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U.S. DEPARTMENT OF LABOR

OFFICE OF WORKERS' COMP PROGRAMS
PO BOX 8300 DISTRICT 14 SEA
LONDON, KY 40742-8300
Phone: (206) 470-3100

July 24, 2019

Date of Injury:
Employee:

Dear

This concerns your compensation case and your request for reconsideration received on 10/10/2017.

We have evaluated the evidence submitted and have reviewed the merits of your case under 5 U.S.C. 8128. You have provided sufficient evidence to warrant modification of the decision dated 03/30/2018. Based on the information received, the decision is now vacated.

The reasons for this decision are outlined in the enclosed Notice of Decision.

Sincerely,

Division of Federal Employees' Compensation

PAUL H FELSER-ESQ
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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.

File Number:
Merit Review4-D-RECO

NOTICE OF DECISION

Claimant Name:
Case Number:

ISSUE: The issue for determination is whether the evidence presented is of sufficient probative value to modify the decision of the claimant's loss of wage earning capacity (LWEC) dated March 2, 2004 is warranted.

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:

As a _____ with the _____ you filed a claim for Traumatic Injury on 10/25/1982, indicating you sustained an injury or medical condition(s) on 10/07/1982 as a result of your employment with the _____.

Specifically, you stated that while executing a federal warrant at a residence in _____ both you and a partner were shot at with automatic weapons. During the exchange of gunfire the subject was killed and a bullet grazed the left side of your forehead. This Office accepted your claim for an open wound of the scalp with complications, post-concussion syndrome, post-traumatic stress disorder and other adjustment reaction. You stopped work on 10/7/1982, and returned to work part time on 12/14/1992 as a _____ You worked various jobs until you were hired in the _____ limited duty earning _____ at _____ on 2/28/2000. A formal Lost Wage Earning Capacity (LWEC) decision was issued on 03/02/2004. It was determined that the position of _____ fairly and reasonably represented your wage-earning capacity. Of your own volition, you subsequently relocated to _____ in January 2014 and on 1/27/2014 started working from home as a _____ with _____ You resigned from this position on 3/12/2015.

On 03/25/2015 we received your written request for an increase in your disability payments because you could no longer work. However, since a formal LWEC decision has been issued in your case, your claim for totally disability or recurrence of disability has been treated as a request for modification of your formal LWEC decision. Information received with your claim/request consisted of: a medical memo dated 5/1/2015 from Dr. _____ requesting an extension to submit a medical report. _____ M.D., a psychiatrist, performed a second opinion examination of the claimant and provided his findings in a report dated February 18, 2016.

On 03/23/2016, a formal decision was issued in your case finding our Office could not find any evidence to substantiate that you have met any of the three criteria for modifying a formal LWEC decision. The documentation upon which the decision was based included a Performance Management Program Record of Conference dated 3/12/2015, a completed questionnaire dated 5/4/2015, medical reports from Dr. _____ dated 5/20/2015, 8/27/2015, and a personal letter dated 11/16/2015. The second opinion report from Dr. _____ dated 02/18/2016.

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After reviewing all available evidence, our Office could not find any evidence to substantiate that you have met any of the three criteria for modifying a formal LWEC decision.

You disagreed with the 03/23/2016 decision and requested by letter/appeal to the Branch of Hearings and Review form received on 10/10/2017. On 10/12/2016 H&R denied modification of the formal WEC decision.

On 10/12/2017 you again disagreed with the decision 10/10/2017 and requested by letter reconsideration.

DISCUSSION OF EVIDENCE: The evidence reviewed in support of your reconsideration request includes, reconsideration request from attorney dated 10/10/2017, medical reports from Dr. [redacted] dated 10/02/2017 and 04/22/2016.

This evidence was reviewed to determine whether any of the three established criteria sufficient to warrant modification of a formal LWEC decision have been met: (1) The original LWEC rating was in error; (2) the claimant has been retrained or otherwise been vocationally rehabilitated; or (3) the claimant's accepted employment-related medical condition has materially changed

Dr. [redacted] a psychiatrist stated in a report dated 10/02/2017 that I am familiar with Mr. [redacted] and the circumstances of his work injury that occurred while he was employed as a [redacted] I was provided with a statement of accepted facts; he was able to be re-employed in various positions with low stress. He worked as a part time [redacted] in a [redacted] He worked briefly as a [redacted] Eventually he was re-trained in the [redacted] He performed as a [redacted] While living in [redacted] he was hypervigilant, isolating himself, and he was continuing to have difficulties even in familiar surroundings. He then moved to [redacted] where he obtained similar work, but eventually even small tasks became more difficult (i.e. [redacted] Mr. [redacted] does have persistent dysthymia and depression and it is related to the original work injury. She indicated that the move has been difficult for the claimant. She stated he works as a [redacted] from his home for [redacted] Working from home leaves him isolated and depressed and he feels he is unable to handle the workload demanded of him by the [redacted] Dr. [redacted] concluded that the claimant's PTSD and depression were exacerbated by his lack of connection and his inability or desire to make friends or to go out of his comfort zone. She further stated he was not close to an uncle who lived on [redacted] October 12, 2016. The death of his uncle did not cause his more recent inability to attempt to continue some form of work. I think his lack of connection and his inability or desire to make friends or go out of his comfort zone is more a response to the PTSD than his move to [redacted] or the death of his uncle. He has recently moved to [redacted] to be near his daughter. He will need ongoing treatment in his new area.

Dr. [redacted] opined, "I think his lack of connection and his inability or desire to make friends or go out of his comfort zone is more a response to the PTSD than his move to [redacted] or the death of his uncle. And once his children did not need him anymore to help support them it was difficult for him to provide a connection and happiness for himself. He has recently moved to [redacted] to be near his daughter." These

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factors constitute an independent intervening cause.

A letter from Dr. _____ a psychiatrist dated 04/22/2016. This was previously considered in the H& R decision dated 10/12/2016.

The attorney argument includes disagreement with the previous decision based on medical evidence, as he is not a psychiatrist his opinion has no probative value.

The attorney further states the SOAF statement of accepted facts was incomplete. It does not list a complete work history, he was a _____ in _____ from 2000- to 2014 and it does not include medical treatment history after 1996. It is noted in the SOAF, "The claimant returned to work as a _____ for 17 days, on 11/19/1995 the claimant returned to work at _____ assisting _____ and performing other duties with the most recent being a work _____ with _____ . According to the claimant he resigned from this position in March 2015. "and in the SECOP report dated 02/18/2016 Dr. _____ acknowledges the claimants employment history in _____ when he states; " He became a _____ he did that job for 13-14 years" as reported by claimant . The history of employment is acknowledged, in his decision. Further, when a SECOP examination is performed the physician is provided with an updated Statement of Accepted Facts, a list of questions, a copy of your date of injury job description and copies of all available medical reports and testing from your case file. In a well-rationalized, detailed report dated 02/18/2016, Dr. _____ displayed thorough knowledge of the history and mechanics of your injury, and the progression of illness, based on his review of the Statement of Accepted Facts and medical documents provided.

Although you state the SOAF is incomplete because it does not list the treatment history after 1996. It is not a requirement to; recite medical evidence, findings, or opinion. It is noted the SOAF reflects; "The claimant was first seen by a psychiatrist 04/11/1996" The SECOP examiner to whom the claimant was referred the case, copies of all available medical reports and testing from your case file.

The circumstances in the claimant's case are analogous to those in _____ Once his children did not need him anymore to help support them, it was difficult for him to provide and connection and happiness for himself. The claimant moved to _____ and his uncle who lived there passed away shortly thereafter. The claimant felt isolated and the claimant experienced stress due to his job duties as a medical coder for _____
These factors constitute an independent intervening cause.

While Dr. _____ opined that the claimant's condition is due to his accepted employment injury she cited the independent intervening cause, the move and its aftermath, his feelings of loss of connection and happiness for himself due to his children's independence and the claimant's work as a _____ coupled with the lack of medical rationale that the claimant's condition worsened without the independent intervening cause was insufficient to warrant modification of the LWEC.

OWCP's procedures note that to establish modification of a wage-earning capacity determination the medical evidence must demonstrate a worsening of the accepted condition without intervening injury. 2 The Board has previously found that, although a claimant requested total disability compensation, the claimant had not established entitlement to modification of an LWEC determination if her disability increased from

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partial to total disability due to factors she encountered in her private employment, and with her family, as these factors constituted independent intervening cause.

In the claimant's treating psychiatrist stated that the claimant's part time work at a made him anxious, he was pushed to do more and more and could not handle it. The psychiatrist opined that the claimant's condition deteriorated and reduced his work hours. The Board cited in which the claimant, an at the time she filed her claim returned to work as a The Board found that modification of the loss of wage earning capacity was unwarranted as the claimant's decompensation of her emotional condition from partial to total disability was due to factors she encountered in her private employment as a and with her family. These factors that constituted an independent intervening cause.

On 03/30/2018, a formal decision was issued in your case finding our Office could not find any evidence to substantiate that you have met any of the three criteria for modifying a formal LWEC decision.

You disagreed with the 03/30/2018 decision and requested by letter/appeal to the Employees Compensation Appeals Board (ECAB). On 12/04/2018 ECAB set aside the decision and remanded the file back to the regional office.

The case was remanded for OWCP to refer the claimant, together with the medical record and a statement of accepted facts, to an appropriate Board-certified physician to determine whether his accepted conditions have worsened such that he is unable to perform the duties of a The impartial medical examiner should address whether any increase from partial to total disability resulted from factors he encountered in his private employment, an independent, intervening cause, or constituted a natural progression of the compensable work injury."

DISCUSSION OF EVIDENCE: The evidence reviewed in support of your reconsideration request includes:

Referee medical report dated 07/22/2019, signed by Dr. MD Board Certified Psychiatrist. Dr. was provided with a copy of the medical records and statement of accepted facts and asked to resolve a conflict of opposing physician's viewpoints of virtually equal weight and rationale. Specifically, whether claimants accepted conditions had worsened such that he is unable to perform the duties of the constructed position. Dr. opines, Mr. continues to suffer from a work-related psychiatric condition and despite his repeated efforts at treatment with counseling/psychotherapy and use of psychotropic medication, he has exhibited a clinical course indicating a progressive decline in his level of functioning. This is a man who was entrusted with significant responsibilities and power as a who subsequent to the shooting incident has exhibited a marked limitation in his ability to sustain employment in even clerical positions.

BASIS FOR DECISION: The evidence is sufficient to vacate the decision dated 03/30/2018. The medical evidence provided by the referee report support a worsening occurred due to the persistence and intensity of Mr. anxiety and depression symptoms which have had a negative effect on his abilities to function occupationally. This condition has worsened to the point that he is unable to perform the duties of a

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Modification of Loss of Wage- Earning Capacity determination is only warranted where the party seeking the modification establishes either that there is a material change in the nature and extent of the injury-related condition.

CONCLUSION: Therefore, the decision dated 03/30/2018 is vacated.

Division of Federal Employees' Compensation