

File Number:
HR11-D-H

RECEIVED FEB 19 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 Kansas City 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 11 KCM
LONDON, KY 40742-8300

Sincerely,

Division of Federal Employees' Compensation

PAUL FELSER
ATTORNEY AT LAW
FELSER LAW FIRM
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, February 15, 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
decision of the Office dated | is set aside for the reasons set forth below.

The issue is whether the claimant sustained an injury as defined by the Federal Employees'
Compensation Act.

The Department of Labor employed the claimant, | as an investigator in
On |, the claimant completed a Form CA-2, Notice of
Occupational Disease, alleging major depressive disorder, post-traumatic stress disorder
(PTSD), depression, agoraphobia and other psychiatric and physical conditions alleged to be
related to factors of his employment. The claimant noted he had flashbacks to cases in his
prior employment with the IRS when performing everyday work such as reading email,
accessing the agency database, conversing with the IT help desk, and talking with business
owners and their employees. The claimant first became aware of the condition on
| and first realized it was caused or aggravated by his employment on

The claimant provided an | description of his condition and noted an
suicide attempt. He cited events from his prior employment with the IRS and how they
influenced his current work behaviors. The claimant alleged that he skipped meals when
working investigations, had difficulty concentrating, and that his work over the last year had
degraded. The claimant described the employment factors to which he attributed his
conditions as: interviewing business owners and employees in person and by telephone;
driving to and from interview locations; driving past any business related to his prior IRS and
prior and current casework; using his laptop and phone; and, lack of appropriate interaction
with an immediate supervisor.

By letter dated | the district office advised the claimant of the deficiencies in the
evidence received and afforded him 30 days to provide additional documentation.

A |, letter by | M.D., a family practitioner, attributed the claimant's
major depressive disorder, general anxiety disorder, and PTSD to current work with the
Department of Labor and past work with the IRS.

A |, letter from psychiatrist | M.D., noted the claimant had been
working for the Department of Labor for the past year noted his symptoms. Dr.
indicated the claimant had severe chronic bipolar disorder, OCD, and PTSD.

By letter dated _____, the district office requested the employing establishment comment on the claimant's allegations and evidence. The request contained in excess of 300 pages of documents.

The claimant's position description for his current position noted the work involved conducting on-site investigations and interviewing employers and employees. He was responsible for analyzing issues, developing information, conducting negotiations, preparing case reports, and consulting with supervisors or higher-level investigators as necessary. He also used a computer and computer applications to gather, organize, analyze, and produce information.

An _____ email from an employing agency superior noted the investigator position was challenging as it required knowledge of applicable laws, ability to apply those laws and to analyze compliance, and to be able to compute accurate back wages. The claimant continued to submit poor quality cases despite receiving assistance. He did not analyze all compliance issues and document findings and his work was sloppy.

By decision dated _____, the district office denied the claim for the reason that the factual evidence did not establish that the claimant sustained an injury as defined by the Act.

The claimant disagreed with the district office decision and by letter postmarked _____ he requested a hearing.

I have reviewed the evidence of record and find that the district office decision of _____, must be set aside as the evidence was sufficient to establish a *prima facie* claim that required further development.

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹

¹ *Victor J. Woodhams*, 41 ECAB _____ (Docket No. 89-1717 issued December 20, 1989).

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his regular or specially-assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act. On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position.²

When a claimant fails to implicate a compensable factor of employment, the Office should make a specific finding in that regard. If a claimant does implicate a compensable factor of employment, the office should then determine whether the evidence of record substantiates that factor. Perceptions and feelings, alone, are not compensable. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence. When the matter asserted is a compensable factor of employment, and the evidence establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence submitted.³

The Office's Procedure Manual discusses development of medical evidence in occupational disease claims. For the OWCP to undertake development of the medical evidence, the claimant should submit some medical evidence which states a diagnosis and supports causal relationship. However, the opinion need not be rationalized.⁴

The district office decision acknowledged most of the claimant's specific allegations in his current position, including interviewing business owners and employees in person and by telephone, driving to and from interview locations, using office technology, and lack of appropriate interaction with an immediate supervisor, and found that the evidence did not support that he experienced the alleged incidents. The decision then acknowledged that the claimant did read emails, access the agency database, talk to the IT help desk as necessary, and talk to business owners and employees, which indicates that he had established those incidents as factual. The Office therefore incorrectly denied the claim for failure to establish the factual component of the element of fact of injury.

There was of record medical evidence diagnosing a condition or conditions competent to have been caused or aggravated by and attributed to the established exposure. Although the district office found that the claimant had established such factual basis for the claim it indicated that these factors were non compensable because how the claimant "treated individuals was self-generated." The decision did explain why reading emails, accessing the agency database using the computer, using the phone, talking to the IT help desk as necessary, or talking to business owners and employees were non-compensable. These factors, and driving to and from interviews, are clearly regular work duties or requirements

² *Lillian Cutler*, 28 ECAB 125 (1976).

³ *Normal L. Blank*, 43 ECAB ____ (1992) [Docket No. 91-0680, issued January 13].

⁴ FECA Procedure Manual, 2-0806-5(a).

imposed by the employment, which are compensable under the Act. Inasmuch as the claimant has established compensable factors of employment the Office must consider the medical evidence.

On remand the Office should prepare a complete and accurate statement of accepted facts. The Office should refer the claimant for a second opinion examination with a Board-certified psychiatrist. The second opinion physician should be requested to provide a fully reasoned response to appropriate questions regarding whether the claimant has a psychiatric or emotional condition and whether there is a causal relationship between such condition and the accepted compensable factors of employment. Following any additional development of the evidence deemed necessary, the Office should issue a new decision regarding the claimant's entitlement to benefits.

The claimant may file a separate occupational disease claim for any illness he attributes to his prior employment with the Department of Treasury.

Accordingly, the decision of the district office dated _____, is set aside and the case is remanded for further action as described above.

ISSUED:

WASHINGTON, D.C.

Electronically signed

Hearing Representative

For

Director, Office of Workers'
Compensation Programs