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U.S. DEPARTMENT OF LABOR

EMPLOYMENT STANDARDS ADMINISTRATION
OFFICE OF WORKERS' COMP PROGRAMS
PO BOX 8300 DISTRICT 50
LONDON, KY 40742-8300
Phone: (202) 693-0045

APR 03 2007

Date of Injury: 01/10/2006
Employee: CANDYCE L. OLSON

CANDYCE LYNN OLSON
49370 AMBLE AVENUE
STANCHFIELD, MN 55080

Dear Ms. OLSON:

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 has been completed, and it has been determined that the case is not in posture for a hearing at this time. The decision of the District Office has been vacated and the case returned for further action as explained in the attached remand order.

Future correspondence should be addressed to:

US DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
OFFICE OF WORKERS' COMP PROGRAMS
PO BOX 8300 DISTRICT 10 CHI
LONDON, KY 40742-8300

Sincerely,

James M. Bankert
James M. Bankert
Hearing Representative

DEPARTMENT OF AGRICULTURE
FSIS-ALL OTHER FSIS
WCB-BUTLER SQUARE WEST, SUITE 420-C
100 NORTH 6TH STREET
MINNEAPOLIS, MN 55403

PAUL H. FELSER
PO BOX 10267
SAVANNAH, GA 31412

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 Candyce L. Olson, claimant; employed by U.S. Department of Agriculture, Food Safety and Inspection Service. Case file: 102053342. Merit review of the case record was completed on March 30, 2007 in Washington, DC.

On March 22, 2006 the claimant filed Form CA-2, notice of occupational disease, for a left arm condition which she attributed to the performance of her duties as a compensation claims technician with the U.S. Department of Agriculture, Food Safety and Inspection Service, in Minneapolis, MN. The claimant has a prior right shoulder injury claim, accepted by the Office under case file 102032819, for which she underwent open decompression and rotator interval repair of the shoulder on October 12, 2004. On December 14, 2004 the claimant returned to restricted duty for 4.5 hours a day working; alternately, two days a week and then three days a week. The claimant stopper work on January 10, 2006.

On April 24, 2006 the Office issued a decision accepting the claim for left carpal tunnel.

On September 27, 2006, under case 102032819, the Office referred the claimant to Douglas A. Becker, M.D., board-certified orthopedic surgeon, for a referee examination addressing both the right and left upper extremity conditions.

On December 18, 2006 the Office issued a decision stating that the weight of the medical evidence has been determined to rest with Dr. Becker, who found that the claimant did not have any work-related injury to her left upper extremity. The Office denied the claim on the basis that the requirements had not been met for establishing that the claimant sustained an injury as defined by the FECA.

The claimant disagreed with the decision and requested an oral hearing. I find, however, that the case is not in posture for a final decision.

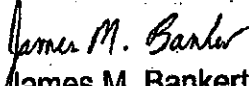
In its decision, the Office denied the claim on the basis that the requirements had not been met for establishing that the claimant sustained an injury as defined by the FECA. However, the Office had previously accepted the claim left carpal tunnel. Since the Office had accepted the claim, it cannot now make a finding that the requirements had not been met for establishing that the claimant sustained an injury as defined by the FECA. The Office states that Dr. Becker found that the claimant did not have any work-related injury to her left upper extremity. Thus, the December 18, 2006 decision is, in essence, a rescission of the accepted condition of left carpal tunnel.

The Office has the authority to reopen a claim at any time under the review power granted by section 8128(a) of the Federal Employees' Compensation Act. This section vests the Office with the discretionary authority to review a claim at any time on its own motion or any application by the claimant. The Office's review power under section 8128(a) is not limited to reconsideration of final decisions which awarded, terminated, increased or decreased compensation. Under Section 8128(a), the Office may at any time on its own initiative open a claimant's case for review and, where supported by the evidence, set aside or modify a prior decision and issue a new decision. It is noted, however, that while the Office may set aside or modify a prior decision, where the Office has accepted a claim and paid benefits, it has the burden of proof to establish that any such acceptance and payment were in error.¹

It is also noted that in its decision, the Office did not notify the claimant that it was contemplating rescission or actually rescinding the accepted condition. It is well-established that the Office must correctly inform a claimant as to the grounds on which a rejection rests.²

The decision dated December 18, 2006 is hereby set aside and the case remanded to the District Office for further action consistent with the present decision.

DATED: APR 03 2007
WASHINGTON, D.C.


James M. Bankert
Hearing Representative
For
Director, Office of Workers'
Compensation Programs

¹ Federal (FECA) Procedure Manual, Part 2, 2-1400-3.f

² *Supra*, note 1, 2-1400-2.c