

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.

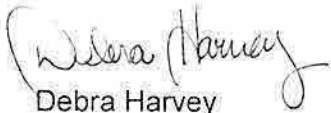
This is in reference to your workers' compensation claim. Pursuant to your request for a hearing, the case file was transferred to the Branch of Hearings and Review.

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.

A copy of the hearing transcript was sent to the Employing Agency for review and comment on March 12, 2015. The agency did not respond.

A brief from Mr. Felser reiterating his argument was received.

Additional medical evidence has also been received.

A report from Dr. was received in response to Dr. report. She stated she "strongly and significantly disagree[d] with the conclusions reached by Dr. " She stated Dr. diagnosed adjustment disorder with mixed anxiety and depressed mood and traumatic symptoms disorder. She diagnosed posttraumatic stress disorder that is a direct result of his exposure to hydrocarbon gas that occurred over a two-week period while he was working as an She enclosed the full diagnostic criteria for PTSD along with the criteria for adjustment disorder and somatic symptom disorder. She stated the claimant met the PTSD criteria and explained her reasoning. She stated he was exposed "repeatedly over a two week period to toxic fumes from tar containing hydrocarbons. He was reassured by management that the fumes would not hurt him while he and his co-worker became progressively sick until two collapsed at work."

She stated the claimant describes episodes when he finds himself thinking of the chemical exposure despite his efforts to suppress the memory and experiences recurrent traumatic work-related nightmares with a recurring theme of needing to escape the where he worked. "At times these are intense and he will yell out in his sleep." She stated he experiences "intrusive thoughts of the traumatic chemical exposure and tries to suppress them along with the associated feelings of anger, guilt and a sense of powerlessness." He avoids exposure to strong odors, especially tar. "He has driven way out of his way to avoid a road that was being worked on. Exposure to certain strong smells elicited in intense anxiety state including hypervigilance shallow breathing and a racing heart." He also has the sense of a shortened life span and does not trust any government agency. She stated the claimant feels "extremely guilty that he did not refuse to work in that environment" and persistently experiences anger, guilt and depressed mood. He avoids social situations, feels detached from most people, is irritable and has problems with concentration and sleeping. She concluded:

It is my professional opinion that Mr meets the established criteria for Posttraumatic Stress Disorder. I also believe that his symptoms are much more severe than those of an adjustment disorder as diagnosed by Dr. (Please see enclosed criteria.) The second diagnosis given by Dr. Traumatic Symptom Disorder, does not exist is DSM V. The diagnostic code used by Dr. is for Somatic Symptom Disorder (Diagnostic Criteria enclosed). Given the nature of my practice, I have seen many people Somatic Symptom Disorder and it is not the appropriate diagnosis in Mr. case.

Also received was a report from Dr. _____ licensed clinical psychologist of _____

She wrote the claimant contacted her for a third opinion examination regarding his psychiatric diagnoses and the cause of origin. She stated that the claimant has been unable to get his psychiatric medications paid for by the Department of Labor since his request to expand the claim was denied. She stated the claimant feels "the Dept. of Labor disregards the traumatic experience he endured in _____ and his consequent distressing symptoms, making him feel of no significance to them. When the Dept. of Labor attempts to ignore or minimize his distress, it reminds him of initially disregarding the _____ fears and expression of debilitating symptoms during the original chemical spill in _____. She noted that while Dr. _____ and other providers advised the claimant to take disability leave due to a decline in his physical and emotional wellness, he was not paid for the time off. After seven months, he had to return to work. He stated that because the doctors knew of his financial plight, they "reluctantly signed documents giving him permission to return to work even though they feared doing so would jeopardize his emotional and physical well-being. Mr. _____ feels the Dept. of Labor shows their disregard for Dr. _____ diagnoses and his other doctors' recommendations and their overall indifference to his well being by not paying him for his medical leave. For Mr. _____ this has exacerbated his initial feelings of powerlessness and the government's indifference to his well being he initially experienced during the two weeks, approximately, in _____ when he felt _____ treated he and his fellow _____ as 'expendable.'"

She went on to state that after the claimant was exposed over a "chemical spill" he felt "uneasy and scared but he believed in his management who insisted that the smell from the chemicals would not harm them. Because of the poor ventilation, Mr. _____ experienced conditions in the _____ as especially treacherous." He continued to work but as the days passed, he and his colleagues "increasingly manifested dizziness, disorientation, nausea and other symptoms." She stated her feelings of loyalty to the _____ "his denial of their potential for corruption and his own feelings of powerlessness began to wane."

He felt powerless and struggled with "guilt, shame and self-blame since then." She stated on day _____, two _____ collapsed within 10 minutes of each other and the claimant felt horrified. He feared for his life but blamed himself for trusting management. This led to his distrust of governmental organizations.

After these two persons collapsed, he told the doctor, the _____ "reacted by hiring a professional service equipped to clean up the chemical spill." After the site was cleaned up, he stated the _____ allowed OSHA to evaluate the spill which was no longer available to them to evaluate. The claimant told Dr. _____ that the workforce decreased from 54 _____ to 28 because of their taking disability leave or retirement. "At work and outside of work, Mr. _____ remained hypervigilant to danger, especially any chemical

odor which precipitated anxiety, racing heart, feeling of dread and intrusive memories of the trauma associated with the chemical spill. While he strained to concentrate during his work, the radar room no longer had any chemical odor and at this time did not trigger memories of the trauma.”

He began going to _____ in _____ but declined treatment with medications that would disqualify him from work. But by _____ he was prescribed Neurontin and was off work from _____ until _____. While off from work the claimant was “consumed with thoughts and memories of the traumatic chemical spill” and became having mental symptoms. He returned to light duty work but became more and more anxious when exposed to the radar room. He also felt that work was more stressful than his controller duties. When he received notice in _____ that he could never work as _____ he felt devastated. In _____ Dr. _____ diagnosed him with post-traumatic stress, generalized anxiety disorder, and depressive disorder. She related the PTSD to his chemical exposure and found the depressive disorder was an “indirect effect of his exposure due to the loss of the status of his health. The stress of most likely losing his job is contributing to his recent decompensation.”

Dr. _____ stated there was evidence the claimant had delayed expression onset “with the recognition that some symptoms typically appear immediately and that the delay is in meeting full criteria.”

By _____ the PTSD had become significantly worsened. She stated:

In sum, Mr. _____ met the full criteria for PTSD one month after the traumatic chemical spill in _____ but because of the focus on severe physical repercussions on the body from exposure to the toxic chemicals, no one appears to have inquired about the impact of his experience when exposed to the chemical spill during the 2 weeks in _____ on his mental health or to have focused on evaluating it.”

She also stated she agreed with Dr. _____ diagnosis of major depressive disorder that “supersedes a diagnosis of Adjustment Disorder with Depressed Mood.” She stated she does not believe the claimant has Generalized Anxiety Disorder but PTSD instead. She stated she did not agree with Dr. _____ diagnosis of Somatic Symptom Disorder as this “invalidates his other psychiatric and medical diagnoses.”

All in all, Mr. _____ has Post Traumatic Stress Disorder from the exposure to the chemical spill in _____. He also meets the criteria for Major Depressive Disorder, Moderate to Severe as a result of the accumulation of losses initiated by the exposure to the chemical spill in _____. Based on my evaluation, Mr. _____ has suffered from PTSD since _____ although it worsened in _____ but has only recently been diagnosed in _____ so he has missed out on many years of treatment. Because of the lack of support and understanding by the Dept. of Labor regarding this diagnosis, Mr. _____ initial feeling related to the trauma of feeling powerless and ‘expendable have become exacerbated.”

I have carefully reviewed this case and find that the Office's decision of October 30, 2014, must be SET ASIDE and the case REMANDED for further development.

This case was accepted for toxic effects of other neurocarbon gas, myalgia and myositis with the record containing absolutely no evidence from the agency as to the nature of the exposure. The claimant initially stated he was exposed to fumes from roofing materials. This account has changed over the years to a chemical spill.

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of the Act; that the claim was filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged; and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.² These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.³

To determine whether an employee sustained a traumatic injury in the performance of duty, the Office must determine whether "fact of injury" is established. First, an employee has the burden of demonstrating the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence.⁴ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed.⁵ An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability and/or condition relates to the employment incident.⁶

Proceedings under the Act are not adversarial in nature, nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.⁷ 20 C.F.R. § 10.118(a) states: "The employer is responsible for submitting to [the Office] all relevant and probative factual and medical evidence in its possession, or which it may acquire through investigation or other means. Such evidence may be submitted at any time."

The FECA *Procedure Manual*, Chapter 2-800-7 (b)(4) states that the employing agency is usually the best source for exposure and identification of substances.

²² *Alvin V. Gadd*, 57 ECAB 172 (2005).

³ *Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117 (2005).

⁴ *David Apgar*, 57 ECAB 137 (2005).

⁵ *Gary J. Watling*, 52 ECAB 278 (2001).

⁶ *Id.*

⁷ *Phillip L. Barnes*, 55 ECAB 426 (2004).

The Office failed to ask the agency for any corroboration of the claimant's account of his exposure. The agency has not provided any information concerning any exposure which, according to the claimant and the attorney, affected numerous employees.

While the Office has accepted the case for physical conditions, the Office must establish a causal relationship between an employment incident and a diagnosed medical condition. The claimant has requested expansion of the claim to include post-traumatic stress disorder at least.

In deciding whether an injury is covered by the FECA, the test is whether, under all the circumstances, a causal relationship exists between the employment itself, or the conditions under which it is required to be performed and the resultant injury.⁸ Causal relationship must be established by rationalized medical opinion evidence.⁹ Part of a claimant's burden of proof is the submission of rationalized medical evidence based on a complete and accurate factual and medical background showing causal relationship.¹⁰

Therefore, on return of the case file, the Office should contact the Employing Agency and ask for all information concerning the exposure and the events that occurred in

The agency should be asked for a statement concerning exactly what happened, the duration of the exposure, whether the _____ in which the claimant worked was involved as well as detailing any other areas where the claimant may have been exposed, any investigation into the incident and the investigation report, and a list of the chemicals that were involved in the incident. Once this information has been received, and if exposure has been confirmed, the Office should prepare a Statement of Accepted Facts in accordance with Chapter 2-809 of the Office's *Procedure Manual*. The Office should then refer the claimant for another psychiatric second opinion examination as that of Dr. _____ is not based upon an accurate history as he was not provided with any information as to the nature and duration of the chemical exposure. The psychiatrist should be asked if the claimant has any emotional condition that is related to chemical exposure as outlined in the SOAF or consequential to such exposure. The physician should be advised that emotional conditions arising out of the claimant's dissatisfaction to work as an _____ or arising from his dissatisfaction with the handling of his OWCP claim are not compensable factors of employment.¹¹

After completion of all necessary development, the Office should issue a *de novo* decision as to whether the claimant has any emotional condition causally related to factors of employment or residuals of an employment-related injury.

⁸ *Wilfredo Carrillo*, 50 ECAB ____ (Docket No. 97-25, issued October 2, 1998).

⁹ *James H. Botts*, 50 ECAB ____ (Docket No. 97-464, issued March 1, 1999).

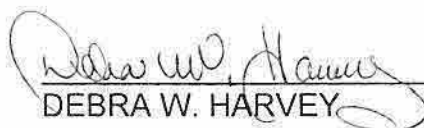
¹⁰ *Kenneth R. Love*, 50 ECAB ____ (Docket No. 96-652, issued December 22, 1998).

¹¹ *Ernest J. Malagrida*, 51 ECAB ____ (Docket No. 98-238, issued January 19, 2000); *John D. Jackson*, 55 ECAB ____ (Docket No. 03-2281, issued April 8, 2004).

As stated, the Office's decision of October 30, 2014, is hereby SET ASIDE and the case REMANDED for additional action as described above.

DATED: MAY 12 2015

WASHINGTON, D.C.


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