

File Number:
HR10-D-H

RECEIVED DEC 30 2010

U S. DEPARTMENT OF LABOR

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

DEC 27 2010

Date of Injury: 06/12/2006
Employee:

Dear Mr. :

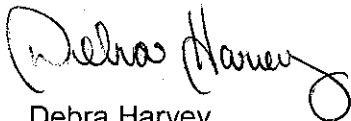
This is in reference to your workers' compensation claim. Pursuant to your request for a hearing, the case file was transferred to the Branch of Hearings and Review.

A hearing was held on 10/18/2010. As a result of such hearing, it has been determined that the decision issued by the District Office should be vacated and the case remanded to the district office for further action as explained in the enclosed copy of the Hearing Representative's Decision.

Your case file has been returned to the Jacksonville District Office. You may contact that office by writing to our Central Mail Room at the following address:

US DEPARTMENT OF LABOR
OFFICE OF WORKERS' COMP PROGRAMS
PO BOX 8300 DISTRICT 6 JAC
LONDON, KY 40742-8300

Sincerely,



Debra Harvey
Hearing Representative

DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WORKERS' COMP DIV-AHL-100
800 INDEP AVE, SW, RM 521,(AHP-500)
WASHINGTON, DC 20591

PAUL H FELSER
ESQ
FELSER LAW FIRM
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
, Claimant, Employed by the United States Department of
Transportation, College Park, Georgia Case No. . Oral hearing was held on
October 18, 2010, in Jacksonville, Florida.*

The issue is whether the evidence of record establishes a causal relationship between the claimed back and/or knee conditions and factors of employment

The claimant, date of birth, , was employed by the Department of Transportation, FAA, in College Park, Georgia, as an Aviation Safety Inspector. He filed the Form CA-2, Notice of Occupational Disease, on August 19, 2008, stating he developed multilevel degenerative disease in his neck, and aggravated his lumbar disc disease and his degenerative joint disease as a result of increased driving, climbing in and around aircraft, lifting and inspecting electronic equipment and files, computer data entry, and writing and editing in the performance of duty.¹ The Office initially denied the claim on November 5, 2008, finding the medical evidence did not establish a causal relationship between the claimed medical conditions and factors of employment. The claimant disagreed with this decision and filed an appeal with the Employees' Compensation Appeals Board

By decision of September 4, 2009, the Board set aside the Office's decision and remanded the case to the District Office for preparation of a Statement of Accepted Facts (SOAF) to include a detailed employment history, job description for each position held, specific functions performed in each position, and restrictions imposed by the treating physician. The Office was then to refer the claimant to either the treating physician or for a second opinion examination for an opinion on causal relationship. The Office prepared a SOAF and referred the claimant to Dr. Alexander Doman who determined his present condition was not affected by an increased workload. The Office again denied the claim for lack of causal relationship on December 16, 2009. The claimant disagreed with this decision and requested an oral hearing before an OWCP Hearing Representative

¹ The evidence of record shows the claimant has an accepted claim for bilateral carpal tunnel syndrome under case number xxxxxx924 for which he is in receipt of medical benefits. He receives compensation for wage loss on the periodic roll under case file number xxxxxx149, accepted for exacerbation of schizoaffective disorder. In addition, case number xxxxxx152 was accepted for bilateral villonodular synovitis of the lower leg and bilateral chondromalacia patella

By decision of March 30, 2010, an Office Hearing Representative remanded the case, finding the Office had not prepared the Statement of Accepted Facts in accordance with the ECAB's decision. She instructed the Office to update the SOAF and send the medical records and SOAF to Dr. Doman for review and a reasoned opinion as to whether the claimant's conditions were aggravated by the work duties. The Office was then to issue a *de novo* decision.

The Office did update the SOAF using the claimant's description of his work duties and referred the claimant, along with the SOAF and the medical record, back to Dr. Doman for another examination. This exam was performed on May 13, 2010. Dr. Doman stated the examination was normal with no objective findings found to indicate any ongoing disability with respect to the knees or lumbar spine. He stated the claimant could work eight hours, full duty. The Office again denied the claim on June 28, 2010, finding the weight of the medical evidence lay with Dr. Doman. The claimant, through his attorney, requested an oral hearing before an OWCP Hearing Representative.

The hearing was held on October 18, 2010, in Jacksonville, Florida. The claimant was not present but was represented by Mr. Felser.

The attorney argued that the claimant has a past, relevant history of accepted bilateral villonodular synovitis of the lower leg and bilateral chondromalacia patellae and has undergone surgeries which were authorized by the Office. He argued that Dr. Doman's reports contained deficient medical histories and did not appear to have given the SOAF its due weight. He noted Dr. Doman did not mention the prior accepted knee claim. He cited the deficiencies he felt existed in the second opinion reports and questioned Dr. Doman's statements the claimant was malingering on examination. Mr. Felser reviewed a progress note from the VA of July 27, 2010, that was to be submitted. He stated this report was in conflict with the report of Dr. Doman.

Mr. Felser was advised that the District Office was attempting to obtain the prior case file from the Federal Records Center and, in addition, was attempting to recreate the case file. The record was left open for 30 days to allow for receipt of additional evidence for consideration.

A copy of the hearing transcript was sent to the Employing Agency on October 27, 2010, for review and comment. There was no response.

A post-hearing brief and additional medical reports were submitted for review.

A June 8, 2010, report from Christopher Connelly, D.C., was received. This report has no probative value as section 8101(2) of the FECA defines the term "physician" to include chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist, and subject to regulation by the Secretary.² Dr. Connelly

² *Jay K. Tomokiyo*, 51 ECAB ____ (Docket No. 98-447, issued March 10, 2000)

did not diagnose a subluxation demonstrated by x-ray. In addition, the claimant was not examined by Dr. Connelly, but, rather, the records were reviewed.

A July 1, 2010, report from Dr. Pran N. Sood, specialist in orthopedics, was received. The claimant was seen for pain in both knees, neck pain, back pain, and pain in both shoulders and upper extremities with numbness. He provided a history of a service-related injury to the knees and low back. He stated the claimant continued to have problems during his employment with the FAA and sustained the prior knee injury in 1994. After the surgery he had "occasional" pain in both knees, low back pain, pain in the neck and pain in the upper extremities. He noted the stress-related and carpal tunnel injuries. On examination, the claimant's gait was painful and "somewhat limited." He had an inability to squat and had mild puffiness of the knees. He had grade 1 patellofemoral crepitus. He had tenderness of the knees. The low back examination showed tenderness, and decreased range of motion. Straight leg raising was negative. The exam of the neck showed tenderness and decreased range of motion. Shoulder examination was normal. He noted the upper extremities were positive for carpal tunnel compression neuropathy. X-rays of the knees were consistent with degenerative joint disease, mild to moderate, tricompartmental. He reviewed MRI scans that showed multilevel lumbar spondylosis with a small disc protrusion at L3-4 and L4-5 with associated stenosis. MRI of the cervical spine also showed multilevel disc disease with spondylosis. EMGs were positive for carpal tunnel syndrome and radiculopathy of the lower extremities. The impressions were: "multilevel musculoskeletal problems secondary to old injuries, recurrent aggravation, and also recurrent fall with aggravation of his knee injuries; lumbosacral injury with aggravation of his lumbar disk disease and herniation, possible radiculopathy; cervical disc disease and spondylosis with upper extremity radiculopathy, and bilateral carpal tunnel syndrome." He stated the claimant is "clearly disabled. Some of his injuries are old and some of his injuries have been aggravated."

The VA report of July 27, 2010, was also reviewed. The history was pain in the back that began in 1983 after he lifted a heavy desk which resulted in a herniated disc. He has suffered with back pain since, "especially in his previous job which required him to drive long distances or sit in small planes." The knee pain has been present since 1982. Results of diagnostic testing were provided. Dr. Shivani Shah stated the claimant had an antalgic gait with cane. He had difficulty with heel/toe walk due to balance issues. He had multiple trigger points through the back. He stated the cervical, thoracic and lumbar spinous processes were non-tender and cervical range of motion was normal. Lumbar range of motion was limited. Straight leg raising tests were negative. Muscle strength was normal throughout the neck and back regions. Range of motion and strength were normal in all four extremities. The assessment was discogenic back pain, myofascial neck and back pain, and bilateral knee degenerative joint disease.

The issue in this claim is whether the claimed conditions are causally related to employment factors by direct cause or aggravation. In deciding whether an injury is covered by the FECA, the test is whether, under all the circumstances, a causal relationship exists between the employment itself, or the conditions under which it is

required to be performed and the resultant injury.³ An award of compensation may not be based on surmise, conjecture or speculation, or a claimant's belief of causal relationship. The mere fact that a disease or condition manifests itself or worsens during a period of employment or that work activities produce symptoms revelatory of an underlying condition that does not raise an inference of causal relationship between the condition and the employment factors. Neither the fact that a claimant's condition became apparent during a period of employment nor the belief that the condition was caused, precipitated or aggravated by the employment is sufficient to establish causal relationship.⁴ Causal relationship must be established by rationalized medical opinion evidence.⁵ Rationalized medical opinion evidence is medical evidence, which includes a physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factor(s). The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁶

The reports from Dr. Sood and from the VA contain differing findings on examination. Dr. Sood provides no explanation for his opinion that some of the claimant's injuries are "old" and some have been aggravated. Dr. Shah of the VA does not establish any causal relationship in his report. These reports are not sufficient to carry the weight of the medical evidence.

I find, however, that the weight of medical evidence cannot lie with Dr. Doman. His report was not based on a complete factual and medical background as he was not afforded copies of the medical records in the prior file for the knee conditions. The Office has attempted to recreate this file by writing to the claimant. Some information has been received from the claimant. While the Employing Agency was sent a copy of the claimant's letter requesting information concerning this injury, the agency was not directly asked to provide copies of documents for this case in its possession.

Therefore, the Office's decision dated June 28, 2010, is hereby SET ASIDE and the case is being REMANDED for additional development. The Office should write the agency and ask for copies of any documents pertaining to the case file number xxxxxx152. Once these documents have been received, the Office should update the SOAF as necessary and send the claimant, along with the complete medical records and SOAF, for a new second opinion examination with an appropriate specialist. The physician should be asked to review all the records and perform a physical examination. He should be asked to provide all findings on examination, along with a firm diagnosis. Any diagnostic testing that the second opinion specialist feels is indicated should be authorized. The

³ *Wilfredo Carillo*, 50 ECAB ____ (Docket No. 97-25, issued October 2, 1998)

⁴ *Michael E. Smith*, 50 ECAB ____ (Docket No. 97-1562, issued March 26, 1999)

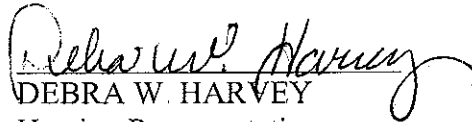
⁵ *James H. Botts*, 50 ECAB ____ (Docket No. 97-464, issued March 1, 1999).

⁶ *Gloria J. McPherson*, 51 ECAB ____ (Docket No. 98-805, issued April 3, 2000)

physician should then provide a reasoned opinion as to whether any or all of the diagnosed conditions are causally related to employment by direct causation, aggravation, acceleration, or precipitation. The Office's definitions should be provided to the specialist. Once the report has been received, and after completion of any additional development deemed necessary by the Office, a *de novo* decision should be issued.

DATE: DEC 27 2010

WASHINGTON, D.C.



DEBRA W. HARVEY

Hearing Representative

For

Director, Office of Workers'

Compensation Programs