

U.S. DEPARTMENT OF LABOR

EMPLOYMENT STANDARDS ADMINISTRATION  
OFFICE OF WORKERS' COMP PROGRAMS  
PO BOX 8300 DISTRICT 13 SFC  
LONDON, KY 40742-8300  
Phone: (415) 848-6700

March 6, 2006

Date of Injury: 02/11/2002  
Employee: ANITA HAMIC

Dear Ms. HAMIC:

This concerns your compensation case and your request for reconsideration received 03/09/2005.

We have evaluated the evidence submitted in support of your request for review. Your case has been reviewed on its merits under Title 5, United States Code, Section 8128, in relation to your application including supporting evidence. It is determined that the weight of medical evidence no longer rests with the second opinion physician. All benefits will be restored while further development is being pursued.

The reasons for this decision are outlined in the enclosure.

Therefore, the decision dated 11/16/2004 is vacated. Your case will be reopened for medical treatment and compensation for wage loss will be initiated.

Sincerely,



Sheree Foster  
Senior Claims Examiner

US POSTAL SERVICE  
SANTA BARBARA MGT SECT CNTR  
ATTN: INJURY COMP OFFICE  
28201 FRANKLIN PKWY  
SANTA CLARITA, CA 91383

STEVEN E BROWN  
✓ 850 HAMPSHIRE ROAD SUITE G  
WESTLAKE VILLAGE, CA 91361

MEMORANDUM TO THE DIRECTOR  
IN THE CASE OF ANITA HAMIC  
FILE # 132047886  
March 6, 2006

The issue for determination is where there is sufficient evidence to warrant modification of the 11/16/04 decision.

By reference, the final termination decision of 11/16/04 and the proposed termination notice dated 10/14/04 are hereby incorporated into this Memorandum to the Director for a history of the claimant's injury and reasons for termination.

Briefly, on 11/16/04, it was determined the second opinion carried the weight of medical evidence and that objectively based residuals medically connected to the incident on 2/11/02 had ceased. A final decision was issued on that date terminating eligibility for medical and wage loss benefits.

The claimant disagreed with that decision, and through her representative, requested reconsideration of the 11/16/04 decision in a letter dated 2/28/05, which was received in our Office on 3/9/05.

In addition to the 9 page reconsideration request from Steven Brown's office, multiple documents have been submitted to the file since the 11/16/04 decision was issued. The most significant of these include a Functional Capacity Evaluation dated 11/15/04 indicating that the claimant can work with limitations; a report from Dr. Hartman dated 12/29/04 in which he provides his opinion of the video taken by Postal Inspectors; witness statements that contradict the heavily edited video tape and testimony submitted by the Postal Inspectors; the 3/17/05 Notice of Separation from the post office; and a report from Dr. Hartman dated 9/7/05 in which it was noted the claimant takes her clothes off to use the lymphedema pump.

We have evaluated the evidence submitted in support of the reconsideration request. As the evidence submitted is new and relevant, a merit review of the case was conducted. In his initial second opinion report dated 7/26/04, Dr. Boeck noted that the claimant was totally disabled. When informed that the employer was able to provide light duty, he submitted a supplemental report dated 9/3/04 in which he indicated that the claimant could go back to work in a sedentary position and provided work restrictions. At this point, the video that was submitted by the Postal Inspectors and a revised SOAF that was updated to describe the events shown in the video, were sent to Dr. Boeck to determine if his opinion regarding her physical limitations would be affected by what he saw in the video. In another supplemental report dated 9/22/04, Dr. Boeck indicated that, based on his review of the 13 minute video and the revised SOAF, he did not see any objective evidence of disability or physical limitations, that the claimant did not have the residuals noted in his previous report, and that she was able to return to regular work. This was the basis for the termination of benefits on 11/16/04.

As noted above, we have received witness statements that directly contradict the Postal Inspectors statements about the claimant standing for two hours. She was taped over a three day period, but only 13 minutes of tape were submitted. While it may be an objective representation of what she was doing at that particular moment, it is not an objective representation of her condition or of what she would be able to do for longer than 13 minutes. The video shows her bending at the waist, walking, standing and sitting. While there are captions added by the Postal Inspectors to explain what the claimant is doing and how long she is doing it, we do not actually see the claimant performing the action for the period indicated. For example, one caption indicated that the claimant was standing and talking to other parents for two hours without sitting. However, we do not actually see the claimant standing for two hours. Further, even though the caption said that she didn't sit during this

period, the claimant is clearly seen getting into her car at least once and sitting for an unidentified period of time.

It is determined that the second opinion report from Dr. Boeck cannot be found to carry the weight of medical evidence. Dr. Boeck provided this opinion regarding residuals without reexamining the claimant; did not provide any rationale to support his new opinion and did not attempt to describe what he saw in the video that led him to revise his opinion. Further, the change in his opinion came about as a result of the heavily edited video with captions that are at odds with the statements submitted by witnesses.

Recommendation: That the decision of denial dated 11/16/04 be vacated and this claim be reopened for medical and monetary benefits. Compensation will be reinstated, beginning on 11/16/04.



Sheree Foster  
Senior Claims Examiner

File Number: 132047886  
EN1049 O-P

U.S. DEPARTMENT OF LABOR

EMPLOYMENT STANDARDS ADMINISTRATION  
OFFICE OF WORKERS' COMP PROGRAMS  
PO BOX 8300 DISTRICT 13 SFC  
LONDON, KY 40742-8300  
Phone: (415) 848-6700

March 6, 2006

Date of Injury: 02/11/2002  
Employee: ANITA HAMIC

ANITA HAMIC  
2091 BRENTWOOD ST  
SIMI VALLEY, CA 93063

Dear Ms. HAMIC:

This letter outlines your entitlement to compensation benefits and your responsibility to return to work in connection with the injury identified above.

#### PAYMENT OF COMPENSATION

The Office of Workers' Compensation Programs (OWCP) will pay you compensation benefits under the conditions set forth below.

Weekly rate of pay used to compute gross compensation: \$819.90

Percentage of rate of pay: 75 %

Cost-of-living adjustments have increased your gross weekly compensation to: \$646

First Payment:

For Period from 11/16/2004 to 02/18/2006

Gross Amount: \$42132.68

Health Benefits: \$0

Basic Life Ins: \$223.23

Optional Life Ins: \$0

Net Amount: \$41909.45

US POSTAL SERVICE  
SANTA BARBARA MGT SECT CNTR  
ATTN: INJURY COMP OFFICE  
28201 FRANKLIN PKWY  
SANTA CLARITA, CA 91383

STEVEN E BROWN  
850 HAMPSHIRE ROAD SUITE G  
WESTLAKE VILLAGE, CA 91361

Regular Payment:

For Period from 02/19/2006 to 03/18/2006

Gross Amount: \$2584

Health Benefits: \$0

Basic Life Ins: \$13.50

Optional Life Ins: \$0

Net Amount: \$2570.50

If you have optional life insurance and/or health benefits coverage, but no deduction for it is shown above, contact this office immediately. You are still responsible for these premiums.

RECOVERY AND RETURN TO WORK

Acceptance of your claim and payment of compensation do not change your employment status with your employing agency. Unless your agency has told you otherwise, you are still its employee and subject to its personnel rules.

Compensation benefits for total disability are payable only while you cannot perform the duties of your regular job because of your injury at work. The Federal Employees' Compensation Act (FECA) is not a retirement program, and you are expected to return to work (including light duty or part-time work, if available) if you are no longer totally disabled because of your injury. The FECA provides that a partially disabled employee shall be paid compensation based on the difference between the monthly pay and the employee's wage-earning capacity, as determined by the employee's actual earnings or by the OWCP.

1. If you have not done so, ask your employing agency whether light or limited duty work is available for partially disabled employees, and whether your usual job can be changed to meet your work limitations due to the injury.

If the answer to either of these questions is yes, ask your physician whether and when you will be able to perform these duties. Once you can perform light or limited duty, you should report to your agency seeking such duty.

2. If you receive an offer of light or limited duty from your agency, advise the OWCP in writing of your decision either to accept or refuse the position offered at the time that you notify your agency. Refusal by a partially disabled employee to seek, accept, or continue suitable work is lawful grounds for the reduction or termination of compensation.
3. If the OWCP learns that you have earnings equal to or higher than the wages being paid for the job you held when injured, the OWCP will terminate your compensation benefits without notice.

File Number: «CaseNumber»  
EN1049

OTHER IMPORTANT INFORMATION

The enclosure to this letter (EN1049) contains other important information about your compensation payments. After you have read it, sign one copy of the certification and send it to this office.

If you have any questions concerning your claim, contact this office at the address or telephone number noted above.

Sincerely,



Sheree Foster  
Senior Claims Examiner

Enclosure(s): EN1049

Employee: ANITA HAMIC

#### OTHER IMPORTANT INFORMATION

Read the following information carefully, and keep it for future reference. If you have question, contact this office at the address or telephone number shown on the front of this letter.

1. **HOW COMPENSATION IS PAID.** Compensation benefits are paid each four weeks. The OWCP approves the payment and the Treasury Department issues it. Your first payment will be sent within 15 days. Regular payments will be dated the last day of the four-week period for which payment is made. **DO NOT** file claims unless you are asked to do so.
2. **DELIVERY OF PAYMENT.** If you do not receive a payment within 10 days after it is due, notify the OWCP at the address shown on the front of this letter. In the letter, include your file number, your address (with ZIP code), and the amount of the payment. Your signature must appear on the letter.
3. **DIRECT DEPOSIT.** If you are not yet receiving your payments by electronic fund transfer (EFT or direct deposit), please so advise the OWCP. We will then send you a sign-up form for direct deposit (you may also be able to obtain one from your bank).
4. **CHANGE OF ADDRESS.** If you change the address used for your payments, notify the OWCP at the address shown on the front of this letter. In the letter, include your file number, the old address, and the new address (with ZIP code). Your signature must appear on the letter. Also, promptly advise the OWCP of any change in your mailing address, if different from the check address.
5. **CHANGE IN STATUS OF DEPENDENT.** If you have one or more dependents, and the status of any dependent changes, notify the OWCP at the address shown on the front of this letter. In the letter, include your file number, the name of the dependent whose status changed, the effective date of the change, and the nature of the change in status. Your signature must appear on the letter.

If you claimed only one dependent, **DO NOT CASH CHECKS RECEIVED AFTER THE CHANGE IN STATUS** of this dependent. Otherwise, an overpayment of compensation may result. Return the checks promptly to this office.

6. **RETIREMENT BENEFITS.** You must report to the OWCP any retirement income you receive from any Federal agency. This is because a person who receives compensation benefits under the FECA is not permitted to receive benefits under the Civil Service Retirement System (CSRS) or the Federal Employees' Retirement System (FERS).

If you are covered under FERS, the OWCP must deduct from your compensation entitlement at least part of any Social Security Retirement benefits to which you are entitled based on age. This is because a portion of FERS benefits is included in Social Security retirement benefits. Therefore, advise the OWCP immediately upon filing for or receiving Social Security Retirement benefits.

7. OTHER COMPENSATION AND DISABILITY BENEFITS. If you have filed for or receive other compensation or disability benefits (for example, black lung benefits or veterans' benefits) from any Federal agency, advise the OWCP of the name of the Federal agency and the nature of the disability involved.
8. RETURN TO WORK. Advise the OWCP if you return to your former job. If you obtain other work, either with your original employing agency or with another employer, submit the following information to the OWCP at once:
  - A. Name and address of employer
  - B. Date you returned to work
  - C. Type of work you are performing
  - D. Number of hours worked per week
  - E. Your weekly pay rate

Your pay rate should include not only cash wages, but also "wages in kind", such as housing, meals, clothing, and reimbursable expenses. If you are self-employed (for example, as a farmer or a store operator), you must report as your pay rate what it would have cost you to hire someone else to do the same work.

9. OVERPAYMENTS. To minimize the possibility of an overpayment of compensation, NOTIFY THIS OFFICE IMMEDIATELY WHEN YOU GO BACK TO WORK. Each payment shows the period for which payment is made. If you have worked for any portion of this period, return the payment to this office, even if you have already advised the OWCP that you are working.

#### NOTICE TO EMPLOYEES COVERED BY THE CIVIL SERVICE RETIREMENT SYSTEM

Disability compensation payments under the FECA are temporary in nature. If the OWCP reduces, further reduces, or terminates your compensation payment, you may wish to elect retirement benefits in the future. In the event of your death, compensation is not payable to your survivors unless they establish that your death resulted from the accepted job-related medical condition.

The Office of Personnel Management (OPM) administers the Civil Service Retirement System. The OPM has asked us to remind you that if you remove your contributions from the Retirement Fund, you lose all entitlement to a Civil Service annuity and your survivors lose all entitlement to a Civil Service survivorship annuity.

If you have any questions about the consequences of taking a refund of your retirement contributions, contact the Office of Personnel Management, Compensation Group, Retirement Operations, Washington, D. C. 20415.

CERTIFICATION

I have read the information contained in EN1049 and understand the conditions under which I may receive compensation and the items I must report to the Department of Labor, Office of Workers' Compensation Programs, in connection with my claim. I agree to be bound by these conditions.

I understand that willful failure on my part to comply with these conditions can result in termination or forfeiture of benefits and liability for resulting overpayments. I am also aware that any falsification or willful omission may result in criminal prosecution.

Signature(in ink )

\_\_\_\_\_ Date \_\_\_\_\_