

File Number: '
HR11-D-H

RECEIVED DEC 12 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 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 San Francisco 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 13 SFC
LONDON, KY 40742-8300

Sincerely,

Division of Federal Employees' Compensation

PAUL H FELSER, ATTORNEY
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, December 06, 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 the \_\_\_\_\_, Case No. \_\_\_\_\_

Merit Consideration of the case file was completed in Washington, D.C. Based on this review, the District Office's \_\_\_\_\_ decision is set aside for the reasons set forth below.

The issue for consideration is whether the claimant is entitled to wage loss benefits from \_\_\_\_\_ to \_\_\_\_\_

The claimant, \_\_\_\_\_ born \_\_\_\_\_, a \_\_\_\_\_, filed a notice of occupational disease on \_\_\_\_\_ claiming that he was exposed to traumatic events in the course of performing his emergency worker duties since \_\_\_\_\_ and his exposure to various traumatic events in the line of duty resulted in the development of his post-traumatic stress disorder. He stated that he first became aware of his condition on \_\_\_\_\_ and realized that his condition was caused or aggravated by his employment as of \_\_\_\_\_. Per the SF50, Personnel Action, approved on \_\_\_\_\_, the claimant retired effective \_\_\_\_\_.

In a \_\_\_\_\_ decision, the Office denied the claim explaining that the claimant had not established a compensable work factor to further consider a factual basis to the claim for a work-related injury or condition. On appeal to the Branch of Hearings and Review (BHR), the Hearing Representative, in a \_\_\_\_\_ decision, explained that new evidence and the claimant's testimony addressing specific employment events required further review by the Office. The Office was directed to request the employing agency to comment regarding the accuracy of specific evidence and the claimant's statements. In a \_\_\_\_\_ letter, the agency responded to the Office's request for comments. The agency submitted multiple records in support of its argument and challenge to the claim.

In its \_\_\_\_\_ Statement of Accepted Facts, the Office detailed the claimed work factors that it accepted as compensable and referred the claimant with the medical records to Dr. \_\_\_\_\_, a board certified psychiatrist. In her \_\_\_\_\_ report, Dr. \_\_\_\_\_ discussed her evaluation of the claimant and concluded that the claimant had an established diagnosis of PTSD (Axis I) and psychosocial stressor of unemployment and family separation (Axis III), which she opined were a direct result of or aggravated by the claimant's work. She noted the fire fighter being killed while under the claimant's supervision, and the stress and long work days during the \_\_\_\_\_ wildfires as a trigger of his PTSD symptoms. Dr. \_\_\_\_\_ explained that the severity of the claimant's condition resulted in his inability to deal with the stress of meeting work deadlines, making work-related decisions, deal with interpersonal relationships with supervisor, coworkers or subordinates, or maintain persistence or the pace of a required work week. She stated that there was a potential for future rehabilitation or re-employment in a non-fire operations position.

In an \_\_\_\_\_ letter decision, the Office explained that the claim was accepted for aggravation of PTSD.

On \_\_\_\_\_ the claimant filed a CA7, claiming total wage loss benefits for the period \_\_\_\_\_ to \_\_\_\_\_

By decision dated \_\_\_\_\_ the Office denied the wage loss claim for the period \_\_\_\_\_ to \_\_\_\_\_ explaining that there was not sufficient medical evidence to establish that the claimant was disabled for work due to the accepted condition. The Office also explained that reports not signed by a physician are not considered relevant medical evidence to establish disability for work. The claimant disagreed with the decision and through his attorney requested a hearing with an OWCP Representative.

I find that further development of the evidence is necessary.

The claimant has the burden of proving by the preponderance of the reliable, probative and substantial evidence that he is disabled for work as a result of an employment injury or condition. This burden includes the necessity of submitting medical opinion evidence, based on a proper factual and medical background, establishing such disability and its relationship to the employment.<sup>2</sup> The Board will not require the Office to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed.<sup>3</sup> To do so, would essentially allow an employee to self-certify their disability and entitlement to compensation.<sup>4</sup>

In the present case, the Office accepted the claimant's claim following Dr. \_\_\_\_\_ second opinion psychiatric evaluation. Dr. \_\_\_\_\_ opined that the claimant was totally disabled as a result of his employment and the work factors that the Office had identified. While she explained that his prognosis for future employment under specific working conditions was good, Dr. \_\_\_\_\_ had explained that the claimant was unable to withstand the working conditions that he was under as of her evaluation.

In review of the record evidence, there is no explanation for the claimant's time out of work or confirmation from the agency of the days, weeks or period of time that the claimant was out of work. While Dr. \_\_\_\_\_ concluded that the claimant was totally disabled for work, the agency advised that the claimant returned to work on \_\_\_\_\_ right after the claimed period.

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Prior to further consideration on appeal, the Office should request a leave analysis for the period in \_\_\_\_\_

<sup>1</sup> The claimant filed additional CA7 claims for total wage loss benefits for periods \_\_\_\_\_ to \_\_\_\_\_; in a \_\_\_\_\_ letter, the Office explained that the agency reported that the claimant was paid through their Leave Share Program and therefore he was not entitled to compensation for the claimed period(s).

<sup>2</sup> *David H. Goss*, 32 ECAB 24 (1980).

<sup>3</sup> *Sandra D. Pruitt*, 57 ECAB 126 (2005).

<sup>4</sup> See *William A. Archer*, 55 ECAB 674 (2004).

<sup>5</sup> *David H. Goss*, 32 ECAB 24 (1980).

<sup>6</sup> *Sandra D. Pruitt*, 57 ECAB 126 (2005).

<sup>7</sup> See *William A. Archer*, 55 ECAB 674 (2004).

question, March to \_\_\_\_\_ to confirm the claimant's time out of work and what reason he indicated that he needed to be off. The Office should then request that Dr. \_\_\_\_\_ ; provide a supplemental report discussing the claimant's ability/inability for work during the claimed period and an explanation as to when he became totally disabled for work given that he was able to return to work on \_\_\_\_\_.

Consistent with the above, the District Office's \_\_\_\_\_ decision is set aside and the case is remanded for further development regarding intermittent disability for \_\_\_\_\_, as filed.

Issued:

Washington, D.C.

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