

File Number
HR13-D-H

RECEIVED MAY 06 2019

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 was completed on the case. Based upon that review, it has been determined that the decision of the District Office should be reversed as outlined in the attached 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,

Division of Federal Employees' Compensation

PAUL H. FELSER, ESQ
FELSER LAW FIRM, PC
7393 HODGSON MEMORIAL DR., 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, April 30, 2019

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
case number

Merit consideration of the case file was completed in Washington, D.C. Based on this review, the decision of the District Office dated January 28, 2019 is reversed for the reasons set forth below.

The issue is whether the Office met its burden of proof to terminate the claimant's medical benefits and wage loss compensation effective January 28, 2019.

The claimant, born _____ was employed as an _____ by _____
On _____ he filed a traumatic injury
claim alleging that on that day he "was informed that an aircraft had crashed that I had just been talking to" and he was very shaken by the entire event. His coworker provided a witness statement noting that when she told the claimant that the aircraft may have crashed and there were possible fatalities, he was visibly shaken by the news. According to a September 23, 2009 statement of accepted facts (SOAF), the Office accepted the claim for nervous and musculoskeletal systems and insomnia. The claimant stopped work on December 23, 2006 and began receiving wage loss compensation on February 5, 2007. He was placed on the periodic rolls effective May 13, 2017.

The Office referred the claimant to several second opinion physicians.

In a report dated October 13, 2009, _____ a second opinion Board-certified psychiatrist, opined that there were some subclinical symptoms of post-traumatic stress disorder (PTSD) related to the plane crash. However, the claimant's narcolepsy was not related to the work incident.

In a report dated October 27, 2009, _____, a second opinion Board-certified neurologist, opined that the claimant's narcolepsy was temporarily related to the work incident although he could not definitely establish causation.

In a report dated January 23, 2014, _____, a second opinion Board-certified neurologist, indicated that the claimant's possible narcolepsy was less likely related to PTSD. In an addendum dated July 22, 2014, Dr. _____ diagnosed PTSD and excessive daytime sleepiness. He was unable to give further information regarding the claimant's work related conditions since his sleep studies were not available.

In a treatment note dated August 11, 2015, [redacted] an attending Board-certified family physician, noted that the claimant did not have ongoing symptoms and he was doing very well. He related that the claimant dozed off easily but denied abrupt uncontrollable loss of consciousness/sleeping/cataplexy. He recommended an evaluation by a neurologist to determine whether or not the claimant has a lifelong need for disability.

The Office referred the claimant back to Dr. [redacted] for a second opinion evaluation. In a report dated November 17, 2016, Dr. [redacted] assessed that the claimant most likely had excessive daytime somnolence and his prior diagnosis of narcolepsy was very much in question due to lack of objective findings. He noted that it was possible that the claimant suffered from obstructive sleep apnea as contributor to his daytime sleepiness. He opined that there was no relationship between the [redacted] work event and the claimant's subsequent diagnosis of narcolepsy. He also opined that the claimant was not capable of working as an air traffic controller primarily due to excessive daytime somnolence. Dr. [redacted] recommended multiple sleep latency test and overnight polysomnogram to establish whether the claimant suffers from narcolepsy or other sleep disorders.

The Office subsequently requested a supplemental report from Dr. [redacted] asking him to address the diagnosis for the [redacted] work injury, whether the claimant's work related narcolepsy resolved, and whether his accepted condition of narcolepsy prevent him for returning to his full duty as an air traffic control specialist.

On August 16, 2017, QTC Medical Services, OWCP's appointment scheduler, contacted the Office regarding the request for a supplemental report and noted that Dr. [redacted] would not do the sleep study test as it needs to be ordered by the treating physician.

The record contained a list of questions to be addressed by a second opinion neurologist and a referral letter. On May 22, 2018, a claims examiner informed QTC that a new request for a second opinion examination was sent on May 21, 2018. In a letter dated May 23, 2018, the Office advised the employing agency that the claimant would be referred to a new second opinion evaluation with a Board-certified neurologist.

On July 24, 2018, QTC informed the claims examiner that Dr. [redacted] had indicated that a sleep study would be necessary to determine whether the claimant has narcolepsy and a second opinion physician cannot order a sleep study because it requires admission to a hospital overnight. The claims examiner contacted the claimant who noted that he did not have a treating physician, the sleep study facility was no longer in his area, and his primary care physician will not do a referral for a sleep study.

On October 5, 2018, the Office issued a notice of proposed termination of the claimant's wage loss compensation and medical benefits finding that the weight of medical evidence established that he no longer had any residuals or disability due to his accepted work injury. It noted that Dr. [redacted] was in agreement with Dr. [redacted] assessment that the claimant had no ongoing symptoms and that he was doing very well.

The claimant subsequently authorized Paul H. Felser, Esq. to represent him and submitted letters from Mr. Felser and copies of evidence previously of record.

The attorney stated that the medical evidence of record confirmed ongoing injury residuals in the form of the sleep disorder as well as the emotional trauma. He contended that Dr. _____ did not provide an opinion on whether the current state of the claimant's sleep disorder was a manifestation of the emotional trauma resulting from the fatal aviation incident and he did not comment on the accepted condition of symptoms involving nervous and musculoskeletal systems. He also contended that the claim should be expanded to include additionally diagnosed conditions of PTSD and anxiety.

By decision dated January 28, 2019, the Office terminated the claimant's medical benefits and wage loss compensation effective that day. The claimant disagreed and, through his attorney, requested an oral hearing.

Based upon a preliminary review of the evidence of record, I find that the Office did not meet its burden of proof in terminating the claimant's compensation and medical benefits.

Once the Office accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.¹ Having determined that, an employee has a disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has either ceased or that it is no longer related to the employment.² The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.³ To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.⁴

The weight of medical evidence is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested, and the medical rationale expressed in support of the opinion.⁵ Medical opinions based on incomplete history or which are speculative or equivocal are of diminished probative value.⁶

In the present case, the Office terminated the claimant's wage loss compensation and medical benefits noting that the second opinion physician, Dr. _____ was in agreement with the treating physician, Dr. _____ assessment that the claimant had no ongoing symptoms and that he was doing very well. However, neither physician opined that the claimant no longer had residuals or disability related to his accepted conditions. Dr. _____ recommended an evaluation by a neurologist to determine whether or not the claimant has a lifelong need for disability. Dr. _____ opined that the claimant was not capable of working as an air traffic controller due to excessive daytime somnolence and

¹ 45 ECAB 316 (1994).

² 40 ECAB 907 (1989).

³ 41 ECAB 361, 364 (1990); 32 ECAB 1019 (1981).

⁴ 39 ECAB 993 (1988).

⁵ (issued August 11, 2010); 56 ECAB 420 (2005).

⁶ ECAB 710 (2006); , 56 ECAB 662 (2005).

recommended a multiple sleep latency test and overnight polysomnogram to establish whether the claimant suffers from narcolepsy or other sleep disorders. Moreover, after Dr. [redacted] did not respond to a request for a supplemental report, the Office began the process of referral to a new second opinion physician, which was not completed. The claims development process is nonadversarial in nature and once OWCP undertakes to develop the medical evidence further, it has the responsibility to do so in a proper manner.⁷

In addition, the record is unclear whether narcolepsy has been accepted as work related. According to the SOAF dated September 23, 2009, the Office accepted the claim for nervous and musculoskeletal systems and insomnia. However, the Office noted in its request for a supplemental report from Dr. [redacted] that narcolepsy was an accepted condition. There is also an unresolved issue of whether the claimant has an emotional condition causally related to the work injury. A second opinion psychiatrist, Dr. [redacted] reported that the claimant had subclinical symptoms of PTSD related to the plane crash.

Upon return of the case record, the Office should reinstate medical benefits retroactive to the date of termination and issue Form CA-1032 to the claimant. Upon receipt of signed and completed CA-1032, the Office should reinstate appropriate compensation retroactive to January 27, 2019.⁸ In addition, the Office should determine whether narcolepsy has been accepted as work related and update the SOAF to include all accepted conditions and all relevant medical history. The Office should then refer the claimant to a Board-certified neurologist for a rationalized opinion as to whether he has any residuals or disability due to his accepted work related conditions. The claimant should also be referred to a Board-certified psychiatrist for a rationalized opinion as to whether he has any emotional condition causally related to the [redacted] work event. Following this and any further development deemed necessary, the Office should reevaluate the medical evidence and take appropriate action.

Accordingly, the decision of the District Office dated January 28, 2019 is **reversed** and the case is **remanded** for further actions as described above.

Issued:
Washington, D.C.

Hearing Representative
Branch of Hearings and Review
for
Director, Office of Workers'
Compensation Programs

⁷ [redacted] (issued October 26, 2018); 55 ECAB 406 (2004).

⁸ The claimant received wage loss compensation through January 26, 2019.