

**RECEIVED JUN 11 2008**

U.S. DEPARTMENT OF LABOR

EMPLOYMENT STANDARDS ADMINISTRATION  
OFFICE OF WORKERS' COMP PROGRAMS  
PO BOX 8300 DISTRICT 6 JAC  
LONDON, KY 40742-8300  
Phone: (904) 357-4777

June 10, 2008

Date of Injury:

Dear Ms. \_\_\_\_\_ :

This is to notify you that your claim has been accepted for:

*Updated*

Diagnosed condition(s) and ICD-9 code(s): PERMANENT AGGRAVATION OF DEGENERATION OF LUMBAR OR LUMBOSACRAL INTERVERTEBRAL DISC, 72252

**Please advise all medical providers who are treating you for this injury of the accepted ICD-9 code(s). If this code needs to be revised, your doctor should explain in writing. Accurate coding facilitates timely bill processing.**


If your injury results in lost time from work, you may be eligible to receive continuation of pay (COP) until you recover or return to light duty, up to a maximum of 45 calendar days. However, if you are a Postal Service employee, you may be subject to the three-day waiting period mandated by the Postal Accountability and Enhancement Act (Public Law 109-435). If wage loss continues after your entitlement to COP expires, you may claim disability compensation on Form CA-7.

If you have not been released to full duty, have your treating physician provide a medical report that includes appropriate work restrictions and a statement as to when you will be released back to full duty without restrictions.


**TO EMPLOYER: IF A FORM CA-7 CLAIMING COMPENSATION FOR WAGE LOSS IS FILED, YOU ARE REMINDED THAT 20 C.F.R. 10.111(c) REQUIRES SUBMISSION OF FORM CA-7 WITHIN 5 WORKING DAYS. PLEASE SEND A COPY OF THE POSITION DESCRIPTION (INCLUDING PHYSICAL REQUIREMENTS) FOR THE JOB HELD BY THE EMPLOYEE ON THE DATE OF INJURY.**

If you have any questions regarding your claim you may contact the Office at the above address. Automated information regarding compensation payments is available 24 hours per day by phoning 1-866-OWCP IVR (1-866-692-7487). All medical providers should call 1-866-335-8319 for any and all requests for authorization. For all inquiries regarding any and all bills, including claimant reimbursements, contact 1-866-335-8319 or online at <http://owcp.dol.acs-inc.com>. If you, your doctor, or other providers require direct contact with a customer service representative you may call 1-850-558-1818 (THIS IS A TOLL CALL).

Sincerely,

  
John Quarterman  
Claims Examiner

Enclosure: NOW THAT YOUR CLAIM HAS BEEN ACCEPTED

 PAUL H FELSER  
ATTORNEY  
POST OFFICE BOX 10267  
SAVANNAH, GA 31412

UNITED STATES POSTAL SERVICE  
GREATER SOUTH CAROLINA PERF CLUSTER  
INJURY COMPENSATION OFFICE  
PO BOX 929443  
COLUMBIA, SC 29292

RECEIVED APR 01 2008

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

MAR 26 2008

Date of Injury:  
Employee:

Dear Ms. :

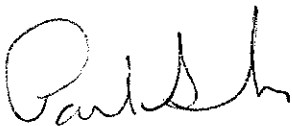
This is in reference to your workers' compensation claim. Pursuant to your request for a hearing, the case file was transferred to the Branch of hearings and Review.

A hearing was held on 01/09/2008. 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  
EMPLOYMENT STANDARDS ADMINISTRATION  
OFFICE OF WORKERS' COMP PROGRAMS  
PO BOX 8300 DISTRICT 6 JAC  
LONDON, KY 40742-8300

Sincerely,



Paula Strange  
Hearing Representative

UNITED STATES POSTAL SERVICE  
GREATER SOUTH CAROLINA PERF CLUSTER  
INJURY COMPENSATION OFFICE  
PO BOX 929443  
COLUMBIA, SC 29292

PAUL H FELSER  
ATTORNEY  
POST OFFICE 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 U.S. Postal Service in Columbia, South Carolina; Case No. \_\_\_\_\_; Hearing was held on JANUARY 9, 2008 in Atlanta, Georgia.*

The issue is whether the claimant sustained an injury on March 19, 2007 in the performance of duty as claimed.

The claimant, \_\_\_\_\_, born \_\_\_\_\_, has been employed with the U.S. Postal Service as a rural mail carrier. On June 21, 2007 she filed a timely Notice of Traumatic Injury and Claim for compensation, claiming that she sustained a sciatic nerve injury on March 19, 2007 while she was processing very heavy mail. She stopped work on March 26, 2007. In a statement accompanying her claim the claimant wrote that she first noticed the pain on March 19, 2007 but that she continued to work until March 26, 2007. She also stated that she believed the repetitive stress of bending and lifting that she performed over many years contributed to her back condition.

Medical evidence introduced in support of the claim includes reports from Dr. Gerald Long, DC, chiropractor. Dr. Long wrote on May 22, 2007 that he had treated the claimant since March 26, 2007 for radiating back pain. He stated that the claimant advised him that she had hurt her back one week prior to the visit when she was lifting heavy mail bags. He diagnosed L3 subluxation. He stated that the claimant's symptoms and pain indicate that the claimant had an injury as she described. Also of record is a report dated June 13, 2007 from Dr. John Hibbitts, MD. Dr. Hibbitts stated that he had been following the claimant for a herniated disc. He opined:

“Although her symptoms reportedly occurred at work, her work activities that require repeated twisting and lifting maneuvers have contributed to herniated disc. I would not say that it was a direct cause. She did have some underlying arthritic changes and those two combined contributed to this problem.”

By letters dated July 7, 2007 the District Office of Workers' Compensation Programs requested that the claimant submit medical evidence to support her claim of injury on March 19, 2007. The Office also advised the claimant of the requirements for chiropractor services.

The Office denied the claim on August 7, 2007.

The claimant's attorney, Paul Felser, requested an oral hearing on the claimant's behalf and submitted additional evidence, including an April 9, 2007 report from Dr. Robert Smith, MD. According to Dr. Smith, Dr. Long took an x-ray. Dr. Smith diagnosed sciatica. He did not opine with regard to causation. In a report dated May 22, 2007 Dr. Smith stated that the claimant did not mention workers' compensation at the time of the first visit on April 9, 2007.

A billing form indicates that an x-ray was taken on April 20, 2007 by Palmetto Bone and Joint PA, and another form shows that Dr. Long took an x-ray on April 6, 2007. Another billing form shows that an x-ray was taken on July 17, 2007. The x-rays reports were not submitted.

Mr. Felser represented the claimant at the Hearing held on January 9, 2008 in Atlanta, Georgia. The claimant did not appear for the Hearing. Mr. Felser acknowledged that the claimant had implicated her repetitive duties as well as the one-time incident of lifting on March 19, 2007. It was also pointed out that the claimant had not explained why she delayed in filing the claim. It was agreed that the record would remain open for 30 days in order that additional evidence might be submitted.

Following the Hearing Mr. Felser submitted additional evidence, including an argument and copies of previously submitted evidence. Also submitted was an August 6, 2007 report from Dr. James Loging, MD. Dr. Loging related that the claimant presented with complaints of back and hip pain that began on March 19, 2007. He stated that the pain started suddenly and there was no injury associated with it. He diagnosed L4/5 disc. Notes from Dr. Hibbitts dated April 27, 2007, May 23, 2007, and July 25, 2007 make no reference to the claimant's employment. In another April 27, 2007 note, however, Dr. Hibbitts related that the claimant complained of pain beginning on March 19, 2007 while she was repeatedly twisting in her postal vehicle.

I have carefully evaluated all evidence of record, to include the Hearing testimony and the evidence submitted after the Hearing. I find that there is now evidence sufficient to compel further case development.

A claimant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which compensation is claimed was caused or adversely affected by factors of the federal employment.<sup>1</sup>

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<sup>1</sup> *Anna C. Leanza*, 48 ECAB \_\_\_ (Docket No. 95-2598, issued October 1, 1996); *Blondell Blassingame*, 48 ECAB \_\_\_ (Docket No. 95-2779, issued October 9, 1996); *Jennifer L. Sharp*, 48 ECAB \_\_\_ (Docket No. 95-379, issued November 25, 1996); *Robert G. Morris*, 48 ECAB \_\_\_ (Docket No. 95-1139, issued December 19, 1996); *Neal C. Evins*, 48 ECAB \_\_\_ (Docket No. 95-558, issued December 24, 1996); *James D. Zurcher*, 48 ECAB \_\_\_ (Docket No. 94-2221, issued January 6, 1997); *Judith J. Montage*, 48 ECAB \_\_\_ (Docket No. 95-51, issued January 15, 1997).

Office regulations specify that reimbursable chiropractic services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-rays to exist. Also included for payment or reimbursement are physical examinations (and related laboratory tests) and x-rays performed by or required by a chiropractor to diagnose a subluxation of the spinal column. A chiropractor may interpret his or her x-rays to the same extent as any other physician defined in this section.<sup>2</sup>

Proceedings under the FECA are not adversarial in nature nor is the Office a disinterested arbiter. The Office has an obligation to see that justice is done. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.<sup>3</sup>

I do not find that the present evidence is sufficient to support the claim. Note that Doctors Hibbitts, Smith, and Loging do not indicate that the claimant sustained an injury on March 19, 2007 as claimed. Dr. Hibbitts concluded that any effects on the claimant's underlying condition were due to general repeated work duties rather than a one time injury. Dr. Smith noted only that the claimant did not initially mention a work injury. He also indicated that the x-ray showed sciatica rather than subluxation. Finally, Dr. Loging indicated that there was no actual injury associated with the onset of back pain.

It is only Dr. Long who found evidence of a March 19, 2007 work injury. He stated that the claimant sustained a subluxation of the spine as a result. There is now evidence that Dr. Long performed an x-ray, but as noted above, the balance of the medical evidence is in contradiction to his conclusions. I find that a second opinion is in order to determine definitively whether the claimant sustained an injury on March 19, 2007 in the performance of duty as claimed. To that regard the Office should obtain the three x-rays mentioned above. The Office should also prepare a Statement of Accepted Facts and refer the claimant, together with the Statement, x-rays and all medical records, to an appropriate Board-certified specialist. The specialist should provide the Office with a rationalized opinion as to whether the claimant sustained an injury on March 19, 2007 due to processing heavy mail on that date. In his report the specialist should discuss all medical records and attempt to resolve the contradictions found therein. He should also review all x-rays and offer an opinion with regard to the diagnosis of subluxation.

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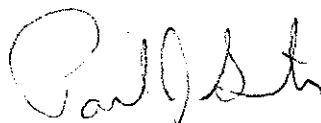
<sup>2</sup> *Beverly G. Akins*, 47 ECAB \_\_\_ (Docket No. 94-2137, issued July 8, 1996).

<sup>3</sup> *Mark A. Cacchione*, 46 ECAB \_\_\_ (Docket No. 93-1038, issued October 21, 1994); *Corlisia L. Sims (Smith)*, 46 ECAB \_\_\_ (Docket No. 93-371, issued October 28, 1994); *Jerry A. Miller*, 46 ECAB \_\_\_ (Docket No. 93-1179, issued November 18, 1994).

When the specialist's report is received, and after any other case development that may become necessary, the Office should issue a *de novo* decision.

MAR 26 2008

DATED:  
WASHINGTON, DC

A handwritten signature in black ink, appearing to read "Paula J. Strange". The signature is cursive and somewhat stylized.

PAULA J. STRANGE  
Hearing Representative  
for  
Director, Office of Workers'  
Compensation Programs