

File Number: . . .
HR10-D-H

RECEIVED MAY 26 2015

U.S. DEPARTMENT OF LABOR

MAY 12 2015

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

Dear Mr.

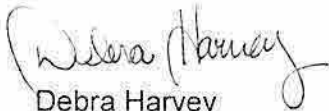
This is in reference to your workers' compensation claim. Pursuant to your request for a hearing, the case file was transferred to the Branch of Hearings and Review.

A hearing was held on 02/26/2015. 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
OFFICE OF WORKERS' COMP PROGRAMS
PO BOX 8300 DISTRICT 6 JAC
LONDON, KY 40742-8300

Sincerely,


Debra Harvey
Hearing Representative

PAUL H FELSER
FELSER LAW FIRM
7 EAST CONGRESS ST
SUITE 400
SAVANNAH, GA 31401

If you have a disability (a substantially limiting physical or mental impairment), please contact our office/claims examiner for information about the kinds of help available, such as communicative assistance (alternate formats or sign language interpretation), accommodations and modifica.

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: Telephonic hearing was held on*

The issue is whether the claim should be expanded to include an emotional condition as a result of the employment injury of

The claimant was employed by the
as an He filed the Form CA-1, Notice of Traumatic Injury,
on for exposure to workplace fumes from building repairs. The claim
has been accepted for toxic effects of hydrocarbon gas and central sensitization
syndrome. He stopped working on returned to limited duty work
on again stopped working on and has not returned.

He was seen by Dr. on for complaints of depression.
She stated the "patient's past medical history is significant for exposure of toxic
chemicals in the workplace. This occurred a number of years ago. He is a former

She stated the claimant had no past history of psychiatric difficulties until after he experienced an exposure to toxic chemicals over a two-week period. He tried working for the ensuing year and kept getting progressively worse. He was never able to go back into which was discouraging to him.. He had been working a temporary assignment in and had been getting progressively more depressed. "His mood plummeted even more after he received a letter 2 the [sic] weeks ago saying that he had been medically disqualified as an because of a diagnosis of a (?) personality disorder and because of his Neurontin. This totally caught the patient unawares as it did his supervisor." The report stated the claimant was not aware of a previous diagnosis of a personality disorder. He was told that as long as he was on Neurontin for neuropathy that developed after the exposure, he was not going to be able to do He has had an increase in his muscle and joint soreness and stiffness and a history of fibromyalgia and central sensitization syndrome. He had a history of paresthesias. She stated he was preoccupied with his work situation. Dr. wrote that the claimant had no prior history of psychiatric or emotional problems. On mental status examination, the claimant's mood was depressed and his affect was consistent with that. Thought form and content were within normal limits. There was no evidence of psychosis and no evidence of suicidal thinking. Cognition was intact. Insight and motivation were good. There was no evidence of impaired judgment. Dr. stated the claimant meets the criteria for

moderate to severe major depressive disorder as well as post-traumatic stress disorder and generatized anxiety disorder. "The PTSD is directly related to his chemical exposure. It is very likely that the depressive disorder is an indirect effect of his exposure due to his loss of the status and health. The stress of most likely losing his job is contributing to his recent decompensation."

A _____ note from a licensed social worker, _____ was received. Mr. _____ wrote that he was following the claimant. He stated the claimant told him the "changed their stance" and "no longer is accusing him of having a personality disorder but is stating they are relieving him to due physical issues caused by the toxic spill. He stated he believes he will be forced to retire and there is 'not much I can do about it' and is is accepting of that at this time." He wrote the claimant "is aware that he has put 'all of my identity' into his career and notes that ending that will be a significant loss." Heath care providers such as social workers, nurses, acupuncturists, physician's assistants and physical therapist are not physicians as defined under the [FECA]. Thus, their opinions on causal relationship do not constitute rationaized medical opinions and have no weight or probative value.¹

Dr. _____ provided a supplemental report dated _____ in which she wrote:

The patient indicates that he was doing better prior to receiving a letter from the Department of Labor. There has been some concern expressed about the fact that some of his current symptoms are exacerbated by stress and not directly do [sic] to his exposure. It is true that his mood is worsened by stress as his anxiety regard to his anxiety. His underlying diagnosis is PTSD. That also worsens under stress. In addition, we did discuss the fact that people with PTSD are often more sensitive to stress in that in the past. This is a direct result of the trauma to which they have been exposed. The patient's PTSD is a direct result of his chemical exposure. It is of delayed onset. Unfortunately, PTSD was not included in the diagnoses listed for his disability. This is a major component of what's going on with him psychiatrically. It needs to be considered as part of the diagnoses contributing to his disability.

His Patient Heath Questionnaire scored for severe depression. On examination the mood was neutral and the affect was "fairly flat." Thought form and content were within normal limits. There was no evidence of psychosis and no evidence of suicidal thinking. Cognition was grossly intact. Insight was adequate and motivation seemed good. There was no evidence of impaired judgment. The impression was major depressive disorder, initial episode, partially treated; posttraumatic stress disorder; generalized anxiety disorder, and chronic pain.

On August 23, 2014, he requested the case be expanded to include post-traumatic stress disorder based on the reports of Dr.

¹ Jan A. White, 34 ECAB 515, 518 (1983).

The Office wrote Dr. _____ and asked her for more evidence to establish the post-traumatic stress disorder was causally related to the initial employment injury. There was no response from Dr. _____ and the claimant was referred for a psychiatric second-opinion psychiatric evaluation with Dr. _____ on _____

He was provided with a Statement of Accepted Facts (SOAF) and the medical records.

The history provided by Dr. _____ was that the claimant had been working as an _____ when he and some of his co-workers developed a "multitude of symptoms" attributed to contamination with an industrial solvent. He stated the claimant told him that all of his co-workers became sick and none of them have returned to work. He took four months off and then returned to work in a _____ where he worked until _____ when he went off work. He has had multiple diagnoses and takes Xanax on an as needed basis. "The multitude of symptomatology has led to the diagnosis of somatoform diagnosis being considered." Dr. _____ noted the claimant is involved with his community, as well as family and church events. Mental examination revealed the claimant was able to "describe coherently his life situation, demonstrating the absence of a thinking disorder. There were no perceptual abnormalities or psychotic thinking. He came across euthymic and there was no evidence of cognitive deficit or memory deficit."

Dr. _____ stated:

This is an extremely complex case that certainly elements of many psychiatric syndromes including generalized anxiety disorder, depression, somatoform disorder, and conditions like fibromyalgia and obstructive sleep disorder. Many of these have strong subjective components; therefore I will confine myself to the strict psychiatric diagnosis of adjustment disorder with depressed mood since the depressive symptomatology appears to have accompanied or followed the physical complaints and limitations and indeed could be attributed to on-the-job injury. The diagnosis of generalized anxiety disorder is not a result of any on-the-job injury and is a condition that has strong genetic components. With all due respect, I do not feel that this gentleman meets criteria for posttraumatic stress disorder, based on the screening test questionnaire, PHQ-9, which is used in primary care settings with no definite diagnostic validity.

The diagnoses were adjustment disorder with mixed anxiety and depressed mood along with traumatic symptoms disorder. "This diagnosis overlaps with numerous symptoms and syndrome that this gentleman has been diagnosed with and offers a comprehensive understanding of this gentleman's psychopathy but it is rather severe. This diagnosis should not be considered a consequence of a work-related physical or psychological injury."

Dr. _____ stated there were no objective findings on examination. He stated, "Although Mr. _____ has distressing dreams related to his work environment, in fact he misses the work satisfaction and resents not being allowed to return to work as an _____

He does not meet any other criteria for posttraumatic stress disorder according to DSM-V. His psychiatric symptoms have no relationship to hydrocarbon exposure that occurred on or about _____.” He stated the claimant did not have depressive disorder but, rather an adjustment disorder with mixed anxious and depressed symptoms and somatic symptom disorder.” He further stated, “Not only does Mr. _____ have numerous symptoms found in generalized anxiety disorder but also in posttraumatic stress disorder and major depression and other true objective physical conditions and pain symptoms. It is my opinion that the diagnosis of traumatic symptoms disorder will encompass his confusing, chaotic and disabling multitude of symptoms.” He stated the claimant has a “diagnosible psychiatric disorder in my estimation, adjustment disorder, which would explain difficulties that he has had adjusting to whatever physical injuries he received while at work for the FAA. The second diagnosis, somatic symptom disorder, is probably noncompensable for psychiatric diagnostic criteria, but it represents the subject’s dysfunctional style of coping with both his physical and psychological excessive concerns.” He stated the claimant’s medication regimen would preclude him from working as an _____ as it might interfere with his mental sharpness and concentration. He stated, however, the claimant could work in a sedentary or light-duty position in a capacity that does not require mental sharpness for four to six hours.

On October 30, 2014, the Office denied the claim, finding the weight of the medical evidence lay with Dr. _____. The claimant disagreed with this decision and requested a hearing before an OWCP Hearing Representative.

Dr. _____ continued to provide treatment notes that supported her diagnoses as well as diagnostic criteria for posttraumatic stress disorder, major depressive disorder, and generalized anxiety disorder.

The telephonic hearing was held on February 25, 2015. The claimant was not present but was represented by Attorney Paul Felser.

Mr. Felser argued that Dr. _____ report was not sufficient to meet his burden of proof as there is no evidence that the physician reviewed the medical records that “would be critical to his assessment.” He also stated the Statement of Accepted Facts (SOAF) was deficient as it did not include the medical treatment, accepted conditions, and extent of care and treatment received. He stated the SOAF did not contain facts but, rather, claimant’s statements. He noted that there was no list of chemicals to which the claimant was exposed provided but some of the medical reports of file provided such a list. He stated there is evidence in the file that the claimant was exposed to a wide variety of chemicals and toxic substances than is listed in the SOAF.

He argued that Dr. _____ did not provide the diagnostic criteria upon which he based his conclusions. He argued that the doctor diagnosed adjustment disorder with mixed anxiety and depressed mood along with traumatic symptom disorder and provided conclusions that supported expansion of the claim. He argued that follow-up action on the part of the Office was indicated and this follow-up did not occur.

