

File Number:  
HR11-D-H

RECEIVED AUG 04 2018

U.S. DEPARTMENT OF LABOR

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

Date of Injury:  
Employee:

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 preliminary review has been completed, and it has been determined that the case is not in posture for a hearing at this time. The decision of the District Office has been vacated and returned to the district office for further action as explained in the attached Remand Order.

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,

Electronically Signed

Hearing Representative

PAUL FELSER  
7393 HODGSON MEMORIAL DRIVE  
SUITE 102  
SAVANNAH, GA 31406

*If you have a disability and are in need of communication assistance (such as alternate formats or sign language interpretation), accommodation(s) and/or modification(s), please contact OWCP.*

Washington DC, July 31, 2018

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  
Claim number \_\_\_\_\_

*Merit Consideration of the case file was completed on 7/31/18. Based on this review, the decision of the Office dated 3/30/18 is set aside for the reasons set forth below.*

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The issue for determination is whether the Office appropriately denied the claim for a consequential emotional condition by decision dated 3/30/18.

\_\_\_\_\_ is employed as a \_\_\_\_\_ with the \_\_\_\_\_

On 10/21/08 he suffered several minor stab wounds in an assault by an inmate. Claim \_\_\_\_\_ was allowed for wounds of the chest, scalp and arm. The claimant resumed his usual duties without evidence of sequela on 11/5/08. A low back injury unrelated to employment was suffered in 2011. The claimant also has a history of anxiety, depression, and hypertension unrelated to employment.

On \_\_\_\_\_ the claimant suffered an accident in the performance of his duties. While leaning back in an office chair, the chair broke and the claimant fell backwards, striking his head on the wall and his low back on the chair.

In exam notes dated 8/30/16 from family practitioner \_\_\_\_\_ DO, Mr. \_\_\_\_\_ reported a history of anxiety and depression secondary to Post-Traumatic Stress Disorder (PTSD).

On 9/14/16 the claim was accepted for a cervical and lumbar strains. The claim was later amended to include cervical and lumbar disc displacement. Mr. \_\_\_\_\_ stopped all work on the date of injury and never returned. He has received compensation for total disability on the automated payment rolls since then. On 11/16/16 the Office expanded the claim allowances to include disc displacement of the cervical and lumbar spines.

On 1/19/17 and EMG study revealed symptoms of Carpal Tunnel Syndrome (CTS). Dr. \_\_\_\_\_ noted that due to his severe morbid obesity the claimant was not a surgical candidate.

Although she recorded no symptoms or exam findings to support the diagnosis, Dr. [REDACTED] indicated moderate recurrent major depressive episode in her 3/6/17 chart note. No relationship to the employment injury was expressed.

On 4/17/17 Dr. [REDACTED] added a diagnosis of anxiety, opining that both psychiatric conditions had worsened due to strained finances.

On 5/15/17 attorney Paul Felser asked that the claim be expanded to include cervical and lumbar disc herniation, stenosis and radiculopathy, as well as anxiety and depression.

On 5/17/17 the Office queried Dr. [REDACTED] regarding the status of Mr. [REDACTED] injuries and his capacity for work.

On 5/19/17 Dr. [REDACTED] indicated diagnoses of generalized anxiety disorder, moderate recurrent major depression, C7 radiculopathy, cervical stenosis, cervical disc herniation, lumbar stenosis, lumbar disc herniation and radiculopathy at L5 and bilateral CTS. The patient had prior lumbar pathology which was aggravated by the fall at work, but the cervical pathology was attributed directly to the chair incident. The patient had been treated for depression and anxiety for years, but the "events surrounding the injury" and lack of income added stress to the marriage and family, worsening his anxiety and depression. She also indicated that the CTS was likely due to repetitive computer use and searching inmate property over the years. The patient remained totally disabled.

On 7/31/17 Dr. [REDACTED] reported that the claimant continued with severe symptoms of cervical and lumbar disc pathology, impacting his activities of daily living and personal care. She noted ongoing anxiety and depression since the work stoppage, adding that the loss of finances had put strain on the marriage.

On 10/3/17 the Office arranged for a second opinion exam with an orthopedic surgeon to evaluate the patient's physical status and work capacity. The Office also asked the examiner to opine on whether any non-work related conditions impacted his ability to work. [REDACTED] MD reviewed the Statement of Accepted Facts, interviewed and examined the patient, and reviewed the medical record. Dr. [REDACTED] provided a summary of the history of injury, and medical care to date, as well the medical record. He noted primary treatment was provided by a family practitioner, but several referrals to pain management specialists had been made with little success. Dr. [REDACTED] opined that the strains had resolved, with no evidence on his exam. He also opined that the disc pathology was degenerative in nature, and unrelated to the employment incident. Finally, he indicated that the CTS was unrelated to the accident. Dr. [REDACTED] noted that the patient attributed his PTSD to the 2008 workplace assault.<sup>1</sup> The claimant remained totally disabled based on the present conditions. Addressing a question

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<sup>1</sup> There is no evidence of any emotional injury in the medical records under file

about any disabling non-work related conditions, Dr. \_\_\_\_\_ answered, "At this time, I do not see any non-job related disability other than the fact that he seems to be suffering from anxiety/depression which appears to be secondary to his persistent neck and back pain."

The employer also submitted a report from occupational medicine specialist \_\_\_\_\_ who had performed a fitness for duty exam on 10/12/17. While \_\_\_\_\_ addressed the physical injuries, he offered no opinion regarding any emotional condition or its relationship to the work incident or work residuals.

On 3/7/18 the district office declared a conflict in medical opinion regarding work capacity secondary to the allowed diagnoses. A referee exam was scheduled to resolve the conflict.

On 3/9/18 Mr. Felser wrote again, noting that an emotional condition had arisen secondary to the work injury according to Dr. \_\_\_\_\_. He indicated that a referral to a board certified psychiatrist was necessary according to OWCP procedures.

The Office denied the claim for a consequential emotional condition by decision dated 3/30/18, citing a failure to relate the diagnosed condition to the work injury. The claimant's attorney disagreed with the decision of 3/30/18 and requested a hearing.

The claimant was seen by referee examiner and board certified orthopedic surgeon \_\_\_\_\_ MD on 5/17/18. He noted that the patient was "quite upset emotionally with a great deal of anxiety due to the fact that he is still having the complaints over his neck and back areas and he is unable to return to work." He also referenced PTSD which the patient attributed to his work assault, but made no formal diagnosis of a mental health condition.

After a review of the evidence of record, I find that the Office's decision of 3/30/18 should be vacated, as the case was not in posture for a decision at the time of issuance.

When causal relationship is not obvious or when there may have been an intervening non-occupational cause, it is essential that the physician give his or her medical reasons for relating the condition to the history obtained. A rationalized opinion is also necessary, and should be requested, when disability appears to last beyond the time frame anticipated for an injury of the type accepted.<sup>2</sup> A physician's opinion on causal relationship between a claimant's disability and specific employment factors is not dispositive simply because it is rendered by a physician. To be of probative value to an employee's claim, the physician must provide rationale for the opinion reached. Where no such rationale is present, the medical opinion is of diminished probative value.<sup>3</sup>

<sup>2</sup> Federal Employees' Compensation Act Procedure Manual Section 2-810-5c2

<sup>3</sup> Lucrecia M. Nielsen, 42 ECAB \_\_\_\_ Docket No. 90-1539, issued April 16, 1991.

When the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury likewise arises out of the employment unless it is the result of an independent intervening cause attributed to the claimant's own intentional conduct.<sup>4</sup>

The treating physician has repeatedly indicated that anxiety and depression are related to physical and financial stressors caused by the work injury. While she is not an appropriate specialist to establish such a diagnosis, this does represent prima facie evidence of such a relationship. In the instant case, there is clear history of pre-existing diagnoses of depression and anxiety. The claimant has attributed these conditions, as well as PTSD, to a work assault in 2008, although the medical evidence does not establish such a nexus. Dr. [redacted] also suggested that the conditions bore a relationship to the work injury. Given the underlying and well documented mental health history, the Office must differentiate between any underlying pathology and any impact on those conditions by the work injury in order to address the request for claim expansion. The Office undertook no formal development of the question of an emotional condition prior to the issuance of the decision of 3/30/18. I find that in order to better develop this matter, a second opinion exam with an appropriate specialist is necessary.

The Office, upon return of the file, should refer Mr. [redacted] for a second opinion examination with a board certified psychiatrist regarding a possible consequential aggravation of his underlying anxiety and depression. Upon review of the report of the second opinion examiner, and the completion of any further warranted development, the Office should issue a de novo decision regarding the claim for a consequential psychiatric condition.

Accordingly, the decision of the District Office dated 3/30/18 is set aside. The case file is remanded to the district office for actions consistent with this decision.

Issued:

Washington, D.C.

Electronically Signed

Hearing Representative  
for  
Director, Office of Workers'  
Compensation Programs

<sup>4</sup> Charles J. Jenkins, 40 ECAB \_\_\_\_ (1988) [88-1369 issued December 23].