

File Number:
HR13-D-H

RECEIVED MAY 21 2018

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 Washington, D.C. 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 25 WAS
LONDON, KY 40742

Electronically Signed

Hearing Representative

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.

Washington DC, May 17, 2018

U.S. DEPARTMENT OF LABOR
Office of Workers' Compensation Programs

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 _____
Claim number _____

Merit Consideration of the case file was completed on _____ in Washington DC.
Based on this review, the decision of the Office dated _____ is **reversed** for the reasons set forth below.

The issue for determination is whether the Office of Workers' Compensation Programs (OWCP) properly terminated Ms. _____ wage-loss compensation benefits based on the determination that she has no work-related injury disability.

Ms. _____ was employed as a letter carrier by the _____ in _____ a _____. The claimant filed a CA2 Notice of Occupational Disease Claim claiming that she sustained left thumb and wrist arthritis, carpal tunnel syndrome, left wrist sprain and strain and a left wrist dorsal carpal ganglion as a result of physical activities required in her job. The claimant stated that she first became aware of her condition on _____ and realized that it was related to her employment on _____.

The Office accepted that the claimant sustained an aggravation of CMC degenerative joint disease of the left thumb and carpal tunnel syndrome on the left. On _____ the claimant underwent a left thumb CMC arthroplasty, trapezium excision of the left wrist, left wrist and hand reconstruction of intermetacarpal ligament one and two using abductor pollicis longus tendon transfer, left carpal tunnel injection, and a excision of dorsal and volar carpal ganglion cyst of the left wrist.

The claimant stopped working on _____ and returned to work on _____ in a part-time modified position and was paid total disability compensation benefits and ongoing partial disability compensation benefits claimed.

The claimant was referred for a second opinion examination with Dr. _____. In her second opinion examination report Dr. _____ provided work restrictions and stated in pertinent parts,

"The recovery from the surgery that she is had is known in medical literature and over quite a few years in the hand surgery community to be a very lengthy recovery. It is a Well-known and accepted fact that people can continue to experience improvement for a year or more after this procedure. As such, her range of motion, strength and ability to do various tasks can be expected to improve through the end of _____"

However, this does not change the fact that she has an excellent prognosis for recovery after this procedure."

"With regard to the OWCP-5 form, questions 1a asks if she can perform her usual job Without restrictions, I have marked the box "no" because she is still strengthening her hand after her surgery. She had a bone removed from her Wrist and the soft tissue was completely rearranged. This takes quite a While to heal and is associated with an approximately one year recovery. She is only at about seven months, and it is very heavy tasks with her left hand yet. This limits her from doing her usual job without restrictions as of yet.

In her , supplemental second opinion report Dr. explained how she arrived at the diagnosis of carpal tunnel syndrome in response to the Office's inquiry. In her supplemental second opinion report Dr. reviewed EMG / NCV findings as directed by the Office and opined that the claimant has a diagnosis of carpal tunnel syndrome in response to the Office's inquiry.

In his report the claimant's treating physician Dr. stated in relevant part,

"A 2nd opinion apparently was performed by Dr. . I have reviewed your report in total. After reviewing the report I sleeve [sic] it confirms much of our current considerations regarding Ms. status. It is my opinion that due to the current status of the patients CMC joint and residual carpal tunnel that the patient has some residual functional limitations and therefore requires a combination in order to return to work. I would suggest that the functional capacity evaluation performed on be considerate of patient's permanent work restrictions and allow her to return to work under those restrictions permanently."

On the Office issued a notice of proposed termination of benefits on the basis that the second opinion physician Dr. opined that she could return to full time work without restrictions after By decision dated , the Office issued a final decision terminating the claimant's wage-loss compensation. The claimant disagreed with the decision and requested an Oral Hearing.

claim is not in posture for a Hearing at this time. Based upon a review of the evidence of record, the Office's decision of should be reversed.

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits. The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.¹ The Office's burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.²

¹ *Gloria J. Godfrey*, 52 ECAB 486 (2001).

² *Gewin C. Hawkins*, 52 ECAB 242 (2001).

The Office did not meet its burden of proof to terminate the claimant's benefits because Dr. [redacted] opinion which was used as the basis for the termination of compensation benefits was based on the determination that the claimant could return to the full duties of her letter carrier position after [redacted] as indicated in Dr. [redacted] second opinion examination report. However Dr. [redacted] opined that the claimant was "expected to improve" and did not examine the claimant after [redacted] to determine if she improved as expected and was capable of returning to the job she held when she was injured. It is also noted that the claimant's treating physician Dr. [redacted] opined that the claimant could not return to the job she held when she was injured and has permanent work restrictions.

The Office failed to meet its burden of proof in terminating the wage-loss compensation benefits by decision dated [redacted]. The Office should reinstate the claimant's benefits retroactive to the date of termination.

For the reasons set forth above, the decision of the District Office dated [redacted] is hereby **reversed** and returned to the District Office for actions consistent with this decision.

Issued:
Washington, D.C.

Electronically Signed
Hearing Representative
for
Director, Office of Workers'
Compensation Programs