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U.S. DEPARTMENT OF LABOR

OFFICE OF WORKERS' COMP PROGRAMS
PO BOX 8300 DISTRICT 6 JAC
LONDON, KY 40742-8300
Phone: (904) 366-0100

October 5, 2017

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
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,

Senior Claims Examiner

PAUL FELSER
ESQ
QUEENSBOROUGH BANK BUILDING
793 HODGSON MEMORIAL DRIVE
SUITE 102
SAVANNAH, GA 31406

If you have a disability (a substantially limiting physical or mental impairment), please contact our office/claims examiner for information about the kinds of help available, such as communication assistance (alternate formats or sign language interpretation), accommodations and modifications.

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 Traumatic Injury indicating you sustained an injury or medical condition on as a result of your employment as a for the in. You stated you strained both shoulders. The supervisor indicated that you were in the performance of your duties at the time of the injury. He also concurred with the facts reported, but noted that the cause of injury was not specified and no physician's opinion provided as to how the work events caused or affected the condition. The claim was administratively closed as a minor injury, with no formal review undertaken.

On , the Office received a request for wage loss benefits, and the claim was reopened. By letter dated the Office notified the claimant of the deficiencies in her claim and afforded her an opportunity, 30 days, to submit the requested evidence. Factual and medical evidence was requested.

Following development and review of the evidence submitted, in a decision dated , the Office denied the claim on the basis that fact of injury, factual had not been met. The reason for the decision was that you neglected to respond to the factual questions, thus failing to establish the facts of the injury. It was also noted that insufficient medical opinion linked an injury to the described event.

In disagreeing with the decision, the claimant requested an oral hearing with the Branch of Hearings and Review which was held on . The claimant's attorney, Paul Felser, represented her at the proceedings. By decision dated , the Branch modified the Office's decision and noted that the evidence at the time of the decision was sufficient to establish fact of injury factual and that the subsequent medical report by Dr. along with the reports by Dr. are sufficient to establish the medical component of fact of injury. However, the medical evidence does not give a physician's explanation of whether and how the diagnosed left shoulder partial rotator cuff tear was caused or contributed to by the accepted work incident and remains insufficient to establish causal relationship.

You disagreed with the decision and through your authorized representative Mr. Felser, requested reconsideration by letter/appeal request form received on , along with new medical evidence. The employing agency was notified of the appeal request by correspondence dated

In his letter, Mr. Felser explained the basis for the request, the issue at hand is medical in nature, so the focus is on the new medical evidence.

DISCUSSION OF EVIDENCE: The evidence reviewed in support of your reconsideration request includes chart notes signed by _____, DO dated _____ and _____

In all of the chart notes, noted above, Dr. _____ provided case number _____ for date of injury of _____. A review of this case indicates that you have an accepted claim for complete rotator cuff rupture, right due to repetitive work duties. You stopped work on _____ and have not returned. You underwent an approved right shoulder surgery on _____ and again on _____. You are currently in receipt of compensation for wage loss and medical benefits as a result of this injury.

In his treatment note dated _____ Dr. _____ discussed treatment for your accepted right shoulder condition and he also noted you were there for evaluation for your left shoulder. He indicated that you had consistent pain in the left shoulder since your injury back in _____. He noted you had chronic pain in the shoulder from your repetition overhead type job and also had an MRI of the shoulder in _____ revealing evidence of Urschel thickness rotator cuff injury. Dr. _____ offered examination findings and diagnosed partial thickness rotator cuff tear, left. He stated symptoms related to likely work related partial thickness rotator cuff injury. Dr. _____ opined that this injury does appear to have its origin with your stated injury of _____ and is likely rotator cuff injury. He noted a revised MRI arthrogram would be warranted to assess your cuff status.

In his _____ and _____ reports, Dr. _____ noted follow up visits for partial thickness rotator cuff tear and glenoid labrum tear for the right shoulder and he offered examination findings for the right shoulder and diagnosed right shoulder rotator cuff pathology and partial thickness rotator cuff tear, left.

BASIS FOR DECISION: The evidence in its totality is sufficient to vacate the decision dated _____. It supports your claim because the record now includes a physician's explanation of whether and how the diagnosed left shoulder partial rotator cuff tear was caused by the _____ work incident.

CONCLUSION: Therefore, the decision dated _____ is vacated.

Your case is now approved for left shoulder partial rotator cuff tear.

Senior Claims Examiner