

File Number:
reconvacate-D-

RECEIVED FEB 23 2007

U.S. DEPARTMENT OF LABOR

EMPLOYMENT STANDARDS ADMINISTRATION
OFFICE OF WORKERS' COMP PROGRAMS
PO BOX 8300 DISTRICT 6 JAC
LONDON, KY 40742-8300
Phone: (904) 357-4777

February 21, 2007

Date of Injury:
Employee:

Dear

This concerns your compensation case and your request for reconsideration received


We have evaluated the evidence submitted in support of your request for review. Your case has been reviewed on its merits under Title 5, United States Code, Section 8128, in relation to your application including supporting evidence. It is determined that you sustained an injury as alleged on the above date. The reasons for this decision are outlined in the enclosure.

Therefore, the decision dated _____ is vacated and your case is accepted for: Lumbar HNP, L4-5.

Sincerely,

 Senior Claims Examiner

US POSTAL SERVICE
PITTSBURGH PERFORMANCE CLUSTER
SHARED SERV CNTR-1 MARQUIS PLAZA
5315 CAMPBELLS RUN ROAD
PITTSBURGH, PA 15277

 PAUL H FELSER
ATTORNEY
PO BOX 10267
SAVANNAH, GA 31401

File Number:
Employee:

NOTICE OF DECISION

Issue: The issue in this case is whether you have submitted sufficient evidence with your request for reconsideration to warrant modification of the prior decision denying your claim for performance of duty.

Requirements for Entitlement: In order for an injury to be covered under the FECA, the evidence must establish that the injury arose out of and in the course of employment. This generally means that the injury occurred while you were performing your duties as a Federal employee, and was related to the performance of those duties.

Background: You were employed as a Rural Carrier for the _____ in _____
On _____ you filed a CA-1, Notice of Traumatic
Injury claim for an injury sustained on _____ when your vehicle was rear-ended
by a truck. After appropriate development, your claim was denied on _____ for
the reason the evidence failed to establish that you sustained an injury as alleged. You
disagreed with this decision and requested an oral hearing. By decision dated _____
the Branch of Hearings and Review affirmed and modified the prior decision.
It was noted you established fact or injury, but your case remained denied for failure to
support you were in the performance of duty when the accident occurred on _____.

In further disagreeing with the prior denials, your attorney, Paul Felser requested a reconsideration by letter dated _____

Discussion of Evidence:

The _____ letter from attorney Paul Felser was the only document sent in support of your request for reconsideration.

Mr. Felser based his argument on the premise that, you as a rural carrier were required to use your own motor vehicle to deliver your route and you were covered to and from the post office. The accident occurred when you attempted to stop for gas and you were rear-ended by another vehicle.

Your employing agency contends you deviated from your travel to work when you attempted to stop for gas at a convenience store and you had a passenger in the vehicle at the time. While the above statement is true, there is no evidence in the file to support you deviated from your route on your way to your duty station. Since Rural Carriers may use their own transportation to deliver their routes, which is a benefit to their employer, they may be deemed to be in the performance of their duties when they are driving their

vehicles to and from their route when they are required by the employing establishment to provide their own transportation. There is a presumption that the trip to work of an employee with fixed hours and place of work is no different from that of any other employee with fixed hours and place of work. However, in the case of employees furnishing their own conveyance, such as rural carriers, coverage is extended when the employee is in the vehicle and driving to and from work because he is required to take his vehicle with him to perform his regular assigned duties.

Basis for Decision: Beyond the above-mentioned documents, I have reviewed your case file in its entirety. The information presented does serve to substantiate that performance of duty has been established. All of the evidence supports you were injured in a motor vehicle accident on while traveling to your duty station. Medical evidence has been received which supports that you sustained a Lumbar HNP, L4-5 as a result of the accident. The information of record is consistent on the account of the injury and there is no reason to cast doubt as to whether the injury occurred as alleged. Moreover, the medical evidence of file provides diagnoses linked to the injury.

Conclusion: decision is vacated. Your claim for a traumatic injury has been accepted for: Lumbar HNP, L4-5.

V Senior Claims Examiner
February 21, 2007