

File Number: 062136324  
HR11-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 5 2006

Date of Injury: 03/02/2002  
Employee: DAVID N. SCHMICK

DAVID N SCHMICK  
308 BRACKIN TRACE  
GRAYSON, GA 30017

Dear Mr. SCHMICK:

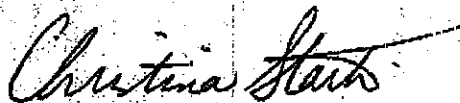
This is in reference to your workers' compensation claim. Pursuant to your request for a hearing, the case file was transferred to the Branch of hearings and Review.

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 6 JAC  
LONDON, KY 40742-8300

Sincerely,



Christina Stark  
Hearing Representative

HOMELAND SECURITY  
IMMIGRATION & CUSTOMS ENFORCEMENT  
FPS-REGION 4-ATLANTA  
77 FORSYTH STREET, SUITE 700  
ATLANTA, GA 30303

PAUL H FELSER  
FELSER LAW FIRM P.C.  
P O 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 David Schmick, Claimant, Employed by the Department of Homeland Security in Atlanta, Georgia. Case No. 062136324.

Merit consideration of the case file was completed in Washington, D.C. Based on this review, the decision of the District Office dated October 2, 2006 is set aside and the case file is remanded for the reasons set forth below.

---

The issue for determination is whether the claimant's recurrence of disability commencing March 1, 2006<sup>1</sup> is causally related to the effects of the accepted work factors.

The claimant, born September 7, 1954, is employed as a Law Enforcement Area Commander for the Department of Homeland Security in Atlanta, Georgia. On December 6, 2004, he filed timely notice of an occupational disease indicating that performance of his federal duties resulted in a low back and right thigh condition. He claimed that wearing an equipment belt (pistol belt) loaded with a sidearm, holster, two magazines, expandable baton, OC spray, etc. resulted in his condition.

The Office accepted the claim for meralgia paresthetica.

He has other OWCP claims. Case 252011317 was filed for a traumatic fall on March 2, 2002 in which the claimant injured his left knee. The case was accepted for a left medial meniscus tear. On March 23, 2006, the Office denied the claim to add a lumbar herniated disc at L4-5 as being related to the March 2, 2002 work injury. On May 25, 2006, the Office denied the additional conditions of postlaminectomy syndrome, lumbar

---

<sup>1</sup>The claimant's work stoppage actually began on December 19, 2005. Compensation for December 13, 2005 to March 1, 2006 was denied, and the claimant did not appeal that decision.

region; pain in soft tissues of the limb; pain in the thoracic spine; unspecified backache; lumbago; unspecified hereditary and idiopathic peripheral neuropathy; and unspecified myopathy. The claimant disagreed with both decisions and requested an oral hearing which was held on October 12, 2006. A final decision has not yet been issued on the claim.

He sustained a fall on January 19, 2005 in which he injured both hands, right elbow, right knee, right shoulder, and back. The claim, 062163031, was denied on June 28, 2006. The claimant has not appealed the decision.

The claimant filed an occupational disease claim for his role in the Hurricane Wilma relief efforts. Claim 062176634 is currently under development.

On July 17, 2002, he underwent lumbar decompressive laminotomy, L4-5, with discectomy and foraminotomy.

On October 22, 2003, the claimant underwent a spinal cord stimulator trial with good success.

On December 8, 2003, he underwent a permanent placement of T9-10 epidural electrode and subcutaneous placement of a neural pulse generator.

On December 9, 2003, the claimant underwent emergency multilevel thoracic laminectomy and removal of epidural electrode and epidural clot and removal of right sided subcutaneous neural pulse generator and cables.

The Office later upgraded the accepted condition in the present claim to include all four of the claimant's surgeries;<sup>2</sup> hematoma complicating a procedure; postlaminectomy syndrome of the lumbar region; and postlaminectomy syndrome of the thoracic region.

On February 15, 2004, agency physician, Dr. Bruce Butler, found the claimant medically ineligible to perform the full range of his regular duties.

On April 13, 2005, Dr. Gerald Rodts, Jr., a neurosurgeon, stated that he has treated the claimant for chronic pain syndrome since 2003. He stated that on December 8, 2003, the claimant underwent an uneventful placement of a spinal cord stimulator

<sup>2</sup>On May 2, 2006, the DMA reviewed the file and determined that all four of the claimant's surgeries should be approved under the present claim.

complicated by a postoperative epidural hematoma. This caused acute paraplegia and complete loss of sensation below T10 and required emergency surgery and removal of the stimulator. On January 28, 2004, he underwent replacement of an indwelling device but developed worsening back and thigh pain. Dr. Rodts diagnosed meralgia paresthetica, post laminectomy syndrome, hematoma complicating a procedure, and pain in the limb. He did not feel that the claimant could continue wearing a pistol belt with equipment.

On January 20, 2006, the Office granted a schedule award for four percent impairment to the right lower extremity.

On March 2, 2006, the claimant filed Form CA-7 to claim compensation for wage loss from December 13, 2005 through March 1, 2006.

On March 27, 2006, the Office requested additional medical evidence to establish disability for work. The Office stated that "Medical evidence establishing disability for work during the entire period claimed is needed. Please arrange to have legible medical evidence contemporaneous to the claimed period submitted." The Office never requested a claim for recurrence or a statement from the claimant regarding why he stopped work.

On May 18, 2006, the Office denied the claim for compensation for the period December 13, 2005 through March 1, 2006. The Office advised that it did not receive any medical evidence to support the claim for disability.

On May 19, 2006, Dr. William Lichtenfeld stated that the claimant's ongoing thoracic pain is related to the work injury of March 2, 2002 and that the back pain is from the laminectomy.

On June 5, 2006, Dr. Elizabeth Mikrut stated that the claimant was unable to work from December 12 to December 20, 2005 and December 27 to January 5, 2006. She diagnosed back pain, muscle spasm, and hyperlipidemia from December 13, 2005 and back pain and muscle spasm from December 27, 2005.<sup>3</sup>

On June 13, 2006, Dr. Keith Osborn submitted a report on the claimant's behalf. He stated that "His diagnosis is that of post laminectomy degenerative pain in the thoracic and lumbar spine. His symptoms have been aggravated by the injury of January 2005 and subsequent long hours and need to physically

<sup>3</sup>The claimant was on approved leave for the week in between.

exert his spine as part of his usual work. The long periods of time in a bullet-proof vest, prolonged periods of sitting and the physical demands of his work are aggravating factors to his condition. These stresses over time cause increased stress on the spine, which is already weakened by the previous laminectomy and causes pain by the combination of work, physical stresses and the underlying weakness and relative instability of his spine. Mr. Schmick is dearly well motivated, given his return to work following the devastating complication of his spinal cord stimulator placement December 8, 2003. Although he has made a valiant effort to maintain his activity level in his work, which he enjoys, his present worsening symptoms are clearly related to the injury of January 2005 and subsequent extremely long hours and physical stresses required through the autumn of 2005. He has reached the point where he is no longer able to work. The present condition of his back does not allow him to safely function in the duties of a supervisory physical security specialist and I have reviewed those for classification 083 and 080. He would be unable to safely protect himself or coworkers or to engage in physical confrontation or the work conditions necessary for his job. His current medications would interfere with his ability to make judgments which could be life threatening to himself or other co-workers. Based on my review of records and my personal care of Mr. Schmick, I believe that his time out of work since December 13, 2005 is medically justified and falls under the musculoskeletal systems standard as well as the neurologic standard given his persistent lumbar radiculopathy in the right leg. Please contact me if you require any additional information."

On June 16, 2006, the claimant filed Form CA-7 to claim compensation for wage loss from March 1, 2006 through June 16, 2006.

On June 19, 2006, Dr. Lichtenfeld stated that he treated the claimant from January 9, 2006 through January 16, 2006 for a complication from a spinal cord stimulator placement. He recommended total disability from work.

On July 12, 2006, the Office advised the claimant of the present medical evidence of record and requested that he submit contemporaneous medical evidence from March 1, 2006 forward that explains why he cannot work and how his inability to work is not due to some other injury.

In an undated report received on July 13, 2006, Dr. Rodts described the December 8, 2003 surgery and its complications hereafter. He opined that the claimant's ongoing thoracic spine pain is related to the work injury of March 2, 2002 (meralgia paresthetica). He recommended that additional diagnoses be added to the accepted conditions in the claim.

On July 14, 2006, Dr. Rodts stated that the stresses of long duration wear of the bullet proof vest and prolonged period of sitting and physical demands of work are aggravating his condition. He concluded that the ongoing thoracic spine pain is related to the work injury of March 2, 2002 (meralgia paresthetica) and that the back pain is secondary to the laminectomy which stemmed from a complication following implantation of the spinal cord stimulator. He again requested that additional diagnoses be added to the accepted condition.<sup>4</sup> He opined that the claimant remains permanently disabled.

On August 21, 2006, the Office discussed the medical evidence received and advised the claimant that he still needs contemporaneous medical evidence beginning March 1, 2006 to explain why he is disabled from work.

On September 22, 2006, the Office denied the claim for compensation for the period beginning March 1, 2006 and continuing. The Office found that the medical evidence was insufficient to warrant acceptance of disability.

After the decision, the Office received a report from Dr. Osborn dated May 11, 2006. In his report, he described the original injury of March 2, 2002 under the prior case in which the claimant injured his knees and back and underwent a right L4-5 laminectomy. Subsequently, he underwent a spinal cord stimulator placement which resulted in complications and another surgery. He stated that the claimant had good recovery and returned to work as a federal officer until December 13, 2005 when he had increasing pain in the thoracic region of the surgery location such that he could not keep functioning. He also described the claimant's fall at work on January 19, 2005 and additional surgery. He examined the claimant and found tenderness throughout the mid thoracic spine and right lower lumbar areas. He found some muscle spasms and limited range of motion of the thoracic and lumbar spines.

<sup>4</sup>This report was received on August 30, 2006, after the Office's last development letter.

Also received after the decision is a report from Dr. Osborn dated January 26, 2006. He examined the claimant and diagnosed degenerative disc disease in the lumbar and thoracic spines. He noted that the claimant has been out of work since the middle of December. Dr. Osborn recommended that the claimant remain out of work due to his thoracic and lumbar pain and instability.

On September 5, 2006, Dr. Lichtenfeld stated that he examined the claimant from January 9 to 16, 2006 and that his pain was made worse by wearing his equipment. He described the implant in December 2003 and noted that it was re-implanted on January 28, 2004. He has been treated for chronic pain ever since. He stated that at the time of his initial evaluation, he felt that the claimant could not perform his duties because he was unable to wear the equipment because of pain and possible sedation and altered level of consciousness from Ultram. On January 16, 2006, Dr. Lichtenfeld recommended treatment at a pain clinic and still opined that the claimant was totally disabled.

On September 5, 2006, the claimant underwent a fitness for duty evaluation with Dr. Joseph Saba. He opined that the claimant cannot perform his full duties. He also recommended a psychiatric evaluation. He stated that his condition arose from a work injury of March 2, 2002 and a significant aggravation of the condition in January 2005.

On September 18, 2006, the agency's physician, Dr. Lawrence Saldino, reviewed Dr. Saba's report and determined that the claimant could not return to full unrestricted duty as a law enforcement officer.

On September 18, 2006, the agency advised the claimant that as a result of a fitness for duty evaluation, he has been found medically unqualified to perform his duties.

On the same date, he filed Form CA-7 to claim compensation from December 27, 2005 through September 16, 2006.

On October 2, 2006, the Office reissued the September 22, 2006 decision to correct a typographical error. However, it did not discuss the various reports received after the decision dated September 22, 2006.

On October 3, 2006, the agency issued a Proposed Removal due to the claimant's inability to perform his full duties. The agency advised that the claimant has been on administrative leave since July 24, 2006.

On October 12, 2006, he filed a claim for compensation from October 12, 2006 through December 20, 2006.

On November 6, 2006, the claimant filed Form CA-2a to claim a recurrence of disability commencing December 13, 2005. He stated that he was deployed from October to November 2005 to support Hurricane Wilma. He worked long hours wearing full police tactical gear which includes full body armor and a full pistol belt. He worked over eighteen hours per day, seven days per week. The strain of the equipment and getting in and out of the car added strain to his thoracic and lumbar spines. He stated that he drove over three hundred miles per day getting in and out of his vehicle. He returned home to Atlanta and attempted to return to work. He saw his physician, Dr. Mikrut, on December 13, 2005. He rendered him disabled for one week. The claimant was already on scheduled leave for the following week. He returned to Dr. Mikrut on December 27, 2005, and he recommended disability and referral to Dr. Lichtenfeld.

The claimant disagreed with the October 2, 2006 decision and requested an oral hearing before an OWCP representative. I find that this case is not in posture for a hearing. Based on my review of the file, the decision of the District Office dated October 2, 2006 should be set aside and the case file remanded for further development.

From the Procedure Manual, Chapter 2-1500-3(b)(1)(a), a recurrence is defined as a spontaneous material change, demonstrated by objective findings, in the medical condition which resulted from a previous injury or occupational illness without an intervening injury or new exposure to factors causing the original illness.

I find that the claimant sustained a new occupational illness and has filed a new claim for the same under case 062176634. It is clear from the record that the claimant's work stoppage beginning December 13, 2005 should have been developed as a recurrence. The Office never developed it as such. The Office merely requested medical evidence to establish disability from work and never asked the claimant to submit a statement surrounding his work stoppage or request completion of Form CA-2a. After the denial, the claimant filed Form CA-2a to claim the December 13, 2005 recurrence but clearly described new occupational work factors commencing in October 2005 during relief efforts following Hurricane Wilma. Two days after filing the recurrence, the claimant filed a new occupational disease

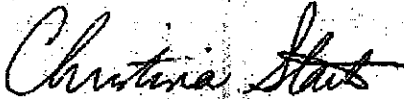
claim for the same factors, and that claim is currently under development.

The claimant's files, 252011317, 062136324, and 062176634 are clearly interrelated and should be doubled for more consistent case management. Evidence from 062136324 should be reviewed in connection with 062176634 for proper adjudication of that claim. Medical records pertinent to 062176634 are located in 062136324.

Therefore, on remand, the Office should combine the above three claims and the Office should issue a de novo decision on claim 062176634 following review of all evidence in the combination of files.

Consistent with the above findings, the decision of the District Office dated October 2, 2006 is set aside and the case file is REMANDED for further action as described above.

DATED: DEC 5 2006  
WASHINGTON, D.C.

  
CHRISTINA STARK  
Hearing Representative  
For  
Director, Office of Workers'  
Compensation Programs