

NOTICE OF DECISION

Claimant Name: **PAMELA J. DAVIS**

ISSUE: The issue for determination is whether a federal work accident caused, precipitated or aggravated the diagnosed condition, thereby requiring that the decisions of 10/29/2003 and 03/05/2004 be vacated.

REQUIREMENTS OF ENTITLEMENT: 20 C.F.R. § 10.605 through 10.609 outline the procedure for application and the Office's handling of requests for reconsideration. A claimant may obtain review of the merits of his or her claim by written request to the Office and by showing that the Office erroneously applied or interpreted a point of law, by advancing a point of law or fact not previously considered by the Office, or by submitting relevant and pertinent evidence not previously considered by the Office. When an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without reviewing the merits of the claim.

In your case, you provided new medical evidence for review.

Furthermore, in order for a claim to be accepted under the Federal Employees' Compensation Act, the component of fact of injury must be established by the medical evidence of record. To establish personal injury in an occupational injury case, the medical evidence must establish the existence of a medical condition caused or aggravated by factors of employment. Secondly, the medical evidence must also support a causal relationship between the injury and federal work factors in order to be compensable.

BACKGROUND: You were employed as a Rural Mail Carrier by the U.S. Postal Service in Macon, Georgia. On 09/10/2003, you filed a timely notice of traumatic injury for a motor vehicle accident that occurred on 09/05/2003. The accident occurred when you were delivering mail and you were rear-ended by a police car. You were immediately treated for the injury.

After proper development, your claim was denied on 10/29/2003. You requested a review of the written record on the matter and the Branch of Hearings and Review affirmed the Office's decision on 03/05/2004.

You again requested reconsideration of that decision through your representative on 03/05/2005. On 04/19/2005 your employer was provided an opportunity to comment on the application for reconsideration.

DISCUSSION OF EVIDENCE: Our office received the following new documents after the 03/05/2004 decision:

- 09/11/2003 note from Gray Family Health
- 09/12/2003 signed form indicating when the claim was filed
- 03/10/2004 work restriction note from E. Lynn Phillips, M.D.
- 03/15/2004 letter from Mellayne Myers, M.D.
- 03/17/2004 letter from E. Lynn Phillips, M.D.
- 12/24/2004 narrative report from Peter O. Holliday, III, M.D.

- 01/19/2005 form SF 50
- 02/24/2005 letter from Dr. Myers
- 03/03/2005 letter from Paul Felser
- 04/06/2005 letter from the U.S. Postal Service
- 05/06/2005 letter from Paul Felser
- your undated letter received 05/15/2005

FACTUAL EVIDENCE REVIEW:

The form SF50 confirmed that you were approved for disability retirement effective 01/19/2005.

Mr. Felser's 03/03/2005 brief provided a synopsis of the medical evidence he was submitting, as well as arguments from precedents set by the Employees' Compensation Appeals Board (ECAB).

The 04/06/2005 letter from the U.S. Postal Service challenged the validity of the claim because of apparent inconsistencies between the medical evidence and your true disability for work, beginning with the hospital treatment note dated 09/05/2003. The Post Office noted that you had retired through the Office of Personnel Management effective 01/19/2005.

Mr. Felser's 05/06/2005 letter reiterated that the Post Office's 04/06/2005 letter did not refute the weight of medical evidence.

In your undated statement, you argued that the emergency room was unable to write you a disability note for more than 3 days; that Dr. Arnold's opinion should not be discredited; that you were unable to respond to the Post Office's calls because you were staying in your guest house in lieu of your residence; and that you were considered totally disabled by your physician.

I find that the issue is fundamentally determined by the medical evidence, and that the arguments submitted against your claim were not significant.

MEDICAL EVIDENCE REVIEW:

The 03/15/2004 letter from Mellayne Myers, M.D., an orthopedist, provided her summary of the diagnoses noted after review of diagnostic testing.

Dr. E. Lynn Phillips, an orthopedist, gave an opinion on 3/17/04 that not only were the lumbar and cervical disc herniations caused by the accident, but that the accident aggravated your degenerative disc condition that pre-existed.

In his 12/24/2004 comprehensive narrative medical report, Dr. Peter O. Holliday, a neurosurgeon, discussed the neurological findings that led to his conclusion that your diagnoses were work-related. He provided a complete history of the injury, the type of treatment he provided beginning on 10/06/2003, diagnostic test results, and treatment plan. He elaborated that the 12/3/2003 electromagnetic and nerve conduction studies revealed radiculopathies at the right S1 level and in the right arm. He explained how the cervical and lumbar myelogram CAT scan dated 11/17/2003 showed disc herniations to the right at the L5-S1 level and at the cervical C5-6 level. He acknowledged that you have a pre-existing degenerative disc condition, but confirmed through examination and testing results that the "acute and immediate onset" of the herniations and radiculopathies was due to the 09/05/2003 accident.

Dr. Holliday explained that the surgeries of 02/25/2004 (lumbar laminectomy, discectomy and posterior interbody fusion) and 11/12/2004 (cervical disc removal) were medically necessary to alleviate the work-related herniations. He estimated that you would reach maximum medical improvement on or about March or April 2005 but that restrictions would be permanent. Furthermore, he opined that the two surgeries would limit your ability to perform light or sedentary work.

In her letter dated 02/24/2005, Dr. Myers concurred with Dr. Holliday's opinion.

BASIS FOR DECISION: Your case was reviewed in its entirety to assess whether the medical evidence supports your allegation.

The ECAB has held,

In assessing medical evidence, the number of physicians supporting one position or another is not controlling; the weight of such evidence is determined by its reliability, its probative value, and its convincing quality. The opportunity for and thoroughness of examination, 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 in support of the physician's opinion are factors which enter into this evaluation.¹

The ECAB has also held that the medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence.²

In the present case, in his 12/24/2004 report Dr. Holliday provided a thorough history of the injury, types of treatment offered, and a rationalized medical opinion supporting that your cervical and lumbar herniations were caused by the accident of 09/05/2003.

I find ample evidence to overturn the previous decision.

CONCLUSION: The decision dated 10/29/2003 shall be VACATED, as the evidence of record establishes that your diagnosed conditions are causally related to the motor vehicle accident of 09/05/2003, as alleged.

Alida V. Anderson

Alida V. Anderson
Senior Claims Examiner
May 23, 2005

¹ Connie Johns, 44 ECAB ____ (Docket No. 91-1226, issued March 9, 1993).

² Ruby I. Fish, 46 ECAB ____ (Docket No. 93-1779, issued November 30, 1994).