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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: 05/05/1990
Employee: ERNEST R. CHAPMAN

ERNEST R CHAPMAN
1728 LILY POND ROAD
ALBANY, GA 31701

Dear Mr. CHAPMAN:

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

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MARINE CORPS-STATIONS BASES
HRO-MARINE CORPS LOGISTICS BASE
814 RADFORD BOULEVARD, SUITE 20319
ALBANY, GA 31704

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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 Title 5, U. S. Code 8101 et. seq. of Ernest Chapman, Claimant; Employed by the Department of the Navy in Albany, Georgia. Case No. 060488720.

Merit consideration of the case file was completed in Washington, D.C. Based on this review, the decision of the District Office dated August 11, 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 bilateral arm condition is consequentially related to the accepted third degree burn to the left arm.

The claimant, born April 2, 1942, is employed as a Heavy Mobile Equipment Mechanic for the Department of the Navy in Albany, Georgia. On May 7, 1990, he filed timely notice of a traumatic injury sustained on May 5, 1990 when he leaned against a hot transmission on an M60 and burned his arm.

The Office accepted the claim for a burn to the left arm.

On May 21, 1990, he underwent a split thickness skin graft of third degree burns of the left arm.

He returned to regular duty work on May 31, 1990.

On September 21, 2001, Dr. Gerald Kadis submitted a report stating that the claimant has had problems with his neck and low back for a number of years.¹

¹On September 17, 2001, a lumbar myelogram revealed a possible left lateral protrusion of the L5-S1 disc; degenerative L5-S1 disc with reactive sclerosis of the end plates of L5 and S1. A post myelogram cervical CT scan revealed a left sided posterior hypertrophic spurs from C4-7. A post myelogram lumbar CT scan revealed a degenerated L5-S1 disc and spondylosis with mild L5-S1 neural foraminal stenosis.

On September 2, 2003, the claimant filed form CA-2a to claim a recurrence. He claimed that after the injury he felt pain and numbness in the left arm and hand but was able to continue working.

On July 29, 2004, Dr. Kadis stated that the claimant has persistent distal sensory impairment in the left ulnar nerve "probably related to a major burn that he sustained and had to have skin grafts to his left lower arm years ago."²

On April 23, 2004, the claimant filed Form CA-7 to claim a schedule award.

On May 7, 2004, the Office requested an impairment rating from the claimant's physician.

On June 23, 2004, Dr. Bobby Prince submitted a report from referral from Dr. Kadis. He noted the prior history and examined the claimant. He diagnosed ulnar nerve chronic irritation. Dr. Prince stated that the claimant does not have clear entrapment and that his joints are unremarkable. He did not have anything to offer the claimant.

On July 29, 2004, the Office's District Medical Advisor (DMA) reviewed the file and determined that the claimant did not sustain impairment as a result of his accepted condition.

On August 11, 2004, the Office denied the claim for a schedule award.

On August 30, 2004, Dr. Paul Peach noted the prior burn injury with resulting chronic weakness and paralysis. He diagnosed left ulnar neuropathy with combined sensory and motor involvement chronically, secondary to burn injury and cervicolumbar radiculopathy.

The claimant disagreed with the schedule award decision and requested a review of the written record. The Hearing Representative remanded the case for further development of whether the claimant has any ongoing residuals of the work injury and whether he sustained any impairment as a result.

On April 11, 2005, the claimant underwent a second opinion examination with Dr. James Owen, Jr., a board certified orthopedic surgeon. He examined the claimant and diagnosed

²On July 22, 2003, NCV studies revealed neuropathy of the ulnar nerve distal to the cubital tunnel.

post-op cervical fusion for cervical stenosis with residual C7 and C8 dermatome deficits with decreased sensation, intrinsic weakness of the fourth and fifth fingers, and post-op repair of burned tissue, left upper extremity, with split thickness skin graft on the volar aspect of the mid-forearm measuring 10 x 5 cm. and dorsal aspect of the distal forearm measuring 3 x 1 cm. and 3 x 3 cm. He opined that the cervical and left shoulder dermatome deficits are not related to the work injury.

On June 3, 2005, the Office denied the claim for a schedule award.

On November 11, 2005, Joshua Massey, a physician's assistant, submitted a report stating that Dr. Kadis has treated the claimant for cervical radiculopathy and cervical surgery. He stated that Dr. Kadis opined that the major burn resulted in numbness and tingling due to damaged nerves from that injury.

The claimant disagreed with the schedule award decision and requested an oral hearing before an OWCP representative. On January 18, 2006, the Hearing Representative remanded the case for further development based on a conflict in medical opinion between the attending physician and Dr. Owen.

On July 25, 2006, the claimant underwent a referee examination with Dr. C. G. Maitland. He examined the claimant and diagnosed double crush syndrome and pain syndrome consistent with a cervical problem involving the C8 nerve root.

On August 11, 2006, the Office denied the claim for treatment of the arms and neck as a result of the accepted left arm burn. The Office found that the weight of the medical evidence rested with Dr. Maitland.

The claimant disagreed with the 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 August 11, 2006 should be set aside and the case file remanded for further development.

When a case is referred to an impartial medical specialist to resolve a conflict in medical opinion, the opinion of such specialist, if sufficiently well-rationalized and based on a proper factual and medical background, must be given special weight.³

³Juanita H. Christoph, 40 ECAB (1988) [88-1260 issued December 23]; Jason C. Armstrong, 40 ECAB (1989) [89-0224 issued May 11].

In a situation where the Office secures an opinion from an impartial medical specialist for the purpose of resolving a conflict in the medical evidence and the opinion from such specialist requires clarification or elaboration, the Office has the responsibility to secure a supplemental report from the specialist for the purpose of correcting the defect in the original report.⁴

I do not find that the Office properly developed the claim such that a conclusive opinion could be presented. In the present case, the prior Hearing Representative remanded the case to obtain a rationalized medical opinion concerning whether the claimant's neurological disorder of his left upper extremity is due to his work related burn injury or conversely due to his non-work-related cervical condition. If the specialist found that it was due to the work related burn injury, he was to rate the claimant's impairment of the left arm in accordance with the Fifth Edition of the A.M.A. Guides.

Dr. Maitland examined the claimant and determined that he has double crush syndrome stemming from a cervical condition. However, Dr. Maitland never addressed what effect, if any, the accepted burn condition had in the development of his neurological disorder. The Office included the Questions for Determination on the referral sheet for the referee physician, but he did not specifically address those questions in his report. Since Dr. Maitland is a referee physician, he must address the issues posed to him and fully explain his opinion. Therefore, further development is needed.

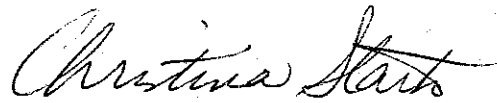
Upon return of the file, the Office should contact Dr. Maitland and request his opinion on whether the claimant's neurological disorder of the left upper extremity is due to the burn injury or to the cervical condition. He agreed that permanent impairment resulted, but he did not provide his opinion on whether the impairment resulted from the accepted work related condition. This, too, should be clarified.

Following completion of any further development the Office deems necessary, it should issue a *de novo* decision on the claim.

⁴Annabelle Shank, 39 ECAB (1988); Ramon K. Farrin, Jr., 39 ECAB (1988).

Consistent with the above findings, the decision of the District Office dated August 11, 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