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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 hearing was held on _____ Based upon that hearing, it has been determined that the decision of the District Office should be reversed as outlined in the attached decision.

Since the enclosed order provides for the reinstatement of compensation for wage loss, you must forward a completed CA7 to the District Office cited below, through your employing agency.

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

Electronically Signed

Division of Federal Employees' Compensation

PAUL H FELSER, ESQ
7393 HODGSON MEMORIAL DR
STE 102
SAVANNAH, FL 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 number _____ Hearing was held by _____
telephone conference on _____

The issue for determination is whether the claimant has a continuing, injury related disability.

The claimant, was employed as a business development specialist. On _____ the claimant filed a timely Notice of Traumatic Injury and Claim for Compensation, claiming that on _____ she slipped on a wet floor and fell. The Office accepted the claim for concussion with loss of consciousness, left knee sprain, tension headache, and psychogenic pain disorder. The claimant stopped work on the date of injury and returned _____ in a modified duty capacity. The claimant stopped work _____ and did not return. She was paid appropriate compensation on the periodic (28-day cyclic) roll. The claimant subsequently relocated to _____

_____ MD, an orthopedist, conducted a second opinion medical examination and submitted a report dated _____. Dr. _____ opined that the _____ incident appeared to have caused permanent aggravation of left knee osteoarthritis. Dr. _____ however added that the aggravation appeared to be temporary inasmuch as the underlying condition was not significantly altered.

_____ MD, a board certified psychiatrist, conducted a second opinion medical examination and submitted a report dated _____. Dr. _____ opined that somatoform pain disorder (a/k/a psychogenic pain disorder) remained active and caused headaches. Dr. _____ opined that somatoform pain disorder contributed to current major depression.

In a Statement of Accepted Facts (SOAF) dated _____ the Office noted pre-existing conditions of left knee osteoarthritis, left knee degenerative meniscal tear, and left femur fracture.

An updated SOAF dated _____ stated accepted conditions of concussion with loss of consciousness, tension headache, left knee sprain, and psychogenic pain disorder.

On _____ the Office determined that a conflict existed between the opinions of _____ MD, an attending physician, and _____ MD, a second opinion orthopedist, as to whether the accepted left knee sprain had resolved. The Office referred the claimant to _____ MD, a board-certified orthopedic surgeon, for a referee medical exam. In a _____ report Dr. _____ opined that the accepted sprain had resolved, and current symptoms were related only to pre-existing left knee conditions.

On _____ the Office determined that a conflict existed between the opinions of _____ MD, an attending psychiatrist, and those of _____ MD, a second opinion psychiatrist, and _____ MD, second opinion neurologist, as to whether the accepted psychogenic pain disorder, concussion, and tension headache conditions were active and disabling. The Office referred the claimant to _____ MD, board-certified in neurology and psychiatry, for a referee medical examination. In a _____ report Dr. _____ opined that the accepted concussion had resolved. Dr. _____ opined that the claimant had underlying memory disturbance due to affective disorder unrelated to the _____ injury. The Office also referred the claimant to _____ MD, board-certified psychiatrist, for a referee examination. In a _____ report Dr. _____ opined that the _____ incident caused a traumatic brain injury.

On _____ the claimant underwent left total knee replacement.

In a report of _____ Dr. _____ opined to stable post-concussion syndrome.

The Office prepared a SOAF addendum dated _____. Such addendum stated concurrent diagnoses of depression, arthritis, obstructive sleep apnea, left knee osteoarthritis, fibromyalgia, GERD, anxiety, syncope, and hypothyroidism.

In _____ the Office referred the claimant to second opinion medical examinations with Dr. _____ the board-certified psychiatrist; _____ MD, a board-certified neurologist; and _____ MD, a board-certified orthopedist.

In an _____ report Dr. _____ opined that accepted psychogenic pain disorder, currently called somatic symptom disorder, remained active, but pain reported by the claimant was well beyond the level reasonable for the documented organic cause of injury. Dr. _____ opined that the claimant could work full duty from a psychiatric perspective.

In an report with addendum noted a negative workup including normal MRI of the brain (report in file). Dr. opined that accepted tension headache had resolved, and current headache symptoms were not medically related to the injury.

In an report Dr. reported findings of mild limp, mild motion restriction of the left knee, and stable left knee following the total knee replacement. Dr. concluded that the claimant could work full duty as a business development specialist.

On the Office issued a notice of proposed termination of compensation and medical benefits, advising the claimant that the weight of medical evidence showed that she was no longer disabled on account of the accepted injury. accorded the weight of medical evidence to the opinions of Drs. The claimant was advised that she could submit additional written evidence within thirty (30) days.

In a letter brief of claimant's representative, Paul Felser, Esq., argued that the Office should have expanded the claim for major depression as diagnosed by Dr. in and traumatic brain injury as diagnosed by Dr. in Counsel argued that the claimant had continuing residuals of the accepted left knee injury. Counsel argued that the medical record established the claimant was totally disabled due to left knee, depression, and brain injury. Pleading in the alternative, counsel argued that the claimant was at least partially disabled and, as a result, the Office should develop the claim regarding a job offer and wage-earning capacity.

On the Office notified the claimant that the proposed termination of compensation and medical benefits would be made final effective such date. The Office accorded weight to the opinions of Drs. The claimant disagreed and requested an oral hearing.

Accordingly, said hearing was scheduled and held by telephone hearing on The claimant did not attend the hearing. Counsel presented oral argument. Based upon the hearing testimony, together with the written evidence of record, I find that the decision should be reversed.

At the hearing counsel argued that the SOAF presented to Drs and in was incomplete. Counsel argued that the Office should have expanded the claim for traumatic brain injury and depression, as well as permanent aggravation of left knee osteoarthritis as diagnosed by Dr. in

Post hearing the record was held open for 30 days to allow for the submission of additional written evidence. A copy of the hearing transcript was provided to the

claimant and the employing agency, and 20 days allowed for the submission of written comments.

In comments dated _____ the employing agency that the Office's _____ decision was correctly based on the opinions of the three recent second opinion medical examiners. The employing agency argued that the second opinion reports showed the claimant could work full duty as a business development specialist, which position was essentially sedentary.

In a statement dated _____ the claimant stated that examinations by Drs. _____ were cursory and brief. The claimant stated she continued to have syncope episodes, headache, nausea, and balance problems. The claimant stated she required continued treatment.

In reply comments dated _____ the claimant argued that the position of business development specialist required more than sedentary activity in order to attend to attend conferences and make presentations.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to his or her employment, the Office may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.¹ The opinion of a second opinion medical specialist, if sufficiently rationalized, may be accorded the weight of medical evidence.²

A SOAF must include all injury-related conditions.³

OWCP's procedures and Board precedent dictate that when an OWCP medical adviser, second opinion specialist, or referee physician renders a medical opinion based on a SOAF which is incomplete or inaccurate or does not use the SOAF as the framework in forming his or her opinion, the probative value of the opinion is seriously diminished or negated altogether.⁴

Dr. _____ opinion may be accorded weight. The record does not establish that permanent aggravation of left knee osteoarthritis is causally related to the injury. Dr. _____ presented in in _____ a contradictory opinion as to whether such an aggravation occurred. Moreover Dr. _____ the referee orthopedic examiner in _____, conclusively opined that only a left knee sprain was causally

¹ *David W. Pickett*, 54 ECAB 272 (2002)

² Federal (FECA) Procedure Manual, Part 2—Claims, *Developing and Evaluating Medical Evidence*, Ch. 2-810-9(i) (September 2010)

³ Federal (FECA) Procedure Manual, Part 2—Claims, *Statements of Accepted Facts*, Ch. 2-809-5(g) (September 2009)

⁴ *N.P.*, Dkt. No. 19-0296, issued July 25, 2019

related to the injury.⁵ In turn Dr. in : opined that the sprain remained active but did not disable the claimant from the full duty position of business development specialist. The claimant's lay opinion as to Dr. examination methods is not probative as medical evidence.⁶

Nonetheless, the Office has not met its burden to terminate entitlement to compensation and medical benefits. Prior to second opinion and referee physicians opined to additional medical conditions causally related to the accepted injury, namely major depression (Dr. and traumatic brain injury (Dr. . The claim should have been expanded to include such conditions, and the conditions listed in the SOAF. As a result neither Dr. nor Dr. were provided with an accurate SOAF with regard to injury-related psychiatric and neurological conditions. It follows that opinions by Drs. cannot be accorded weight.

For the reasons set forth above, the Office's decision of is hereby REVERSED, and claim file is returned to the district office for actions consistent with this decision. Compensation and medical benefits should be reinstated retroactive to

It is recommended that the Office expand the claim for major depression and traumatic brain injury. The Office may at its discretion develop the record as to injury-related disability and work capacity.

Issued:
Washington, D.C.

Electronically Signed
Hearing Representative
for
Director, Office of Workers'
Compensation Programs

⁵ A referee specialist's opinion, if properly rationalized, is accorded special weight. See *Beverly Grimes*, 54 ECAB 543 (2003)

⁶ *J.O.*, Dkt. No. 16-1401, issued February 23, 2018