

File Number:
HR12-D-H

U.S. DEPARTMENT OF LABOR

OFFICE OF WORKERS' COMP PROGRAMS
PO BOX 8300 DISTRICT 50
LONDON, KY 40742-8300
Phone: (202) 693-0045

JUN 30 2011

RECEIVED JUL 05 2011

Date of Injury: 05/08/2009
Employee:

Dear Mr. :

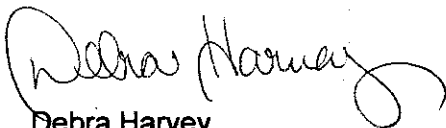
This is in reference to your workers' compensation claim. Pursuant to your request for a hearing, the case file was transferred to the Branch of Hearings and Review.

A hearing was held on 04/11/2011. Based upon that hearing, it has been determined that the decision of the District Office should be reversed as outlined in the attached 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
OFFICE OF WORKERS' COMP PROGRAMS
PO BOX 8300 DISTRICT 6 JAC
LONDON, KY 40742-8300

Sincerely,



Debra Harvey
Hearing Representative

DEPARTMENT OF HEALTH & HUMAN SERVICES
CENTER FOR DISEASE CONTROL
ATLANTA HUMAN RESOURCES CENTER
1600 CLIFTON ROAD, NE
ATLANTA, GA 30333

PAUL A. FELSER
ESQ
FELSER LAW FIRM
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
Claimant; Employed by the Center for Disease Control, Atlanta, Georgia. Case No.
Oral hearing was held on Jacksonville, Florida, on April 11, 2011.*

The issue in this case is whether the District Office properly terminated benefits finding no continuing employment-related disability.

The claimant was employed by the Center for Disease Control in Atlanta, Georgia, as a Laboratory Worker. He initially sustained an injury to his cervical spine on October 1, 2003, after lifting and dumping material. This claim was accepted for a herniated cervical disk on March 23, 2004. The claimant underwent an anterior cervical fusion at the C5-6 level in 2004. He was paid compensation benefits for wage loss after the surgery. He was released to limited duty in May 2005 and continued to work a limited duty position. He was paid schedule award benefits for a 25% impairment of the left upper extremity.

He filed the Form CA-2a, Claim for Recurrence, on May 8, 2009, stating his duties had been changed in March 2009, and he had increased pain due to lifting, bending, and pushing. He stopped working on May 20, 2009. The District Office determined this was not a recurrence and created a new claim under the instant case file number.

The claim was accepted for a neck sprain and post cervical laminectomy syndrome. He was paid compensation for wage loss for the period May 26, 2009, through July 12, 2009. His treating physicians continued to hold him off from work stating he will hurt and be weak permanently.

The District Office prepared a Statement of Accepted Facts (SOAF) on October 13, 2010. The SOAF described the instant injury but failed to describe the prior injury. The SOAF did state that while the claimant was working light duty recovering a prior cervical injury, he experienced pain in his neck. The SOAF stated the claim was accepted for cervical sprain and cervical post laminectomy syndrome. The SOAF stated that cervical degenerative joint disease, cervical HNP, depression, and chronic pain syndrome had not been accepted. The SOAF failed to mention the prior cervical injury was work-related, that a claim had been filed and accepted for a herniated cervical disc, that the claimant underwent an Office-approved cervical fusion, and that the claimant had received schedule award benefits for 25% impairment to the left upper extremity as a result of the accepted prior claim.

The claimant was referred to Dr. Alexander Doman, orthopedic specialist, for a second opinion examination. Dr. Doman was provided a copy of the SOAF and the medical records in the instant claim. Dr. Doman was asked if the work-related cervical sprain and cervical post laminectomy

syndrome had resolved and to provide objective findings in support of his opinion. He was asked if the "work-related injury of 05/08/2009 has resolved and the claimant's current condition is due to a natural progression of age or non work-related Degenerative conditions?" He was also asked if "any of Mr. [redacted]'s current cervical orthopaedic conditions" were causally related to the accepted work injury "as described in the statement of accepted facts." He was asked if the claimant had any residuals that would prevent his from returning to his date of injury position.

Dr. Doman's report was dated November 3, 2010. He stated he reviewed the SOAF and the medical records. He stated the claimant "subjectively limits his range of motion of cervical spine. He has obvious cogwheeling, giving way and intentional weakness with strength testing of both upper extremities. There are no signs, however, of any objective muscular atrophy." He had intact grip strength, reflexes, and strength and full range of motion of the shoulders, elbows, and wrists.

The diagnosis was solid cervical fusion at the C5-7 levels. Dr. Doman stated the accepted cervical sprain and post laminectomy syndrome from the May 28, 2009, injury has fully resolved. "It is my opinion that this claimant sustained a temporary aggravation of his underlying post-laminectomy syndrome of his cervical spine and that this condition has long ago resolved." He stated that the claimant's current condition was a "natural progression of his non-work related degenerative spine condition. This claimant has had a longstanding preexisting cervical spondylosis that resulted in cervical spine fusion. MRI is showing further mild degenerative changes in the levels above the cervical spine fusion. This condition would not have been permanently aggravated by the injury that he describes it at work. The cervical sprain is a temporary self-limited disorder." He stated the claimant had no residuals from the May 2009 injury and could return to full duty.

On November 17, 2010, the District Office issued a Notice of Preliminary Termination of Benefits, finding the weight of evidence lay with Dr. Doman. The claimant was allowed 30 days to provide supporting evidence if he disagreed with the decision. No evidence was received and the termination of wage loss and medical benefits was finalized on December 20, 2010, effective that date. The claimant disagreed with the decision and through his attorney, Paul Felser, requested an oral hearing before an OWCP Hearing Representative.

The hearing was held on April 11, 2011, in Jacksonville, Florida. The claimant was not present at the hearing but was represented by his Mr. Felser.

Mr. Felser stated he provided a response to the Notice of Proposed Termination of Benefits but his response was not considered. (A review of the file shows this response was not received until December 21, 2010, one day after the final decision had been issued.)

Mr. Felser argued that Dr. Doman provided conclusions with out support for those contentions. He stated that his conclusions did not appear to be consistent with the facts of the case.

He stated this brief he had submitted summarized his response to the notice of termination. He argued that Dr. Doman stated the underlying post laminectomy syndrome had been temporarily aggravated but the Office and Dr. Doman failed to acknowledge that the post-laminectomy syndrome was the direct result of the prior accepted claim. He noted Dr. Doman diagnosed the claimant with the longstanding pre-existing cervical spondylosis that resulted in the fusion. He stated that the SOAF was incomplete and Dr. Doman did not have an understanding that the continuing condition was a result of the prior accepted injury. He stated the claimant's benefits were erroneously terminated and requested a "favorable resolution" of the claim.

The record was left open for 30 days to allow for receipt of additional evidence for consideration. A copy of the hearing transcript was sent to the Employing Agency for review and comment on April 21, 2011, for review and comment. There was no response and no additional evidence was received for consideration.

I have carefully reviewed all the evidence in both files and find the Office's decision dated December 20, 2010, must be REVERSED and benefits must be reinstated.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation.¹

In this case, the Office accepted a cervical strain and post-laminectomy syndrome as related to the employment injury of May 8, 2009. The Office prepared a SOAF in order to refer the claimant for a second opinion examination. However, the SOAF, as prepared, is deficient in that it makes no mention of the prior accepted claim, the authorized surgery, or the impairment rating provided in that claim.

The purpose of a statement of accepted facts is to allow a physician to form an impression of the individual and evidence to be evaluated. The statement of accepted facts should state the conditions claimed and accepted by the Office, so the physician can assess whether the diagnoses given in the medical evidence to be reviewed, as well as his own diagnoses, are consistent with the condition(s) for which the claim was filed or accepted.² It is the Office's responsibility to provide a complete and proper frame of reference for a physician by preparing a statement of accepted facts.³

The *FECA Procedure Manual* states in Chapter 2-0809-10(d)(2), states, "The CE must make findings which take into account all relevant evidence. Disregarding factual information will diminish the validity of the SOAF even though the omission might not have materially affected the outcome. The ECAB has remanded cases because facts were omitted and the OWCP could not prove that the decision was not compromised as a result (see Richard A. Sroka, 35 ECAB 209). A greater injustice may be done if a benefit is denied as the result of selective incorporation of evidence, and the case is not appealed." Paragraph 11 (c) of the *Procedure Manual* states that, "Facts should be complete in all essentials. Omission of a critical fact diminishes the validity of a medical opinion or decision as much as an incorrect statement."

¹ *Roberto Rodriguez*, 50 ECAB ____ (Docket No. 96-966, issued October 12, 1998).

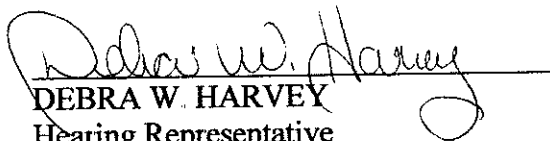
² *Gwendolyn Merriweather*, 50 ECAB ____ (Docket No. 97-2137, issued June 3, 1999).

³ *Donald E. Ewals*, 51 ECAB ____ (Docket No. 98-2180, issued April 3, 2000).

Since the SOAF is deficient, I find that Dr. Lotman's second opinion report, upon which the termination of benefits is based, has no probative value. The weight of medical evidence is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested, and the medical rationale expressed in support of the opinion.⁴ Dr. Lotman's report was not based on a complete knowledge of the facts and medical history of this claimant.

Therefore, I find the Office did not meet its burden to terminate benefits. The Office's decision is hereby REVERSED for the reasons set forth above. The file is returned to the District Office for reinstatement of benefits as appropriate.

DATED: JUN 30 2011
WASHINGTON, D.C.


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

⁴ *Anna C. Leanza*, 48 ECAB ___ (Docket No. 95-2598, issued October 1, 1996).