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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

JUN 15 2007

Date of Injury: 09/20/2002
Employee: SANDRA E. HEWLETT

SANDRA E. HEWLETT
2289 CHASE STREET
GARY, IN 46404

Dear Ms. Hewlett:

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 returned to the district office for further action as explained in the attached Remand Order.

Future correspondence should be addressed to: U.S. Department of Labor, Office of Workers' Compensation Programs:

US DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
OFFICE OF WORKERS' COMP PROGRAMS
PO BOX 8300 DISTRICT 9 CLE
LONDON, KY 40742-8300

Sincerely,



Sherri L. Doiron
Hearing Representative

UNITED STATES POSTAL SERVICE
GREATER INDIANA PERFORMANCE CLUSTER
INJURY COMPENSATION OFFICE
3939 VINCENNES ROAD
INDIANAPOLIS, IN 46298

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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 Sandra F. Hewlett, Claimant; Employed by the U.S. Postal Service in Merrillville, Indiana. Case No. 092025920.

Merit consideration of the case file was completed in Washington, D.C. Based on this review, the decision of the District Office dated April 23, 2007 is set aside and has been remanded for the reasons set forth below.

The issue for determination is whether the claimant has ongoing disabling residuals of her September 20, 2002 work injury.

The claimant, born August 11, 1958, was employed by the U.S. Postal Service in Merrillville, Indiana as a Letter Carrier. On September 23, 2002, the claimant timely filed a form CA-2, Notice of Occupational Disease, claiming on September 20, 2002, she told her supervisor her back was hurting and she needed to see a doctor. She stated that she had strong lower back pain and muscle spasms. On October 3, 2002, the claimant timely filed a form CA-1, Notice of Traumatic Injury, claiming she was standing four hours a day on September 20, 2002 caused her back injury. In a statement accompanying her CA-1 form, she stated her doctor told her that her back injury was caused for standing for long periods of time. The District Office did not create a separate claim for the CA-1, but combined it with the CA-2 form. The claimant stopped working on September 23, 2002.

The claimant has two previous back injuries as a result of motor vehicle accidents in 1993 and 2000. She had about five months of physical therapy as a result of her injuries.

The claimant sought initial medical attention on September 23, 2002 from W.R. Lewis, M.D. Dr. Lewis completed a CA-20 form that diagnosed chronic lumbosacral strain, acute myositis and ruptured L4-5 disc as a result of long periods of standing.

The claimant told her physical therapist on her initial visit on December 13, 2002 that she felt a stabbing pain in her low back while working.

The claimant returned to modified duty in March 2003. In a March 10, 2003 report from Jacqueline Harris M.D., the claimant stated that she was having back pain from delivering and lifting mail due to an increase in her route in July. The claimant stopped work again on May 19, 2003.

The District Office accepted the claim for a lumbar strain without any prior development. The Office later expanded the claim to include acute myofascitis of the sacrum and ileum.

The District Office referred the claimant for a second opinion examination with Julie Wehner, M.D., orthopedist, on April 30, 2003. The claimant gave her history of injury as on September 20, 2002, she was carrying mail for an overburdened route and had to case mail for five hours. Dr. Wehner stated there were no neurological findings on examination, and no evidence of ruptured disk on MRI. She stated the claimant could return to work, full duty.

The District Office determined there was a conflict of opinion between Dr. Wehner and the claimant's physician, Dr. William Lewis, and scheduled the claimant for a referee examination. The Office also denied the May 19, 2003 claim for recurrence by decision dated September 17, 2003. This decision was affirmed on reconsideration. The claimant appealed the denial to the Employees' Compensation Appeals Board (ECAB).

The referee examination was performed on February 17, 2004 by Paul Gruszka, M.D. Dr. Gruszka stated that according to the claimant's reports, her symptoms began on September 20, 2002, when she was carrying mail for an overburdened route. He noted the claimant stated that her pain began on September 20, 2002, but there was no specific traumatic event, but that her pain was caused by wear and tear. He stated the claimant had few objective findings. He diagnosed chronic low back pain and he stated she could return to work full duty.

The claimant changed her attending physician to Daryl Fortson, M.D., her family practitioner, due to Dr. Lewis' illness. EMG and nerve conduction studies were performed on November 16 2004 that revealed no electrodiagnostic evidence for an active lumbosacral radiculopathy. Dr. Fortson disagreed with Dr. Gruszka's opinion and noted Dr. Gruszka failed to mention the strongly positive

EMG finding by Dr. Ungar-Sargon (in 2002) that is consistent with the claimant's clinical exam. He indicated while the claimant's MRI may be negative, this was not the "end-all" of her work-up. He stated the claimant has L5-S1 radiculopathy that was caused by repetitive stress. He recommended a lumbar myelogram to visualize what the MRI may have missed, as well as a discogram.

By decision dated March 11, 2005, the ECAB remanded the case back to the District Office, finding an unresolved medical conflict existed in the case at the time of the September 17, 2003 decision denying the claimant's recurrence. The ECAB ordered that a new decision be issued based on the referee examination.

The District Office again denied the claim for recurrence on August 12, 2005, based on Dr. Gruszka's opinion.

The claimant returned back to modified duty on August 22, 2005.

On August 31, 2005, the District Office issued a Notice of Proposed Termination, proposing to terminate the claimant's medical and wage-loss benefits. The claimant was given thirty days to provide additional evidence if she disagreed with the decision.

On September 14, 2005, the claimant stopped working again and filed a claim for compensation for wage loss. After development, the District Office denied the claim by decision dated February 23, 2006 for the reason that the medical evidence, consisting of reports from Dr. Fortson, did not provide any explanation as to why she was disabled effective September 14, 2005. The claimant disagreed with this decision and requested an oral hearing.

The District Office then referred the claimant out for another second opinion examination. This examination was performed by Dr. Richard Sidell, Jr. on November 22, 2005. Dr. Sidell noted the claimant stated at the time of September 20, 2002, she was required to lift more than what she thought was appropriate which caused her to develop back pain and that there was no specific injury. Dr. Sidell opined the claimant had a chronic myofascial strain based primarily on subjective complaints with minimal objective findings. He stated she had recovered from the initial lumbar sprain within six to twelve weeks of the injury. He stated her subjective complaints of low back pain were due to a chronic underlying condition that was not related

to any one injury event. Based on the subjective complaints, he advised she should have a lifting restriction not to exceed 30 pounds.

Dr. Fortson advised in his December 23, 2005 report that the claimant's objective findings were right sciatic notch tenderness on bilateral straight leg raises and protrusions seen at L4-5 and L5-S1 on discogram. He referred the claimant for a functional capacity evaluation. The evaluation found the claimant's findings were consistent with sciatic symptoms that would limit her ability to lift repetitively.

The Postal Service withdrew the claimant's modified duty job on June 20, 2006. The claimant was paid compensation effective June 20, 2006 due to this withdrawal. The District Office also reissued the Notice of Proposed Termination on August 8, 2006.

Dr. Fortson responded to the proposed termination with a report dated September 5, 2006. He diagnosed the claimant with L5 radiculopathy, and right leg sciatica secondary to sacroiliitis exacerbated by repetitive work trauma. He opined these were work-related conditions, explaining that the claimant is a Letter Carrier and required to lift and carry bags of mail of not less than ten pounds continuously and up to seventy pounds intermittently. He noted the claimant has to get in and out of a truck with a mail bag she must carry for fairly long distances in the hottest of Midwest weather and in the coldest of its winters. He noted he has personal knowledge of her route, since it was in the area where one of his previous offices was located. He stated she has to lift, bend, and twist. He noted she has a thin-build, and after 23 years of full-time work with the Postal Service, has developed repetitive stress consequences in her lumbar spine and sacroiliac joints, with referred pain into the right leg. He stated that no physician that has examined her has alleged or diagnosed her with malingering or somatization and there was no other reasonable conclusion to draw but a work-related etiology. He stated while the motor vehicle traumas contributed to her condition, their contribution to her pain is not as proximate as her day-to-day work.

The claimant disagreed with the February 26, 2006 decision and requested an oral hearing by an OWCP representative on the issue of compensation from September 14, 2005 through February 28, 2006. By decision dated December 26, 2006, the Hearing Representative affirmed the February 26, 2006 decision.

By decision dated April 23, 2007, the District Office finalized the August 8, 2006 proposal and terminated medical and compensation benefits effective April 23, 2007 based on Dr. Sidell's opinion. Specifically, the decision stated Dr. Fortson treated the claimant for conditions that had not been accepted as related to the work injury and attributed her conditions to employment factors which she did not claim. The decision stated that her examinations failed to demonstrate she had any objective findings of the soft-tissue injury that had been accepted.

The claimant disagreed with the April 23, 2007 decision and requested an oral hearing before an OWCP representative. I find that the case is not in posture for a hearing. Based upon my review of the file, the decision of the District Office dated April 23, 2007 should be remanded for further development.

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.¹

The Board reviews the medical evidence to determine whether the medical report was based on incomplete information, and it looks at such factors as the opportunity for and thoroughness of examination performed by the physician; the accuracy and completeness of the physician's knowledge of the facts and medical history; the care of analysis manifested; and the medical rationale expressed by the physician on the medical issues addressed to him or her by the Office.²

A rationalized medical opinion must include a discussion of the nature of the underlying conditions; their natural or traditional course; how the underlying conditions may have been affected by appellant's employment as determined by medical records covering the period of employment; whether such affects, if any, caused material changes in the underlying conditions; or, if no material changes occurred, would the symptoms or changes indicative of a temporary aggravation have subsided or resolved immediately upon appellant's removal from the employment environment and, if not, at what point would such symptoms or changes have resolved; and whether any aggravation of appellant's underlying conditions caused by factors of his or her employment caused disability during or subsequent to appellant's employment.³

¹Bettye F. Wade, 37 ECAB 556 (1986).

²James T. Johnson, 39 ECAB (1988).

³Newton Ky Chung, 39 ECAB (1988).

The District Office gave the weight of medical evidence to the second opinion examiner, Dr. Sidell, because he did not find any objective findings to support the claimant's symptoms; because the Office only accepted a soft-tissue injury; and because Dr. Fortson opined her injury was caused by employment factors that she had not claimed. I do not find the statement that the claim was only accepted for a soft-tissue injury in the April 23, 2007 decision to be accurate, as the record shows the claim was also accepted for acute myofascitis of the sacrum and ileum. While the claimant only implicated standing at work in her CA-1 and CA-2 forms, the evidence of record is quite consistent in reporting that the claimant did not specify any traumatic event on September 20, 2002, but rather indicated that was when her symptoms began as a result of prolonged standing and repetitive lifting, carrying, and casing mail, which she had been doing for at least 23 years.

I do not find that the weight of medical evidence can rest with Dr. Sidell for the reason that his opinion was not based on an accurate history or the factors surrounding the claim. The Office's Statement of Accepted Facts (SOAF), does not indicate what work factors that the claimant has alleged in the cause of her back pain, but gives the history of injury only as she reported her back pain to her supervisor on September 20, 2002. The Office has established procedures for the preparation of a SOAF which include, among others, a statement of the conditions accepted by the Office as employment related.⁴ In addition, the Office did not explain why Dr. Sidell's opinion should carry the weight over Dr. Fortson's opinion. It is also noted that the termination decision was based on an opinion that was nearly a year and a half old. The Board has stated that, consistent with case precedent, stale medical evidence cannot form the basis for current evaluation of residual symptomatology or disability determination.⁵

For these reasons, the claim should be remanded for further medical development.

Upon return of the case file, the Office should amend the (SOAF)⁶ with a description of the work factors that the claimant has

⁴Liliana M. Martinez, 42 ECAB (Docket No. 90-1944, issued March 20, 1991).

⁵Diane M. James, Docket No. 05-1866, issued February 13, 2006; Keith Hanselman, 42 ECAB 680 (1991); Ellen G. Trimmer, 32 ECAB 1878 (1981) (Reports almost two years old deemed invalid basis for disability determination and loss of wage-earning capacity).

⁶See Part-2-0809 of the FECA Procedure Manual.

implicated in the cause of her condition and refer the claimant for a second opinion examination with an appropriate specialist for an opinion regarding whether the work factors of standing, lifting, casing, and carrying mail on and prior to September 20, 2002 is continuing to objectively contribute by direct cause, aggravation, precipitation or acceleration to the claimant's condition. The Office should provide the specialist with the definitions of the types of causal relationship.⁷

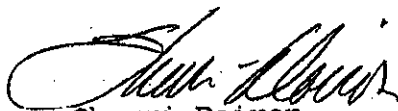
In addition, as the case file currently contains two SOAFs, the Office should be aware that Chapter 2-0809-9 of the Federal Employee's Compensation Act Procedure Manual states that "When a second statement is prepared, the Claims Examiner should clearly show whether it replaces or amends the first one. The Examiner should also note on any previous SOAFs that they are superseded, and initial and date the notation."

The District Office should reinstate the claimant's medical benefits effective April 23, 2007.

Following any further development the Office deems necessary, it should issue a de novo decision on the claim.

Consistent with the above findings, the decision of the District Office dated April 23, 2007 is set aside and REMANDED and the case file is returned for further action as described above.

DATED: JUN 15 2007
WASHINGTON, D.C.



Sherri Doiron
Hearing Representative
For
Director, Office of Workers'
Compensation Programs

⁷Part 2-0805-2 of the Federal Employees' Procedure Manual.