

RECEIVED FEB 08 2010

U.S. DEPARTMENT OF LABOR

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

January 29, 2010

Date of Injury:
Employee:

Dear Ms. _____ :

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

Diagnosed condition(s) and ICD-9 code(s): INTERVERTEBRAL DISC DISORDER WITH MYELOPATHY, THORACIC REGION, 722.72

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.

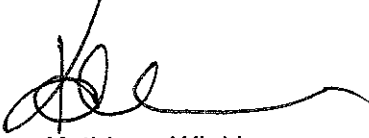
If you have not been released to full duty, have your treating physician provide a medical report that includes appropriate work restrictions and a statement as to when you will be released back to full duty without restrictions.

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,

A handwritten signature in black ink, appearing to read 'Kathleen Winkler', with a long horizontal flourish extending to the right.

Kathleen Winkler
Claims Examiner

Enclosure: NOW THAT YOUR CLAIM HAS BEEN ACCEPTED

UNITED STATES POSTAL SERVICE
ATLANTA PERFORMANCE CLUSTER
INJURY COMPENSATION OFFICE
1605 BOGGS ROAD
NORTH METRO, GA 30026

PAUL H FELSER, ESQ.
FELSER LAW FIRM, P.C.
7 EAST CONGRESS STREET
SUITE 400
SAVANNAH, GA 31401

File Number:
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

RECEIVED SEP 30 2009
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SEP 23 2009

Date of Injury:
Employee:

Dear Ms.

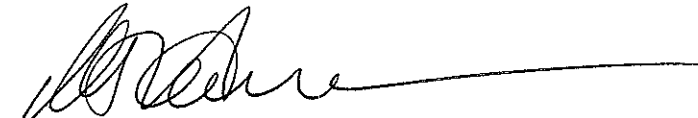
This is in reference to your workers' compensation claim. Pursuant to your request for a hearing, the case file was transferred to the Branch of Hearings and Review

A 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

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,



Karen S. Hunt
Hearing Representative

UNITED STATES POSTAL SERVICE
ATLANTA PERFORMANCE CLUSTER
INJURY COMPENSATION OFFICE
1605 BOGGS ROAD
NORTH METRO, GA 30026

PAUL H FELSER, ESQ.
7 EAST CONGRESS STREET
SUITE 400
SAVANNAH, GA 31401

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 Postal Service, Conyers, Georgia, claim number _____

Merit consideration of the case file was completed. Based on this review, the decision of the district office dated July 13, 2009, is set aside for the reasons set forth below.

The issue is whether or not the claimant sustained an injury causally related to the accepted employment incident of February 23, 2007.

The United States Postal Service employed the claimant, _____, born _____, as a rural letter carrier in Conyers, Georgia. On March 21, 2007, the claimant timely filed a Form CA-1, Notice of Traumatic Injury, claiming that on February 23, 2007, she sustained a back injury while pushing a tray of mail and turning.

The Office denied the claim by decision dated May 14, 2007, for the reason that the evidence failed to establish that the claimant's back condition was causally related to the employment incident of February 23, 2007. The claimant disagreed with the Office decision and requested an oral hearing which was held on October 10, 2007, in Atlanta, Georgia. By decision dated December 11, 2007, the hearing representative remanded the case for further development.

By decision dated November 26, 2008, the Office denied the claim for the reason that the weight of the medical evidence, as represented by the opinion of referee physician, Thomas Cadier, M.D., established that the claimant's thoracic spine condition was not causally related to the February 23, 2007, employment injury. The claimant disagreed with the Office decision and requested an oral hearing.

By decision dated February 2, 2009, the hearing representative set aside the Office decision of November 26, 2008, and remanded the case for additional development. Diagnostic tests of record demonstrated multiple disc herniations in the claimant's thoracic spine. On September 12, 2007, the claimant's treating physician, Sangwook Yoon, M.D., an orthopaedic specialist, opined that the claimant suffered thoracic myelopathy and aggravation to her predisposition to having thoracic disc herniation causally related to the accepted employment incident. On January 29, 2008, Dr. Yoon opined that the claimant's thoracic disc herniation and thoracic spondylosis with myelopathy were directly related to the February, 2007, employment incident. The hearing representative found that the Office did not query Dr. Doman, the second opinion

specialist, or Dr. Cadier, the referee physician, as to whether the February 23, 2007, employment incident aggravated the claimant's underlying condition. The hearing representative further noted that Dr. Doman's statement that the claimant's condition had resolved and had returned to her base line condition suggested that the work incident affected her underlying condition in some way although further clarification was necessary. The decisions of the hearing representatives dated December 11, 2007, and February 9, 2009, provide the relevant case history and describe the relevant evidence and same are incorporated herein by reference.

The Office attempted to obtain supplemental clarifying opinion from Dr. Doman as directed. A memorandum in the case record notes that the Office medical broker had changed in the interim and new second opinion and referee examinations were therefore necessary.

The Office referred the claimant for a second opinion examination with John Bieltz, D.O., a Board-certified orthopaedic surgeon. Dr. Bieltz was provided with a statement of accepted facts and the case medical records. He examined the claimant on June 17, 2009. Dr. Bieltz's report related an accurate factual and medical background. He described the claimant's symptoms and provided physical examination findings and noted results of diagnostic studies. Dr. Bieltz diagnosed multi-level disc extrusion in the cervical, thoracic, and lumbar spine resulting in spinal stenosis at multiple levels. Dr. Bieltz indicated that the claimant sustained a thoracolumbar strain, which had resolved, related to the work incident of February 23, 2007. Dr. Bieltz further stated that the work incident aggravated a pre-existing thoracic condition which he felt was temporary and had resolved, although he did not describe a medical basis for that opinion. Dr. Bieltz stated he did not recommend the proposed surgery unless things became work although the surgery was not based on the February 23, 2007, employment injury.

By decision dated July 13, 2009, the Office again denied the claim for the reason that "it has been established that the claimed medical conditions have resolved and the employee has returned to baseline."

The claimant again disagreed with the Office decision and by letter dated July 13, 2009, her attorney, Paul Felser, requested an oral hearing.

I have reviewed the evidence of record and find that the Office decision of July 13, 2009, must be set aside as the Office failed to identify and resolve an existing conflict of medical opinion.

A claimant seeking compensation under the FECA has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, including that any specific condition or disability for work for which compensation is claimed is causally related to the employment injury.¹ An award of compensation may not be based on surmise, conjecture or speculation or upon appellant's belief that there is a causal relationship between his condition and his

¹ *Jacquelyn L. Oliver*, 48 ECAB ____ (Docket No. 94-2519, issued December 18, 1996).

employment. To establish causal relationship, appellant must submit a physician's report in which the physician reviews the factors of employment identified by appellant as causing his condition and, taking these factors into consideration as well as findings upon examination of appellant and appellant's medical history, state whether these employment factors caused or aggravated appellant's diagnosed conditions and provide medical rationale in support of his opinion.²

Section 8123(a) of the Act provides that when there are opposing medical reports of virtually equal weight and rationale, the case must be referred to an impartial medical specialist to resolve the conflict in medical opinion.³

The claimant's treating physician, Dr. Yoon, opined that the claimant's thoracic spine disc herniations and stenosis were caused or aggravated by the accepted employment incident of February 23, 2007. Dr. Doman, who acted as an Office second opinion physician, suggested that the employment incident affected underlying thoracic disc herniations.⁴ As the Office was unable to obtain clarification of Dr. Doman's opinion on remand it referred the claimant for a new second opinion evaluation to consider the issue. Dr. Bieltz, the second opinion physician, indicated that the claimant sustained a thoracolumbar strain, which had resolved. Dr. Bieltz further opined that the accepted work incident temporarily aggravated a pre-existing thoracic spine condition which had resolved although he did not provide medical reasoning in support of his opinion. There exists an unresolved conflict of medical opinion between Drs. Yoon and Bieltz as to whether or not the accepted employment incident aggravated the claimant's diagnosed thoracic disc herniations and myelopathy, and if any such aggravation was temporary or permanent.

On remand, the Office should refer the claimant for an impartial medical examination by a Board-certified orthopaedic surgeon to resolve the existing conflict in medical opinion. The referee specialist should be provided with the case record, a statement of accepted facts, appropriate questions for response, and the Office's accepted definitions of the types of causal relationship and aggravation. The referee specialist should be requested to provide fully rationalized opinion as to whether the claimant sustained thoracic spine disc herniations and /or myelopathy causally related to the accepted employment incident. If the referee opines that the work incident aggravated an underlying or pre-existing condition, he or she should explain whether or not the aggravation was temporary or permanent, and, if temporary, whether the aggravation has ceased. The referee should also provide reasoned opinion as to whether surgery is warranted related to a condition causally related to the accepted employment incident. Following any additional development deemed necessary, the Office should issue a new decision regarding the claimant's entitlement to benefits.

² *Donald W. Long*, 41 ECAB ___ (Docket No. 89-1467 issued October 30, 1989).

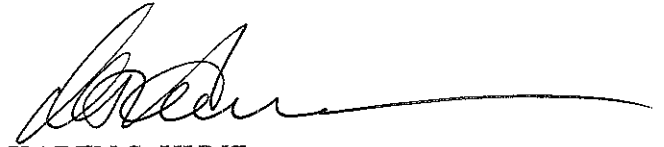
³ *William C. Bush*, 40 ECAB ___ (1989) (Docket No. 89-0449 issued July 10, 1989)

⁴ Dr. Cadier, the prior referee physician, opined that the claimant suffered a lumbar strain which had resolved and any residual complaints were related to chronic degenerative congenital spine problems.

Accordingly, the decision of the Office dated July 13, 2009, is hereby set aside and the case record is returned to the district office for actions as outlined above.

DATED: SEP 23 2009

WASHINGTON, D C.

A handwritten signature in black ink, appearing to read 'Karen S. Hunt', with a long horizontal flourish extending to the right.

KAREN S HUNT
Hearing Representative
For
Director, Office of Workers'
Compensation Programs