecting left nondominant side; acquired claw hand, left hand; other acquired deformities of left foot; and enthesopathy of hip region, right.

During a hearing held on \_\_\_\_\_ regarding schedule award entitlement that had been appealed several times before the claimant's attorney, Paul Felser, noted that the case had not been accepted for all of the conditions that had reportedly developed as a consequence of the work injury. Specifically, he made reference to a coccyx fracture, radiculopathy, lumbago, sciatica, lumbar degenerative disc disease, lumbar spondylosis, chronic low back syndrome, traumatic brain injury and acute encephalopathy. He also stated that the claimant had shoulder and knee problems that had not been accepted. Mr. Felser argued that the Office must address expansion of the claim because when the DMA evaluates the case for rating purposes, he is only addressing the conditions which have been formally accepted. As such, this directly affects Ms. Newton's schedule award entitlement.

In a decision dated \_\_\_\_\_ the case was remanded for the District Office to undertake development of the expansion claim.

In a letter dated \_\_\_\_\_ the claimant was advised of the evidence needed to establish her consequential injury conditions of knee problems, a shoulder condition, coccyx fracture, sciatica, radiculopathy, lumbar spondylosis, lumbar degenerative disc disease, chronic low back pain syndrome, traumatic brain injury, and acute encephalopathy". She was allowed 30 days to submit additional evidence.

In a decision dated \_\_\_\_\_ the Office denied expansion of the claim. Specifically, the decision advised that medical evidence was not provided which established the consequential conditions.

The claimant disagreed with the decision and Mr. Felser requested an oral hearing with an OWCP representative. Accordingly, a telephonic hearing was scheduled and held on \_\_\_\_\_

The claimant was represented by Mr. Felser at the hearing. Mr. Felser noted that the previous remand stated, "It is the responsibility of the office upon receipt of a request to amend the claim to include an additional diagnosis or consequential injury to review the evidence of record and determine if sufficient documentation exists to support acceptance; if after any necessary development the weight of the medical evidence does not support the additional diagnosis or consequential injury, the office is responsible for issuing a formal decision with appeal rights." He argued that the District Office only did the last part. They sent out their development letter and said no new information. He noted the claimant's difficulty having physicians who are willing to participate in this process and submit their bills and billing and be available to provide narrative reports. Mr. Felser argued that the District Office had an obligation to look at everything that has been previously filed.

Mr. Felser noted that in an \_\_\_\_\_, District Medical Advisor memo, Dr. \_\_\_\_\_ said that this claimant was assaulted while on the job in \_\_\_\_\_; she suffered a traumatic brain injury and is left with a spastic left hemiparesis; due to this, she falls often; in \_\_\_\_\_ she again fell suffering a fractured coccyx; this became infected and led to a pressure ulcer on her coccyx; the ulcer is a direct consequence of her work related injury; stage II pressure ulcer of the coccyx should be added to the list of accepted conditions. He argued that the memo touched on three of the additional conditions requested for expansion. She suffered a traumatic brain injury, so says Dr. \_\_\_\_\_. He says it caused spastic left hemiparesis and that as a result of that, she falls often. When she falls, she falls on her back, her knee. She falls. She hits the ground with force. This is a known event, something that is beyond question. If you take a few extra minutes to look at some of the definitions, just the standard basic medical definitions as I have, spastic hemiplegia is a neuromuscular condition of spasticity that results in the muscles of one side of the body being in a constant state of contraction and so she's literally dragging around her left side. The evidence indicates that there's a foot deformity. She can't walk the same way that you and I. It's permanently deformed. It turns in.

He argued that the medical evidence in the record clearly supports that this dramatically alters her gait, puts pressure on the opposite side on the right, affects her lumbar spine, has caused radicular pain so says the medical evidence, not so says Mr. Felser, has caused sciatica, lumbago, radicular pain and degenerative changes over time.

Concerning the fractured coccyx, he noted that the pressure ulcer was accepted and that the DMA did not dispute that these falls occur from the work-related injuries that drastically impair and affected her left side and that one of these falls caused a fractured coccyx, one of the additional conditions on the list for inclusion, and he goes on to say that it became infected and developed a pressure ulcer. Mr. Felser noted that you can't have a pressure ulcer being accepted as a consequential condition but overlook and omit the fracture of the coccyx. The ulcer didn't occur but for the fall. If the ulcer is accepted, the coccyx has to be accepted as

well. He stated, going back to the other traumatic brain injury, there's evidence of post-concussion syndrome. These are all accepted conditions; cognitive deficits, beaten and struck in a manner that caused her to have a head injury purportedly without loss of consciousness, but there are conflicting -- there's conflicting information on that.

He discussed the Statement of Accepted Facts, (SOAF), dated [redacted] and noted that it says the case was expanded to include the conditions of left hand claw deformity, left foot varus equinus and posttraumatic headaches. He stated that SOAF noted that the claimant was hospitalized on [redacted] and diagnosed with acute encephalopathy, secondary to having an adverse reaction to taking baclofen for treatment of spasticity. The office approved this condition as being caused by taking medication for a work-related condition. He noted that the claimant has difficulties getting the hospital bill paid. He also noted that the SOAF lists concurrent non-work related medical conditions of Type II diabetes, essential hypertension, thoracic scoliosis, lumbar spondylosis, lumbar degeneration and radiculopathy, claw deformity of the left hand, varus equinus of the left foot, vascular headaches and noted that part of the conditions were accepted. However, in this regard it appears that there were two SOAF's dated [redacted]. One correctly identified the conditions claw deformity of the left hand, varus equinus of the left foot, vascular headaches as being accepted rather than non-work related.

In addition, Mr. Felser discussed injections authorized for her back and that she has a chronic low back pain syndrome, issues with her sciatic low back, with her sacral lower back, radiating pain into the lower extremity. This care and treatment has been regularly approved.

The case was held open for 30 days to allow the claimant an opportunity to provide additional evidence to support the claim. A copy of the transcript was sent to the employing agency for review and comment. No comments were provided. A review of the case file was completed.

This file has been reviewed and remanded multiple times in reference to the accepted conditions. Mr. Felser has requested that the claim be expanded to include acceptance of additional conditions of "knee problems, a shoulder condition, coccyx fracture, sciatica, radiculopathy, lumbar spondylosis, lumbar degenerative disc disease, chronic low back pain syndrome, traumatic brain injury, and acute encephalopathy. Each diagnosis will addressed individually below:

Consideration of expansion of the claim must be based on actual medical diagnoses. "Knee problems and a shoulder condition" are not valid medical diagnoses. A specific medical diagnosis should be identified for expansion consideration.

Sciatica refers to pain in the lower back and leg and as such is a description of a symptom and not a firm medical diagnosis.<sup>1</sup> As such, Dr.'s description of these symptoms are insufficient to establish a firm medical diagnosis related to the accepted incident at work.<sup>2</sup>

<sup>1</sup> See *C.B.*, Docket No. 13-694 (issued May 29, 2013).

<sup>2</sup> See *M.D.*, Docket No. 15-0464, (issued April 14, 2015).

Coccyx fracture – A medical report from Dr. \_\_\_\_\_ MD stated, “This claimant was assaulted while on the job in \_\_\_\_\_. She suffered a traumatic brain injury and is left with a spastic left hemiparesis. Due to this, she falls often. In \_\_\_\_\_ she again fell suffering a fractured coccyx. This became infected and led to a pressure ulcer on her coccyx. The ulcer is a direct consequence of her work-related injury. Stage II pressure ulcer of the coccyx should be added to the list of Accepted Conditions.” It is reasonable to accept the fractured coccyx as a consequence of the work injury accepted condition based on the DMA's opinion that the pressure ulcer due to the infected fractured coccyx was a direct consequence of her work related injury.

Traumatic brain injury – It is already accepted that the claimant had a traumatic brain injury as a result the \_\_\_\_\_ assault. Multiple diagnoses associated with the traumatic brain injury have been accepted. The medical evidence indicates she lost consciousness following the assault. However, the actual diagnosis of traumatic brain injury was not added to the accepted conditions. The traumatic brain injury condition should be formally accepted and the appropriate ICD-10 codes should be added.

Acute encephalopathy – Medical evidence in file indicates that on \_\_\_\_\_ the claimant sought emergency treatment after her family noticed acute changes in her mental state. In a medical report dated \_\_\_\_\_ Dr. \_\_\_\_\_ reported that according to family at the bedside the patient was denied comp coverage for trial of botox for her chronic left sided spasticity and in lieu of toxin was recently started on trial of baclofen around the middle of last week by her neurologist Dr. \_\_\_\_\_. She was noticed on day one of taking this therapy to appear confused with nonsensical speech noticed by family after she had only taken a few doses of this medication. The patient's confusion apparently transitioned into lethargy and somnolence over the weekend and yesterday in the ED she was noticed to have increased spasticity/rigidity involving both sides of her body.

In a hospital note dated \_\_\_\_\_, Dr. \_\_\_\_\_ provided an assessment of “Toxic Encephalopathy: CSF studies benign. She is improving. Baclofen new start in setting of chronic medication abrupt discontinuation likely etiology of MS change and change in tone. She does have chronic hemiplegia due to previous brain injury. Tone much better today. Suggest avoiding baclofen as it has been known to cause encephalopathy and/or coma especially in patient with preexisting brain abnormalities.”

The District Office authorized treatment for the condition and in fact noted in the Statement of Accepted Facts that treatment for the condition was approved. Formal acceptance of the condition is necessary and the appropriate ICD-10 code should be added.

Medical documents in file establish that the claimant was seeking treatment for chronic pain syndrome and back conditions. While pain is not an acceptable diagnosis chronic pain syndrome can be accepted if the evidence establishes causal relationship.

Although the Employees' Compensation Appeals Board has issued numerous decisions stating that pain is not a diagnosis, the CE must be careful to evaluate the AP's reports to determine if they contain a diagnosis other than pain, including the diagnosis of a “syndrome”. If there is objective evidence of injury, i.e. muscle spasm or

