

NOTICE OF DECISION
Claimant Name:
Case Number:

ISSUE:

The issue for determination is whether the evidence presented is of sufficient probative value to vacate the decision dated 01/22/2013.

REQUIREMENTS FOR ENTITLEMENT:

In accordance with the regulations set forth in 20 CFR § 10.609, if an application for reconsideration is accompanied by new and relevant evidence or by an arguable case for error, OWCP will conduct a merit review of the case to determine whether the prior decision should be modified. If sufficient evidence exists to overturn the prior decision, it should be vacated.

BACKGROUND:

On _____ you filed a claim for Traumatic Injury indicating you sustained an injury or medical condition on _____ as a result of your employment. Specifically, you were struck in the left side of your head by a Bookcase/Storage area door. You sustained a temporal hematoma to the left side of your head above the ear.

Following proper development of your compensation case, this office denied your claim on 10/20/2010, as you had not provided sufficient factual evidence that you experienced the claim as you reported.

You disagreed with the _____ decision and requested reconsideration on _____ via an Appeal Request Form. On _____, the _____ decision was modified as you had submitted sufficient evidence to support the factual portion of your case (that the incident occurred), but now the medical evidence did not establish a causal relationship between the diagnosed conditions and your injury of _____

On _____, you submitted both a letter and an Appeal Request Form asking for reconsideration a second time. On _____, Modification was again denied as the medical evidence of record still did not establish a causal relationship between the diagnosed condition and your injury sustained on _____

You disagreed with this decision and again requested reconsideration via an Appeal Request Form signed _____

On 02/10/2012, this office declined your request to "review the merits of your case". Your only appeal was to the Employees' Compensation Appeals Board.

You requested an appeal before the Board; however, the appeal was dismissed on 09/12/2012, as the "...appellant, through his attorney, requested that the appeal be withdrawn".

On _____, through your authorized attorney, Paul H. Felser, you again requested reconsideration of the office denial finding that you had not established a causal relationship between your _____ injury and the conditions diagnosed.

On _____ this office reviewed your medical evidence and vacated the decision. Your case was accepted for the conditions of brain hematoma (left) and memory loss. However, the condition of Seizures was still denied and you were notified in your acceptance letter of the following:

"The medical dated _____, support a complete resolution of the hemorrhage and hematoma. Per your physician you returned to work full time in _____ and released you PRN per office visit dated _____. Therefore, your case has been closed.

You disagreed with the _____ decision and requested reconsideration by letter, through you authorized attorney which was received on _____.

Mr. Felser maintains that evidence sufficient to show a causal relationship between your _____ injury and the diagnosed seizures has been submitted. Further, he opines that the evidence also shows that you continue to suffer from the residuals of being struck on the left side of your head through the present time and therefore, your case should be open for continuing medical treatment.

To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such a causal relationship.[1] The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[2]

DISCUSSION OF EVIDENCE:

The evidence reviewed in support of your reconsideration request includes, Mr. Felser's 01/21/2014 reconsideration request, wherein he states based upon the submission of "**new evidence and argument**", he feels the prior decision should be overturned and 1) this case should expand your claim to include Seizures (as a consequence of your 12/01/2008 injury), and 2) open your claim back up so that you may obtain the necessary treatment for your work related conditions.

Mr. Felser has cited both old and new medical evidence to support his belief that causal relationship has been established in your case.

1 See 20 C.F.R. § 10.110(a); *J. M T.*, 35 ECAB 234 (1983).

2 *J. M.*, 43 ECAB 321 (1991).

However, since causal relationship can only be decided by a physician, the new medical evidence is being reviewed.

In a report dated 02/01/200013, _____, M.D. states:

“Residuals from that hemorrhage include epilepsy with partial seizures; cognitive problems including problems with new learning and recent memory; and personality change with increased depression, anxiety, rigidity, and low frustration threshold. The cognitive and behavioral issues have been well documented by Dr. _____ and have led to significant difficulties at work, documented in the patient's supervisor's recent work review. Specifically in regard to the patient's seizure disorder, I believe that it is very likely related to his left temporal cerebral hemorrhage in 2008”.

In a report dated 03/11/2013, _____, Ph.D. states:

“...Over the last 4 months or so, patient has grown increasingly more tense and paranoid to the degree to where he is having a difficult time at work and functioning in general”.

* * *

“He remains at home, being a virtual isolate and is functioning at very low levels at work”

Dr. _____ reports of _____ basically provide updates on his emotional condition and his frustrations with work and activities that surface in his life. Dr. _____ is provided no opinion that the injury caused the personality changes and emotional conditions cited in his report.

A report dated _____ from the Georgia Neurosurgical Institute, _____ M.D. provides the following information in support of this case:

“Now he is very isolated and fearful, even at time suicidal. He is a shell of himself and apperceives a work environment as noisy, cluttered, confusion, uncaring and replete with excessive demands. While this does not appear to be accurate, he sees it that way. His psychological style of action and reasonable perfection is problematic as he is obsessive, depressive, feels helpless and hopeless, and believes that he has few outlets. He in effect has psychiatric problems that prevent adequate translation of his skills. He also has endorsed stress moderators that cause problems—functional deficits, social isolation, and pessimism. He is now at risk at work for complete failure or a breakdown of some sort. He cannot continue at work in this manner.

Based on these data, it is my opinion that he is now and has been impacted by the accident and brain injury in _____. His emotional problems and to some extent his cognitive problems are more likely than not the result of this injury. The seizures he experienced in _____ have amplified his injuries. Based on these data (report is in the record), I believe that he is best served by a medical retirement as he will have problems at work”.

Finally, there is a report dated 02/27/2014, from Neurologist, M.D.

"Mister (DOB) suffered a left temporal intracranial hemorrhage which required surgical evaluation on . He has had residual problems from that hemorrhage, including epilepsy with partial seizures; cognitive problems with new learning and recent memory; and personality change with increased depression, anxiety, rigidity, and low frustration threshold. The cognitive and behavioral issues have been well documented by Dr. , neuropsychologist, and have led to significant difficulties at work, as documented in the patient's supervisors work reviews.

Specifically, it is my medical opinion that the patient's seizure disorder is due to this left temporal cerebral hemorrhage in

BASIS FOR DECISION:

The evidence is sufficient to vacate the decision dated 01/22/2013 because the Employees' Compensation Appeals Board (ECAB) has held:

"In discussing the range of compensable consequences, once the primary injury is causally connected with the employment, Larson notes that, when the question is whether compensability should be extended to a subsequent injury or aggravation related in some way to the primary injury, the rules that come into play are essentially based upon the concepts of direct and natural results and of claimant's own conduct as an independent intervening cause. The basic rule is that a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury. [3] A claimant bears the burden of proof to establish a claim for a consequential injury. As part of this burden the claimant must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship. [4]

I note that as far back as Dr. M.D. felt that the seizures were in fact a consequence of the head injury sustained on . This has been prevailing opinion, from Neurosurgeons, M.D. and Jr., M.D.; Neurologist, .D., and finally, Psychologist, Ph.D.

I have determined that the medical evidence submitted is sufficient to show that the seizure disorder (epilepsy) is a consequence of the original injury sustained and caused by a blow to the left side of the head above the ear (temple region). The medical evidence is further sufficient to warrant opening this case for continued treatment of the conditions accepted by this office as both a direct and indirect consequence of the original injury.

3 Larson, *The Law of Workers' Compensation* §1300; see C.W.D., 54 ECAB 421 (2003).

4 J.J., 60 ECAB ____ (Docket No. 09-27, issued February 10, 2009)

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Merit Review4-D-RECO

CONCLUSION:

Therefore, the decision dated 01/22/2013 is vacated. We have expanded your case to include the condition of Seizure Disorder (epilepsy) and have opened your case for continuing treatment.

Patricia A. Fedele
Senior Claims Examiner