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File Number: 112028437
HR10-D-H

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

DEC 19 2006

Date of Injury: 04/20/2005
Employee: AILEEN R. NELSON

AILEEN R NELSON
505 N FILLMORE
LEXINGTON, NE 68850

Dear Ms. NELSON:

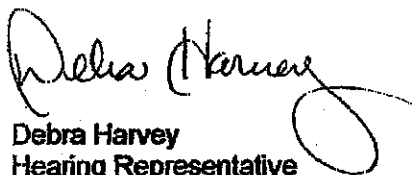
This is in reference to your workers' compensation claim. Pursuant to your request for a hearing, the case file was transferred to the Branch of hearings and Review.

A hearing was held on 10/12/2006. 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.

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 11 KCM
LONDON, KY 40742-8300

Sincerely,


Debra Harvey
Hearing Representative

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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 5 U.S. Code 8101 et seq. of Aileen R. Nelson, Claimant; Employed by the United States Department of Agriculture, Lexington, Nebraska. Case No: 112028437. Hearing was held on October 12, 2006 in Atlanta, Georgia.

The issues in the claim are: 1) whether the office properly denied the requested surgery to remove the coccyx, and 2) whether the office properly terminated compensation benefits under 5 U.S.C 8106(c) for refusal to accept suitable employment.

The claimant, date of birth July 2, 1946, was employed by the USDA in Lexington, Nebraska, as a Food Inspector. She sustained a low back injury on April 20, 2005 when she tripped over trim on the floor. The claimant did not fall, but sustained a twisting injury to her back.

The claimant was initially treated on the date of injury at the Tri-County Area Hospital in Lexington. The history given was the claimant was walking along at work and tripped. "She caught herself. All of a sudden she had a severe degree of back pain." She had low back pain without radiation. There was no pain in the buttocks or down the leg. The diagnosis was a lumbar strain.

The claimant then was seen by her Attending Physician, Dr. Pat Unterseher on April 22, 2005. The history given to Dr. Unterseher was, "I fell at work over some trip @ work on Wed night I twisted to catch myself & I think I pulled some muscles." At this time, pain was increasing over the lower back. The diagnosis was lumbago. On April 25, 2005 Dr. Unterseher stated the claimant was still having back pain. He performed a rectal examination and stated there was tenderness at the coccyx. The diagnosis at that time was "other disorders of coccyx." The claimant was held off work and referred to a neurosurgeon, Dr. Adeleke Badejo.

An MRI of the lumbar spine was performed on May 10, 2005 that showed a compression fracture at the L1 level.

The claim was accepted for a lumbar strain on June 7, 2005.

In a consultation report of June 9, 2005, Dr. Badejo stated the claimant was seen for an acute onset of back pain that started on April 20, 2005 "when she tripped . . . and did not really fall further and then she developed severe low back pain diffusely involving both paraspinal regions lower down." She was prescribed a back brace and was having "very, very minimal discomfort" at the time of this examination. The findings on examination were minimal limitation of flexion of the lumbar spine, as well as extension. Straight leg raising was negative bilaterally. "The rest of the exam was normal." His diagnosis was a compression fracture of the L1, posttraumatic. He stated the claimant could return to work four hours per day by June 20, 2005 for two weeks, and then six

hours per day for two weeks and assume regular duty by the end of the month, but had to wear her back brace. She did return to work six hours per day on June 27, 2006.

However, by July 5, 2005, Dr. Unterseher stated the claimant was "overpowered" by pain at times. He advised her to continue with six-hour workdays.

On July 14, Dr. Badejo recommended a Functional Capacity Evaluation. The FCE was begun on August 11, 2005 and the initial evaluation recommended four weeks of work conditioning, five days per week, four hours per day.

By August 12, 2005, Dr. Unterseher stated the claimant's tailbone pain was minimal and she could return to unrestricted work on August 29, 2005. He then stated that her tailbone pain remained minimal and she "feels better but not well enough to go to work at regular job." She began receiving compensation benefits for wage loss on August 15, 2005.

An MRI of the thoracic spine was performed on September 6, 2005. This was essentially normal.

The discharge report from the FCE was received, stating the claimant was capable of performing "full-time sedentary and some light level work." However, the Office was advised on September 21, 2005 that the "USDA cannot meet any restrictions; employees must be able to do full duty or they don't work."

Dr. Unterseher referred the claimant to Dr. Doak Doolittle, a general surgeon, for evaluation and Dr. Doolittle's opinion as to whether removal of the coccyx was warranted. He stated in a report of November 3, 2005 that the claimant's coccygodynia was "better til sat on edge of bench and she then had a worsening of the problem." In the referral to Dr. Doolittle, Dr. Unterseher described the mode of injury as, "This fine lady has had a fall and had classic coxygodynia was injected 5 times total and she would do much better for a short while only to relapse." He stated, "This fall occurred April 20th of 2005."

Dr. Doolittle examined the claimant on November 7, 2005. His history was, "Aileen Nelson is a 59-year-old white female, who on April 20, 2005 fell on her buttocks on the kill floor at Tyson Foods." Physical examination revealed tenderness throughout the entire lumbosacral and coccyx areas. "Rectal examination showed an extremely tender coccyx." The impression was coccygodynia; however, Dr. Doolittle stated, "but I feel there are other problems that cannot be explained by coccygodynia. The lumbosacral pain, the pain migrating down the left hip are certainly not related to coccygodynia. I believe she received relief from this type of pain with injection of the coccyx simply because of the generalized steroid use. I would be willing to remove the coccyx on this patient with a coccygectomy; however, the patient must be fully aware as well as Dr. Unterseher that it certainly may not help the patient's other symptoms along the lumbosacral spine and also down the left hip."

On November 9, 2005, Dr. Unterseher requested authorization to remove the coccyx and stated he was holding the claimant off work until after the surgery was performed.

In a letter of January 19, 2006, Dr. Unterseher stated, "Please be advised that the patient's claim needs to be expanded to include coccygodynia and a compression

fracture of the L-1 vertebrae as accepted conditions. Both conditions are result of original trauma sustained at work on or about the 20th of April 2005. The patient's original mechanism of injury was falling on to the buttocks area sustaining longitudinal compressive forces from the coccyx through the thoracic spine. This fall caused the associated lumbar vertebra #1 compression fracture, coccygodynia and lumbar strain."

The claimant was placed on the periodic roll on February 7, 2006 and was paid wage loss benefits each 28 days.

The claim was expanded to include an accepted condition of compression fracture, L1. Dr. Dee R. Dorey, specialist in orthopedics, performed a second opinion examination on February 14, 2006. Dr. Dorey was provided with a Statement of Accepted Facts (SOAF) summarizing the case and the complete medical file. He reviewed the SOAF and the medical records. Dr. Dorey stated the claimant initially told him she fell at work "but as I talked with her closely she does not describe a fall to the floor to me nor does the record suggest such." He stated she said her main problems were with her low back and left hip. He diagnosed lumbar sprain, compression fracture of L-1 and left lower extremity radiculopathy related to the employment injury. Dr. Dorey stated the claimant was not able to return to her date of injury job as a food inspector. "The reason is working in the environment of slippery conditions, uneven flooring and handling of knives for a person with radiculopathy and this pain situation is not accepted just from a safety standpoint. She is liable to have her leg give way and cause her to slip and injure herself or someone else. Although the physical requirements she cannot perform either because of the findings of the physical capacity evaluation and on my evaluation today are rather clear to me." He provided work restrictions of 8 hours sitting, four hours' per day walking/standing, 2 hours' reaching, 1 hour reaching above the shoulder, no bending/stooping/twisting or squatting, as well as two hours pushing up to 20 pounds and two hours' pulling/lifting up to ten pounds with ½ hour kneeling.

On March 27, 2006 the District Office's District Medical Advisor (DMA) reviewed the file and stated the requested surgery to remove the coccyx was not indicated, based on the medical evidence of file. The DMA stated the medical histories provided by Drs. Unterseher and Doolittle was incorrect and Dr. Badejo and Dorey never mentioned any problems with the coccyx. The District Office did accept left lower extremity radiculopathy on March 31, 2006.

Since Dr. Dorey provided work restrictions, the claimant was referred for vocational rehabilitation services. The USDA was also provided with a copy of the work restrictions and asked if they could offer a job within the work restrictions.

On April 10, 2006, the District Office denied the request for surgery to remove the coccyx finding the medical evidence of record did not support a causal relationship based upon an accurate medical history between the coccydynia and the employment injury.

On May 7, 2006, the claimant's attorney, Paul Felser, requested an oral hearing on the denial of the surgery.

A June 16, 2006 letter from Dr. Unterseher stated he had reviewed Dr. Dorey's report and agreed with his findings concerning the accepted condition. However, he stated Dr. Dorey was "negligent in not fully evaluating the spine. The lowest part of the spine is the

coccyx and no rectal exam was performed. Without a rectal exam we do not have full evaluation of the spine and thus dissecting out all the components of this low back pain was not done. Due to the fact that most spine surgeons and neurologists have inadequate training to evaluate this area it is not surprising that he neglected to do the rest of the exam." He stated he had performed multiple rectal exams on the claimant and found the coccyx to be mobile and which caused the claimant to have severe pain at the junction of the coccyx and sacrum. He agreed that removal of the coccyx would not alleviate all of her low back pain, stating her low back pain had "multiple etiologies." "The radicular pain does not warrant surgery, but the coccygodynia does."

On June 20, 2006 the Employing Agency offered the claimant a limited-duty job as a Food Inspector - Slaughter (Poultry/Turkey). It required relocation to West Liberty, Iowa, and the agency stated they would authorize relocation expenses.

On July 5, 2006 the claimant responded she questioned the suitability of this position, wanted to confer with her doctor, wanted to inspect the location, wanted information concerning the relocation package, and asked why she could not be placed at a location closer to her home.

Dr. Unterseher provided an addendum to his June 16, 2006 letter on July 13, 2006, stating "the patient Aileen Nelson was seen after a fall at Tyson while working for USDA and had sustained injury to the coccyx and subsequently on examination April 25, 2005 there is a clear cause and effect relationship with fall having caused the mobility and pain of the coccyx." He submitted another statement on July 27, 2006 stating, "I want to declare that there is a definite relationship between the initial trauma 04/20/2005 and the subsequent back problems and the coccygodynia. Thus we have a clear cause and effect relationship of any abnormalities she may have had prior to the incident were asymptomatic and it was only after the incident that she started having pain and problems."

The District Office ruled the offered job was suitable on July 31, 2006. The agency stated this job was the nearest location with an opening within the claimant's medical restrictions.

On August 29, 2006, the claimant, through Mr. Felser submitted a statement contending the offered job was not suitable. He stated that the job was outside of Dr. Unterseher's restrictions, did not consider the coccyx condition, and was over 500 miles from the claimant's residence, as well as the claimant's age (60 years old).

Dr. Unterseher then provided a letter stating he had reviewed the job description and said the claimant could not perform the duties of the offered job due to "excruciating pain when sitting or standing for more than an hour or so. In addition, the patient is on medications that interfere with job performance." He stated she had developed reactive depression and was overwhelmed with pain and disability.

The claimant submitted a letter dated July 31, 2006 requesting her benefits be continued for one year due to pain. Copies of Dr. Unterseher's medical reports were resubmitted.

On September 14, 2006 the District Office advised the claimant that the reasons for refusing the job offer were not acceptable and she had 15 days to accept the position or her benefits could be terminated.

A September 24, 2006 letter from Mr. Felser stated that Dr. Dorey did not review the job offer to determine if it was suitable and that Dr. Dorey's work restrictions were based solely on the accepted conditions and no other conditions were considered. He stated the claimant needed surgery on her coccyx; Dr. Dorey's report was more than seven months old, and Dr. Unterseher was Board Certified with special training in orthopedics.

On October 3, 2006 the District Office issued a formal decision terminating benefits under Section 8106 (c) of the Federal Employees' Compensation Act which states, "A partially disabled employee who refuses to seek suitable work; or (2) refuses or neglects to work after suitable work is offered to, procured by, or secured for him, is not entitled to compensation." The Office found the weight of the medical evidence lay with Dr. Dorey.

The claimant disagreed with this condition and requested an oral hearing before an Office of Workers' Compensation Programs' Hearing Representative. The hearing was initially scheduled for the issue of the denial of the coccyx removal; however, due to the second request on the termination of benefits, both issues were covered during the hearing that was held on October 12, 2006 in Atlanta, Georgia. The claimant did not attend, but was represented by Mr. Felser.

Mr. Felser stated the need for the coccyx surgery had been documented several times by Dr. Unterseher and mentioned the July 27, 2006 in which the doctor stated there was a clear cause and effect relationship between the employment incident and the coccyx condition. He stated the claimant was asymptomatic prior to the injury and then began having problems afterward. The claimant was treated conservatively but did not improve. He stated that Dr. Dorey's second opinion examination was incomplete, as it did not include a rectal examination to diagnose possible coccyx problems.

He stated the suitability decision is erroneous. He stated that it relied on Dr. Dorey's diagnosed conditions only and no other conditions, particularly the coccyx condition. He stated this, in conjunction with the claimant's accepted conditions, show she "clearly is not fit for return to work at this time."¹ He stated Dr. Dorey did not consider the job offer and Dr. Unterseher reviewed the job offer and stated the claimant could not perform the job. He recommended that Dr. Unterseher's report be reviewed and determined to carry equal weight with Dr. Dorey. He stated additional evidence would be forthcoming and the record was held open for thirty days to allow for submission of the evidence.

On October 17, 2006 a medical report from Dr. Doolittle was submitted. This report was dated September 25, 2006 and stated the claimant "apparently fell on her buttocks on April 20, 2005." "My physical examination was completely consistent with Dr. Unterseher's examination and it revealed excruciating pain with movement of the coccyx, both on rectal exam and simply on palpation of the coccyx posteriorly. This is highly consistent with coccydynia." Dr. Doolittle stated he felt Dr. Dorey's examination was incomplete due to a rectal exam not being performed, "I am asking you at this time to please reconsider Aileen Nelson's diagnosis of coccydynia as at least a partial explanation for much of her ongoing pain from the fall on her buttocks sustained on April 20, 2005."

¹ Hearing transcript, page 11.

A copy of the hearing transcript was sent to the Employing Agency on October 19, 2006 for review and comment. The Agency responded on November 7, 2006. The Agency stated they felt the denial of the surgery was warranted as no well rationalized medical opinion had not been submitted to support the surgery was for an employment-related condition. In addition, the Agency stated Dr. Doolittle did not "provide support that the surgery would be medically beneficial to the claimant's work related condition." In addition, the Agency stated the believed the offered job to be a valid and suitable offer in line with Dr. Dorey's work restrictions.

A copy of the Agency's response was sent to the claimant on November 2, 2006. Mr. Felser submitted a copy of an OPM approval for disability retirement for the claimant. Medical records were resubmitted, along with a written response from the claimant dated November 15, 2006. She stated she had problems with the coccyx area from the date of injury and stated Dr. Unterseher had injected her for pain in the coccyx. She stated the "bench incident" occurred in November 2005 due to her being careless. She sat on a picnic bench and leaned back against the table and felt excruciating pain from her coccyx up her back. She went back to Dr. Unterseher who referred her to Dr. Doolittle. She stated she is in severe pain and may have the pain for the rest of her life.

Mr. Felser submitted a post-hearing brief of November 24, 2006. He again stated he felt the reports submitted by Drs. Unterseher and Doolittle carried at least equal weight with Dr. Dorey and should be sufficient to warrant referee examination. In addition, he stated the coccydynia should be considered prior to finding the job suitable, whether that condition was accepted or not.

In this case, the claimant was diagnosed by her Attending Physician, Dr. Unterseher, and by Dr. Doolittle, a surgeon, with coccydynia, based upon a rectal examination. While both these doctors opine for a relationship between this condition and the employment injury, their opinions are based upon an incorrect history of injury. Both stated the claimant's fell onto her buttocks. The evidence of record does not show that there was any fall; rather, the claimant tripped and sustained a twisting injury. As part of the burden of proof, the claimant must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relation.² Thus, this condition cannot be accepted as related to the injury at this time.

However, the two doctors mentioned above have diagnosed this condition. While Dr. Dorey did not diagnose this condition, the evidence of record shows the District Office did not ask Dr. Dorey if this condition was existent. He was merely asked for a current diagnosis. He was specifically asked if the lumbar strain and compression fracture were still active but was not asked if the claimant had any problems with her coccyx. Nor was he asked if he felt surgery to remove the coccyx was indicated. The Federal Employees' Compensation Act *Procedure Manual*, states, "If medical reports in file document a condition which has arisen since the compensable injury and this condition disables the claimant from the offered job, the job will be considered unsuitable (even if the subsequently acquired condition is not work related)."³

In this case, the issue as to whether the claimant has coccygodynia remains unresolved. Therefore, the case will be REMANDED to the District Office for further development on

² Kathryn Haggerty, 45 ECAB ____ (Docket No. 93-1252, issued January 31, 1994).

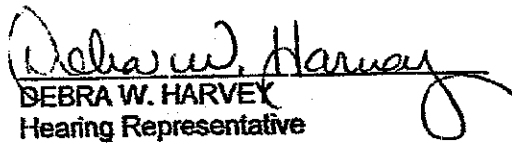
³ FECA *Procedure Manual* 2-814-4 (b)(4).

this issue. The District Office should update the Statement of Accepted Facts (including the incident on the picnic bench of November, 2005) and refer the claimant and the medical file back to Dr. Dorey for another second opinion examination to determine if she does have coccygodynia. He should be asked to perform an examination and tests as needed to determine if the claimant does have this condition. If so, he should provide a reasoned medical opinion as to whether it was related to the employment incident of April 20, 2005 in which the claimant tripped and twisted her body as opposed to falling. If he opines for a causal relationship, he should also state if he feels the proposed removal of the coccyx is indicated. Updated work restrictions should also be provided.

Once this report has been received and after any other development the Office deems necessary, the Office should issue *de novo* decisions as to whether the condition of coccygodynia is causally related to the April 20, 2005 injury, whether surgery for this condition is indicated, and whether the offered job was suitable. Since this condition had never been accepted, reinstatement of compensation benefits is not indicated at this time. Therefore, for the reasons stated above, the decisions of the District Office dated April 10, 2006 and October 3, 2006 are SET ASIDE and the case REMANDED for action as described above.

DATED: DEC 19 2006

WASHINGTON, D.C.


DEBRA W. HARVEY
Hearing Representative
For
Director, Office of Workers'
Compensation Programs