

U S DEPARTMENT OF LABOR

EMPLOYMENT STANDARDS ADMINISTRATION
OFFICE OF WORKERS' COMPENSATION PROGRAMS
P O BOX 8300 DISTRICT 2 NYC
LONDON, KY 40742-8300
(646) 264-3000

November 1, 2006

Date of Injury: 08/21/2004
Employee: JOANNE M MCLELLAN

RECEIVED NOV 06 2006

JOANNE M. MCLELLAN
2703 BURLINGTON RD
CANASTOTA, NY 13032

DECISION VACATING PRIOR DECISION

Dear Ms. McLellan:

This is a decision concerning your request for reconsideration of the decision that denied your claim. As explained in the January 25, 2006 Decision of the Hearing Representative, your claim was denied because the medical evidence of record failed to explain how your diagnoses were related to what occurred at work on August 21, 2004, when bundles of Reader's Digest magazine fell, striking you on your right arm in the elbow area.

In a letter dated July 28, 2006, which was received by the Office of Workers' Compensation Programs (OWCP) on August 3, 2006, your representative, Paul H. Felsler, requested a reconsideration of the denial. The letter referred to an "enclosed report" that confirms that you "suffered a work-related incident on or about 8-21-04," but the only other correspondence received on August 3, 2006 is a disability certificate dated July 27, 2006 from Mahender Goriganti, M. D., a disability certificate which makes no reference to any occurrence on August 21, 2004.

Further review of your claim disclosed an undated narrative report, received on July 10, 2006, from Dr. Goriganti. This report was not of record when the prior decisions were issued in your claim, and therefore constitutes new evidence. In the report Dr. Goriganti states:

On 8/21/04, while [Ms. McLellan] was sweeping a bundles of catalogs came through the shoot [chute] striking down on her right arm. She then went to North Med with instructions to see me. She came to see me with swelling, pain and decreased range of motion the right elbow. I evaluated her on 8/24/2004 for her right elbow related to her 8/21/04 worked related injury.

It is now clear that soon after the claimed injury you were seen by a physician who found you to have swelling and pain and decreased range of motion of the right elbow related to what happened at work on August 21, 2004. In the report Dr. Goriganti diagnosed elbow sprain/strain "following the specific incident of injury on 8/21/04."

Medical evidence has been received that explains that you suffered a right elbow sprain as a result of the incident at work on August 21, 2004 and for this reason the prior decision must be **vacated** and the claim must be **approved**.

Your claim that you sustained an employment injury on August 21, 2004 has been accepted for the condition **right elbow sprain**. The ICD-9 code, which is necessary for medical billing purposes, for this condition is: **841.8**

US POSTAL SERVICE
ALBANY PERFORMANCE CLUSTER
INJURY COMPENSATION OFFICE
30 OLD KARNER ROAD
ALBANY, NY 12288

FELSER LAW FIRM, P C
P O BOX 10267
SAVANNAH, GA 31401

You are entitled to receive continuation of pay (COP) for your work absence from August 22, 2004 through September 8, 2004. Your employer reported that you returned to work on September 9, 2004.

At this time OWCP has not approved as work related any of the other conditions diagnosed by Dr. Goriganti. He does not explain how the left lateral epicondylitis diagnosed is related to the August 21, 2004 incident to your right arm. If you wish to expand the acceptance of this claim to include the condition left lateral epicondylitis as a result of the accepted right elbow sprain, you must submit medical evidence in which the physician explains whether, and in what way, the left lateral epicondylitis is related to the right elbow sprain.

Dr. Goriganti diagnosed bilateral epicondylitis related to the repetitive nature of your employment but he does not explain how the condition is related to what occurred at work on August 21, 2004. If you wish to claim that you suffer from bilateral epicondylitis related to specific requirements of your employment you may do so by filling form CA-2, Notice of Occupational Disease and Claim for Compensation. If you file such a claim, you must describe the specific activities that you perform at work on a daily basis to which you attribute the condition.

On review of the record it is further noted that form CA-2a, Notice of Recurrence, was filed by you on January 4, 2005. You claimed that as of December 3, 2004 you lost time from work intermittently because of the effects of your August 21, 2004 work injury. Each claim filed under the Federal Employees' Compensation Act must be supported by medical evidence in which the physician states the history obtained, findings, diagnosis, and explains whether and how the diagnosed condition and disability are work related. In his report of November 30, 2004 Dr. Goriganti stated that the follow-up visit was for bilateral elbow and shoulder pain but he does not address how these conditions relate to the August 21, 2004 incident at work. If you wish to pursue the recurrence claim you may do so by submitting medical evidence in which the physician explains whether, and in what way, the condition as of November 30, 2004 was related to what happened at work on August 21, 2004.

Enclosed is a notice entitled "Now That Your Claim Has Been Accepted . . ." which provides information about payment of bills, claims for compensation, and other matters pertinent to your claim. If you have any questions about your claim, you may contact this office at the above address.

Sincerely,

David Parks

David Parks
Senior Claims Examiner