

File Number: 1
HR10-D-H

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U.S. DEPARTMENT OF LABOR

DFELHWC-FECA, PO Box 8311
LONDON, KY 40742-8311
Phone: (202) 693-0045

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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 hearing was held on _____ As a result of such hearing, it has been determined that the decision issued by the 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 your assigned Claims Examiner. You may contact that office by writing to our Central Mail Room at the following address:

US DEPARTMENT OF LABOR
DFELHWC-FECA, PO Box 8311
LONDON, KY 40742-8311

Sincerely,

Electronically Signed

Federal Employees Program

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, December 22, 2020

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
Number* . . . *A telephone hearing was held on*

Case

The issue for determination is whether the evidence establishes a medical condition causally related to the work incident claimed.

is employed as a with the . On he filed a claim for Traumatic Injury indicating he sustained an injury or medical condition or as a result of his employment. Specifically, he stated that the injury or medical condition occurred at around 1:00 p.m., when he moved two 55 gallons of hazardous waste from one pallet to another with strong fumes coming out of them. He stated that he left work at 2:00 p.m., smelt a funny smell, had a seizure and wrecked his truck while driving. He was still on the military base at the time of the accident.

By letter dated , the Office advised the claimant of the deficiencies in the evidence and afforded him 30 days to provide additional documentation sufficient to establish the claim. Additional factual and medical evidence were provided.

By decision dated the Office denied the claim on the basis that the fifth basic element, Causal Relationship had not been met. Specifically, the evidence was not sufficient to establish a medical condition causally related to the accepted work event(s). The reason for this finding was that the medical evidence of file does not support that the diagnosed conditions were caused by the work injury or wrecking his car. The decision noted that the medical evidence did not substantiate that the diagnoses provided, seizure disorder, lumbar degenerative disc disease (DDD) with left leg neuropathy, were caused or aggravated by the work injury. The medical evidence submitted with the claim did not provide an explanation of how the conditions occurred or an opinion on the cause.

In a report of Dr. dated he stated that it appears that his seizures were linked to his history of exposure to hazardous chemicals. However, evidence dated of record under case number revealed the claimant had a long pre-existing history of a seizure disorder, that he underwent repair with kavlar plate to the skull post MVC and that he had seizures during this period. He again had seizures in and bit a portion of his tongue off. He also had a pre-existing history of a fractured vertebrae, chronic back pain with radiation into the legs and a left leg injury due to a military accident, severed nerve.

Although the claimant stated that he fractured his left wrist, his low back, had neck and back pain and numbness in his left arm and hand, the office had not, as of the date of the decision, received the medical documents which supported the treatment he received on the date of injury or any follow-up care for the injury had not been provide with any diagnosis of conditions which were caused by the crash.

The claimant disagreed with the decision and his attorney requested a telephone hearing with a representative of the Office of Workers' Compensation Programs. Accordingly, a telephone hearing was scheduled and held on _____.

The claimant did not attend the hearing. However, he was represented by his attorney, Paul Felser, at the hearing. It was noted that there were limited medical records in file. Mr. Felser asked that the claim be combined with the additional injury claim number _____.

He noted that there was a substantial hiatus in the interim until this particular situation when the claimant was again exposed to chemicals which we contend and we feel the medical records support that that was a triggering mechanism for the current set of circumstances. Mr. Felser noted that he will ask the claimant to provide a statement to put things into more context since the old claim was mentioned so significantly. He noted that the claimant was once again asked to handle hazardous chemicals and the claimant did experience the onset of symptoms after being exposed to the chemicals and then driving his vehicle.

The medical evidence was discussed and Mr. Felser advised that Dr. _____ was of the opinion that the claimant's exposure to these chemicals is what ultimately triggered the episode where he became overcome and lost control of his vehicle and experienced the onset of the seizure episode once again and that the triggering mechanism was his exposure to these hazardous chemicals and that's what resulted in these injuries under the circumstances. Mr. Felser argued that Dr. _____ at the very least at this time establishes an uncontroverted inference of causal connection such that the case should be remanded for further development by the district office with Dr. _____ and possibly to include evaluation by a second opinion examiner with respect to the remand for development. Mr. Felser was advised that it was not clear from the medical evidence of the diagnosed conditions claimed, other than the seizures and medical evidence was needed to address the physical injuries.

The case was held open for 30 days to allow the claimant an opportunity to provide additional evidence to support the claim. A copy of the transcript was sent to the employing agency for review and comment. No comments were provided from the employing agency. A review of the case file was completed.

Additional factual documents were received which included statements, an accident report and copies of bills.

A statement dated _____ was received from _____. She stated that on _____ at 2:30 PM she received a phone call from _____ stating that she had her husband's phone and he had been in a serious accident on 247/Hawkinsville Hwy. She described arriving at the accident. She stated that she spoke with _____ and she stated that she could tell something medically was wrong. She said _____ couldn't remember her and she asked him if he had a phone, he thought for a second and said yes and she reached deep down in his pocket and got his flip phone. Additional family members arrived. She described officers asking if they knew anything and that all the claimant could tell them was he left work and smelt a funny smell. She and her son told the officer that they believed he had had a seizure and were wandering what he had been around at work to trigger a seizure because he hadn't had one in 15 years or more.

She described the claimant being taken to the hospital and tests being completed of his brain and back. The next morning when the Neurologist and Neurosurgeon asked him what he remembered about his wreck. He stated the only thing he remembered was leaving work and then having a funny smell and then being at the hospital. They asked did he remember being at work. He said yes. They then asked what he was doing at work. _____ told them he was emptying IAPS. He explained that IAPS was hazardous waste material bags from the airplane, and that he also, moved two 55 gallon drums of liquid hazardous waste that was from the planes also. She told the doctors that the base knew he was not to be around those hazardous materials because of a _____. The doctor than stated _____.

they were not going to run anymore of the "Brain test" because they now knew that the hazardous material caused the seizure which caused his wreck.

stated that the claimant's supervisor came to the hospital to see him and asked if they knew what happened. She told him that the doctor told them that his being around the IAPs caused him to have a seizure came to the hospital twice and to their home several times with the paperwork he said needed for his leave. She attached a text message that she stated was from The message did not have any information concerning who sent the text but stated, "I was driving alongside your husband for a good period of a time prior to him crossing the median, which is when I called 911 immediately. I thought he may be in a medical crisis as he was driving alongside me just moments before." In addition provided a handwritten note concerning notifying what the doctors told her and copies of emails pertaining to the injury claim.

In an unsigned written statement presumed to be completed by the claimant, a work history was listed. The statement described being treated for a seizure in and his work assignments after that date. The statement indicated that he was not supposed to be around hazardous waste. He was working overtime on and at the end he was assigned to dispose of an IAP bag and to load two 55 gallon drums of hazardous waste onto a pallet. He stated after emptying the IAP bag and moving one drum, the guy that was with him had to move the 55 gallon drum because the fumes were strong and he got light headed and dizzy. He went to his office to rest until off time. He still had a headache and since he lives about 10 minutes from work he thought he would take some Advil and lay down for a little bit. The last thing he remembered was coming through the gates and turning on to 247. He started smelling this funny smell and the next thing he knew he was in the ER.

Medical records establish that the claimant was transported by EMS to the emergency room on following a motor vehicle accident. A history was provided that bystanders witnessed patient swerving vehicle uncontrollably going approximately 80 mph causing him to swerve off the road and hit a tree. The patient reported positive loss of consciousness and cannot remember all details of the event. It was noted that the patient has a history of seizures and takes Depakote daily. He denied missing any doses of a seizure medication recently. Multiple diagnostic studies were completed. An impression was offered as "concussion, LTP fx L4, poss L ulnar fx." He was admitted for trauma services.

An orthopedic consultation reported that he complained of low back pain and had abrasions to head and left wrist. He did not complain of left wrist pain with palpation or passive/active motion. He stated that he has known slipped discs and lumbar fractures. An attending addendum stated that he had seen and evaluated this patient personally as well as reviewed the PAs note above and the patients imaging. It was noted that the claimant presented to the emergency room status post MVC. He stated that he had a seizure and lost consciousness resulting in a car crash. The patient had some abrasions to his dorsal wrist and x-rays were obtained in the emergency room demonstrating severe pancarpal and radiocarpal arthritis as well as a questionable fracture through the distal ulna. It was reported that the patient stated that he did have an injury to this wrist where he fractured something in his wrist approximately a year ago. The patient had no pain in his wrist and had full range of motion without difficulty. It was reported that the fracture of the distal ulna was likely chronic secondary from his previous injury of the wrist. He was noted to be stable from an orthopedic standpoint and discharged for home.

A discharge summary reported that he has a past history of seizures and did not skip his dosage. He also has a history of hypertension, hyperlipidemia, and memory problems. It stated that during the hospitalization neurology was consulted and attributed to subtherapeutic levels of Depakote and

recommended in double the dosage. He was also taking primidone for the tremor and it was too low to be an anticonvulsive dosage and if the symptoms of seizures recur than the dose has to be increased up. He will need in follow-up with neurology in the outpatient. The report stated as he had a warning sign of smell followed by lip smacking and then had convulsive episode this could be most likely the temporal lobe seizures which is alteration of it. Neurosurgery was consulted and recommended MRI of the thoracic to rule out AVM and was ruled out and recommended to get a repeat in 3 to 6 months. MRI noted mild enhancement in the dorsal aspect of the thoracic cord at T6-T8 level. Prominent Dural vessels versus Dural AV fistula. Discussed with neurosurgery and agreed upon discharge and also recommended him not to drive for at least 6 months and also not to work with the machinery. He said that he works at base and does forklift and driving the vehicles and recommend and gave him a letter of not to drive these vehicles, no swimming, no regular driving for at least 6 months and will need further evaluation from the PCP before he gets back to work.

The next medical document in file is an off work note dated _____ signed by Dr. _____. The reason was treatment for "MVC 1-27-2020". No examination notes were provided. A note from Dr. _____ dated _____ reported that he examined the claimant on _____ His hospitalization of _____ was also completely reviewed. He stated, seizure appears to be linked to his repeated exposures of Haz-Mat chemical waste he encounters regularly at work. He should not be in close proximity to, or transport, the Haz-Mat chemical waste. Due to his recent seizure, _____ is medically restricted from driving vehicles and forklifts for 6 months until _____. He was released back to work _____ with the restrictions noted. No examination notes were provided.

A work status certificate dated _____ reported for the treatment of "MVC injuries, Seizure disorder, and Lumbar DJD with Left Leg Neuropathy." He was released to return to work/school on _____. Restrictions were listed as unable to drive until _____ and cannot walk over 200 yards (1/10 mile). No examination notes were provided.

In an _____ letter, Dr. _____ repeated the statement made in the _____ note that his seizure appears to be linked to his recent exposures of Haz-Mat chemical waste. He released the claimant back to his previous work duty and stated that he was restricted from depositing Hazardous liquid waste and IAPS as of _____. He has been seizure free for the past six months, and therefore, he has no driving restrictions. No examination notes were provided.

In a narrative report dated _____, Dr. _____ provided a history of work related exposure injuries. He stated that his seizure on _____ appears to be linked to his repeated exposures to Hazmat chemical waste. He encounters hydrocarbon Hazmat regularly at work. His last seizure due to posttraumatic cause was 20 years ago in _____. He stated that this recent seizure caused him to crash his vehicle into a tree. He sustained a nondisplaced fracture of left distal ulna and a displaced fracture of left transverse process of L4. He reported the dates he evaluated and examined the claimant.

Concerning the cause of the recent seizure he reported that the claimant was injured in a motor vehicle crash in _____ and sustained comminuted left temporal skull fracture requiring surgical left anterior temporal lobectomy. He had a couple seizures shortly after surgery. He was placed on Depakote ER and has not had a recorded seizure since at least _____. There is no reason to suspect this old stable issue as a cause of his recent seizure, except that something changed. He opined that exposure caused aggravation/exacerbation of Pre-existing seizure condition. The repeated exposures of hydrocarbon Hazmat chemical waste is the something that has changed, to exacerbate his remote history of seizure disorder. He discussed hydrocarbons and that they are used extensively during aircraft Depot-Maintenance and must be disposed of following strict OSHA guidelines.

Dr. [redacted] noted recent fractured wrist and lumbar process and offered limitations with right arm lifting and no bending, lifting twisting with the back temporarily. He reported that he had a history of fracture of Left Fibula due to military gunshot wound and has difficulty walking the long flight of stairs and traversing the lengthy bridge to get to his duty station from distant parking lots. He was limited in walking to less than 200 feet without resting. Parking should be closest to his duty building. He stated that the claimant was to avoid any exposures to open hydrocarbon Hazmat chemical waste. He should not be in close proximity to, or transport, hydrocarbon Hazmat chemical waste unless it is hermetically sealed. He cannot climb over 5 feet, or work in areas involving heights on ladders or scaffolding. He should not work with bright flashing lights/strobe lights. He is restricted from confined workspace and should not be working in an area where he needs to use a respirator mask device. He has been seizure free for over six months, and therefore, he had no driving restrictions.

Additional records were provided from treatment received on [redacted] and in [redacted]

Actual examination notes were not provided by Dr. [redacted]. In addition, the file is devoid of any treatment records pertaining to treatment of his left wrist and spine conditions subsequent to the [redacted] hospital records.

A review was also completed of case file [redacted]. This claim was submitted as a traumatic injury claim for date of injury [redacted] which occurred when carrying bags of NDI equipment up B-716 stand, bending/leaning over for extended period of time performing inspection and down B-716 felt pop in lower back upon exiting stand to hanger floor. The claim was denied by decision dated [redacted]. Of note is that while the injury claim mentioned his pre-existing seizure disorder in the medical history, there was no evidence to establish a seizure disorder as accepted as causally related to his work and there were no medical records in the case file after [redacted]. There was no current evidence in file to suggest combining the claims would be necessary for proper adjudication or medical management of the claim.

The development of the claim was reviewed. The claimant alleged exposure to chemicals that he believed caused his seizure and subsequent motor vehicle collision. The development letter issued to the claimant requested information concerning performance of duty when the injury occurred. There was no response to the questions pertaining to performance of duty. Also the development letter did not address the chemical exposure that was claimed or request a witness statement concerning whether anyone was aware of his being exposed to chemicals, odors etc. I find that this is necessary to ascertain the factual circumstances and the performance of duty aspect of the claim. An accurate factual history and background is necessary to allow a physician to form an impression of the individual and the evidence to be evaluated. In this regard, I find that additional information is needed to clearly determine the factual portion of the claim that must be considered in weighing the medical evidence.

In addition, there was no correspondence to the employing agency concerning the chemical exposure and performance of duty.

Part 2-0810-3 of the Federal Employees' Compensation Act *Procedure Manual* discusses the criteria for weighing medical evidence. Any medical opinion must be based upon a complete and factual background; otherwise, it can be given no probative value.¹

¹Williams Nimitz, Jr., 30 ECAB 567

Based on the hearing testimony, together with the review of the written evidence of record, I find that the decision of the Office dated _____ should be set aside and remanded for further development.

Proceeding under the Federal Employees' Compensation 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 so that justice is done.²

Generally, "fact of injury" consists of two components that must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident or exposure that is alleged to have occurred. The second component is whether the employment incident or exposure caused a person injury and generally can be established only by medical evidence.³

Whether the claimant actually experienced the accident, untoward event, or employment factors alleged to have occurred. This is a factual determination. The claimant must show that the accident or work exposure that is claimed did in fact occur at the time and place and in the manner alleged. In occupational disease cases in which the claim is not based upon a specific incident, the claimant must submit sufficient evidence to identify fully the particular work conditions alleged to have caused the disease and substantiate exposure to the conditions claimed.⁴

In the present claim, I find that further development of the factual evidence is necessary to establish an accurate history of injury. The employing agency has not provided any comments pertaining to the injury claim. The evidence of file does not have any documentation pertaining to the exposure to hazardous chemicals or whether the motor vehicle accident occurred in the performance of duty. It is noted that the location of the accident to his regular duty station was not identified. In addition, the claimant indicated that he had a seizure after smelling something funny. There is no evidence in file concerning the odor alleged or the actual chemical exposure. He stated that another individual was working with him and there is no statement from the individual confirming the alleged odor. Additional evidence is necessary for further consideration of the medical aspects of the claim.

Upon return of the case file, the employing agency should be provided a copy of the factual documents received on _____. The agency should provide comments to the statements and confirm whether the accident occurred on agency premises and the location in proximity to his regular duty station. In addition, the employing agency should verify whether the claimant was exposed to hazardous chemicals or odor on the date of injury and identify the chemicals he was exposed to while working on that date. A reasonable period of time should be allowed for a response.

In addition, the claimant should be provided 30 days to submit the medical records pertaining to the actual examinations and medical treatment for his work injury conditions.

Following receipt of the information, the Office should weigh the additional evidence and make findings of fact regarding the claim. After this and any additional development necessary, the Office should weigh the factual and medical evidence and issue a de novo decision on the claim.

²William J. Cantrell, 34 ECAB 1223 (1983); Mark A. Cacchione 46 ECAB 1038, (1994).

³Elaine Pendleton, 40 ECAB 1143(1989).

⁴ FECA Chapter 2-0800 4.(3) a.

Consistent with the above findings, the decision of the Office dated
case REMANDED for further action as described above.

is set aside and the

ISSUED:
Washington, D.C.

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