

File Number:
HR10-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

FEB 28 2011

Date of Injury: 08/23/2007
Employee:

RECEIVED MAR 04 2011

Dear :

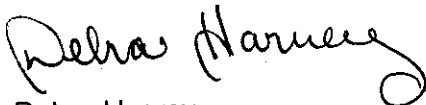
This is in reference to your workers' compensation claim. Pursuant to your request for a hearing, the case file was transferred to the Branch of Hearings and Review

A hearing was held on 12/06/2010. 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 Seattle 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 14 SEA
LONDON, KY 40742-8300

Sincerely,



Debra Harvey
Hearing Representative

PAUL H FELSER, ESQ
FELSER LAW FIRM, PC
7 EAST CONGRESS ST, 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 _____
Case No. 142062395. Oral hearing was held on December 6, 2010, in Jacksonville, Florida

The issue is whether the District Office properly denied the claim for a consequential psychiatric condition.

The claimant, date of birth, _____, was employed by the _____ in _____, as a _____. She filed the Form CA-1, Notice of Traumatic Injury, on _____, stating on _____, she injured her lower back, sacroiliac, and right leg when she bent over a hamper and pulled on a parcel that was jammed. The claim was accepted for sacroiliac sprain.

On October 6, 2009, the District Office received a request for authorization of a psychological evaluation and team conference. The District Office requested supporting evidence via letter of October 6, 2009. The Office denied the claim on November 19, 2009, finding the medical evidence received from Dr. _____ was insufficient to support a psychological condition was resultant from the employment injury. The claimant disagreed with this decision and requested an oral hearing before an OWCP Hearing Representative. The hearing was held on March 29, 2010.

By decision dated June 10, 2010, the Hearing Representative remanded the claim to the District Office. She noted that another claim for emotional stress had been denied on the basis of causal relationship _____. The two claims have been combined. The Hearing Representative cited the FECA *Procedure Manual*, Chapter 2-0805-7, that stated when psychological factors affect the medical condition and the attending physician indicates that such a component is present, and where such a *prima facie* case is established, the Office should refer the claimant to a Board-certified psychiatrist for evaluation and opinion concerning causal relationship. The Hearing Representative noted an October 13, 2009, report from Dr. _____ that stated the claimant was depressed due to chronic pain issues. She found Dr. _____ had established a *prima facie* claim that required further development on the part of the District Office and instructed the Office to refer the claimant for a second-opinion psychiatric examination. All medical records from the case files were to be sent to the psychiatrist for review. A physician was then asked to provide a report that contained a reasoned opinion as to whether the claimant's depression had been caused, aggravated, or accelerated by the accepted condition in the instant claim. The psychiatrist was also to be asked if the recommended psychological testing and team evaluation was warranted to properly

evaluate and provide pain treatment for the accepted conditions. The Office was then to issue a new decision

The Office prepared a Statement of Accepted Facts (SOAF) and referred the claimant for the second opinion examination as directed with Dr. _____, psychiatrist. An examination was performed on August 2, 2010. He noted the claimant had been hospitalized in April 2010 for a “nervous breakdown” Dr. _____ administered the MMPI-2 test. He diagnosed pain disorder associated with psychological factors; opioid dependence; anxiolytic dependence, benzodiazepine, tranquilizers, currently in remission, and nicotine dependence, currently in remission.

Dr. _____ stated that while the claimant reported on her “unhappiness, anxieties and distress with her financial circumstances, subjective pain complaints and physical limitations, a formal DSM-IV depressive mood or anxiety disorder are not documented.”

He stated:

“The diagnosis of a Pain Disorder Associated with Psychological Factors (307.80) is made when the patient’s subjective pain complaints are not in keeping, or explained, on the basis of actual physical pathology, objective physical findings or known medical illness. These psychiatric disorders are caused by preexisting constitutional and developmental factors along with ongoing psychosocial issues; somatoform disorders (307.80) are not caused by actual tissue pathology or injury. The reason a patient develops and/or maintains the pain symptoms involves some type of non-deliberate, subconscious way of dealing with problems in living, intrapersonal conflicts or bothersome emotional feelings and include receiving some benefits, psychological and tangible, engendered by the invalid role. In my review of the records, _____ providers do not appear to be aware of the somatoform nature of her subjective pain complaints. To my review, _____ history and clinical course – featuring an essentially normal bone scan and relatively unremarkable lumbar MRI along with, to my reading, a lack of objective findings (tenderness to palpation is not regarded as clearly objective by many clinicians) are what is seen with psychogenic pain disorders (307.80). An independent orthopedic evaluation may be of help to further clarifying the somatoform diagnosis (307.80).”

He stated that opioid dependence was “made in view of _____ longstanding daily use of opioids and inability to discontinue the opioids, and because the opioid use is likely the significant factor in the maintenance of her level of subjective pain complaints, report of disability and failure to sustain improvement” He continued that, “The cause of chemical dependency _____ relates to constitutional and developmental factors with as yet clearly identified psychosocial determinants; what is known, however, is that chronic pain does not cause Opioid Dependence.” He recommended discontinuing the narcotics and resuming an exercise program. He concluded, “As none of psychiatric diagnoses listed are caused or worsened by _____ work exposure or injury in 2007, she does not require further psychological evaluation of treatment because of her workers’

compensation claims.” He noted that the April 2010, hospitalization resulted in the discontinuation of Benzos [benzodiazepine] and felt better; she was also able to discontinue smoking.”

He stated none of the claimant’s psychiatric diagnoses were resultant from the employment injury. By decision dated August 20, 2010, the Office denied the claim, finding no causal relationship between the psychiatric condition and factors of employment had been established by Dr. The claimant disagreed with this decision, and through Mr. Felser, requested a hearing.

The hearing was held on December 6, 2010. The claimant did not appear for the hearing but was represented by Mr. Felser.

He argued that the medical reports of the treating psychiatrist, Dr. [sic] reports indicated the claimant suffers from chronic pain as a result of her accepted back problem. He stated the claimant had been taking antidepressant medications for some time. He stated he felt the Statement of Accepted Facts (SOAF) and the questions to Dr. were incomplete and Dr. did not have a “full and complete understanding of the claim by the doctor, by the second-opinion doctor” (Hearing transcript, page 10.) He argued the claimant suffers from a consequential emotional condition. She has “great difficulty coping with the effects of her work-related physical injuries, and that has been born out through Dr. medical records. . . .” He stated the claimant has been hospitalized on several occasions and has filed for bankruptcy.

Mr. Felser was advised that the records from the April 2010 hospitalization be submitted so the record was complete. It was noted that the claimant was undergoing psychiatric treatment and the records of the treating psychiatrist were requested.

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 on December 15, 2010, for review and comment. There was no response.

The requested medical records were not received, but a brief from Mr. Felser restating his argument, along with a letter from Dr. , dated February 7, 2011, was received. Mr. Felser argued that Dr. letter should establish the claim or at least constitute a conflict in medical evidence.

Dr. stated he was treating the claimant for recurrent major depression “secondary to a back injury she sustained as a result of collecting mail from a deep hamper in the course of her employment with the” He stated the claimant was diagnosed with chronic bilateral sacroiliac strain with complaints of radiculopathy.

He stated the claimant was having “great difficulty coping with the effects of her work-related physical injury. She has experienced chronic pain which is marginally managed

by her medication regime. Subsequent to the work injury, [redacted] experienced limitation in almost all aspects of her life." He noted she was unable to work, had problems sleeping (for which she has required additional medication), and is unable to perform physical activities. He stated, "Due to the chronic pain and physical limitations, [redacted] has experienced recurrent episodes of depression. While [redacted] has a history of treatment for anxiety and depression, the work injury has most certainly aggravated these conditions."

He stated:

"Based on my treatment of [redacted] the recorded onset of her complaints contemporaneous with the work injury and the severity of her physical and emotional complaints since that time, I would say that on a more likely than not basis, the work injury has caused or contributed to the development of Ms [redacted] emotional conditions (i.e. major depression, for which I am now providing). Since the time of the back injury, [redacted] has become increasingly fixated on the turmoil and physical pain which the 'hamper' injury has brought to bear on her life. She continues to require invasive therapy and she is disabled from all work presently due to the chronic depression that she is experiencing"

In this case, Dr. [redacted] has diagnosed an aggravation of depression, Dr. [redacted] has stated the claimant does not have depression and diagnosed a pain disorder associated with psychological factors that he stated was not work related.

The FECA *Procedure Manual*, Chapter 2-0805-7; Psychological Factors Affecting Medical Condition, states, "Unlike psychological conditions which may result from employment factors or from the effects of a specific injury, psychological factors affecting the medical condition express themselves physically in conjunction with an injury or illness. The symptoms have no physical basis, nor are they produced voluntarily. If pain is the only symptoms, the term used to designate the condition is 'psychogenic pain disorder.' If physical functioning is lost or altered, the term 'conversion disorder' applies. . . . Indications that psychological factors may be present include apparent lack of recovery within the usual medical time frame and exaggerated symptoms in comparison with the objective findings. To be compensable, such factors must be related to the employment injury rather than to some other aspect of the claimant's life."

Dr. [redacted] opined the claimant had a pain disorder associated with psychological factors but opined the condition was not related to work. His description, however, of her condition is consistent with the description in the *Procedure Manual*. However, the claimant has significant personal stressors and the claim cannot be accepted based on his report.

I find that there is a conflict in medical opinion between Dr. _____ and Dr. _____, beginning with the diagnosis of depression vs pain disorder associated with psychological factors, necessitating a referee evaluation to resolve the conflict.

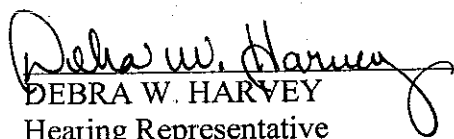
Section 8123(a) provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Office shall appoint a third physician who shall make an examination.¹

On return of the case file, the Office should write the claimant and request her medical records from her April 2010 hospitalization. She should be given a timeframe to provide these records and she should be advised that without them, the record does not contain a full and complete medical history. Upon receipt of these records, the SOAF should be amended to include the record of the claimant's hospitalization, as well as her financial difficulties. She should then be referred to a Board-certified psychiatrist for the referee examination. The physician should provide a medical report containing accurate history, examination findings, firm diagnosis, and opinion, with rationale, as to whether the diagnosis(es) was caused, aggravated, accelerated, or precipitated by her accepted employment injury. The Office's definitions of these terms should be provided. The physician should be advised of the two diagnoses and asked to discuss if the claimant has either or both. He should be advised of the contents of Chapter 2-0805-7 in his discussion of psychogenic pain disorder and asked if this applies to the claimant. In addition, he should be asked to discuss the role that her non-employment related stressors play. He should also be asked if she has narcotic dependence that is a result of the accepted condition. In addition, he should be asked if the request for psychological evaluation and team conference is indicated for an employment-related condition. Once the medical report has been received, and after completion of any additional development the Office deems necessary, a *de novo* decision should be issued.

Therefore, for the reasons set forth above, the Office's decision dated August 20, 2010, is hereby SET ASIDE and the case REMANDED for a referee evaluation and new decision as described above.

DATED: FEB 28 2011

WASHINGTON, D.C.


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

¹ Richard L. Rhodes, 50 ECAB ____ (Docket No 98-2346, issued February 23, 1999)