

File Number:
Merit Review4-D-RECO

U.S. DEPARTMENT OF LABOR

RECEIVED MAR 07 2020

OFFICE OF WORKERS' COMP PROGRAMS
PO BOX 8300 DISTRICT 6 JAC
LONDON, KY 40742-8300
Phone: (904) 366-0100

March 04, 2020

Date of Injury:
Employee:

Dear

This concerns your compensation case and your request for reconsideration received on
Per the decision issued on your case was remanded for a merit review of the
decision.

We have evaluated the evidence submitted and have reviewed the merits of your case under 5
U.S.C. 8128. You have provided sufficient evidence to warrant modification of the decision dated
Based on the information received, the decision is now vacated.

The reasons for this decision are outlined in the enclosed Notice of Decision.

Please see the enclosed acceptance letter for a discussion of your rights and responsibilities.

Sincerely,

Division of Federal Employees' Compensation

PAUL H FELSER
FELSER LAW FIRM PC
QUEENSBOROUGH BANK BUILDING
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.

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NOTICE OF DECISION

Claimant Name:

Case Number:

ISSUE: The issue for determination is whether the evidence presented is of sufficient probative value to vacate the decision dated

REQUIREMENTS FOR ENTITLEMENT: In accordance with the regulations set forth in 20 CFR § 10.609, if an application for reconsideration is accompanied by new and relevant evidence or by an arguable case for error, OWCP will conduct a merit review of the case to determine whether the prior decision should be modified. If sufficient evidence exists to overturn the prior decision, it should be vacated.

BACKGROUND: On you filed a claim for Occupational Disease indicating you sustained an aggravation of a pre-existing medical condition on or prior to as a result of your employment as a in

You allege that your pre-existing hypertrophic obstructive cardiomyopathy with ventricular tachycardia was worsened due to stress from your federal employment.

On a formal decision was issued denying your claim for failure to establish a causal relationship between your claimed job duties and your diagnosed medical condition.

By decision i, the Branch of Hearings and Review remanded the decision to address the factual evidence of record and initiate further development. Specifically, the Office was tasked to review the statements submitted by you and forward this, along with any other relevant evidence, to the employer for review and comment on the accuracy of all allegations made therein. Upon receipt of the agency's response, the Office should proceed in making a finding of fact. The allegations should be categorized by those that are found to be factual and compensable, those that are factual but not compensable and those that are unsubstantiated. If it is determined that the claimant has identified a compensable factor of employment, then the Office should perform appropriate development of the medical evidence. Following review and completion of any additional development warranted the Office should issue a de novo decision.

On a De Novo decision was issued outlining the factual aspects of your claim. It was noted that you only provided vague and general information regarding your claim without supporting evidence or specific examples. You did provide witness statements and/or documented evidence or proof to support that what you claimed occurred in the manner that you allege. You did not provide the specific details of what you are claiming, i.e. time, date, place, what occurred, who was involved, what was said, your reaction, etc. Without such evidence you have failed to provide a factual basis to support your claim. Based on these findings, your claim was denied on the factual component of the third basic element, Fact of Injury, because the evidence did not support that the injury and/or event(s) occurred.

On a formal decision was issued finding that you established that you were a federal employee who timely filed a claim for injury. You also established the factual and medical components of the Fact of Injury element. He also established that he

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performed some representational duties as union president and that he traveled as a bank examiner for a period of time; these work factors are accepted as factual and were found to be compensable. However, he did not meet his burden of proof in establishing that he experienced a medical condition in connection with any compensable work factor. The factual aspects of your claim are detailed in the _____ decision.

On _____ a formal decision was issued denying a merit review of the _____ decision.

On _____, a decision was issued by the Employees' Compensation Appeals Board (ECAB) remanding the case for a merit review.

On _____, a copy of your request for a reconsideration dated _____ was forwarded to the employing agency for their review and comments. No response from the employing agency was received.

DISCUSSION OF EVIDENCE: The evidence reviewed in support of your reconsideration request includes: the _____ letter for reconsideration and the medical report from Dr. _____ dated _____.

The factual aspects of your claim are outlined in detail in the _____ decision issued by the Branch of Hearings and Review. The compensable work factors are: Mr. _____ worked full time as an Examiner from _____ until _____. He performed part time Examiner duties from _____ to the end of the year; Mr. _____ traveled extensively while working as an examiner, spending 75% of his time in travel status from _____ to _____ and Mr. _____ was union president from _____ until _____. A portion of his time was spent in negotiations over the labor contract, personnel matters, and other representational functions during that time. From _____ to the end of the year, he worked part time as examiner and part time as union president. He performed only union duties from _____ until _____. A portion of his union activities were representational in nature, and therefore compensable work factors.

A review of the medical report from Dr. _____ shows you have been treated by her since _____ when you were diagnosed with hypertrophic obstructive cardiomyopathy and malignant ventricular tachycardia. You had an implantable cardiac defibrillator. She provided a detailed history of your medical condition and medical treatment, including the _____ incident when you experienced a "ventricular tachycardia storm." Dr. _____ noted that your incidences of sustained ventricular tachycardia and pvc's (irregular skipped beats) "gradiently and significantly increased over the four years as evidence in the pacemaker read paperwork submitted as part of the medical record."

Dr. _____ explained the following: "His worsening over time was directly related to the compensable work factors or 75% travel, stressful and new examiner work conditions never before performed in the financial regulatory sector, and even more stressful conditions related to his work as the first President of his Union representing thousands of employees in a brand new union in the federal government. Travel away from home, in new settings, carrying up to 50 lbs on flights twice a week, 75% of the time in an environment that is clearly in the public domain; all brand new with little or no supervision, and his subsequent fighting for the rights of the employees that had tasked the patient to keep this brand new agency fair and right in such a tough environment

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contributed significantly to his stress related activities, and for that matter, increased his physical activity to the point it degraded his physical condition. This is evidenced by the significant increase in the amount of v—tach and pvc episodes year to year, that gradually increased to the point where his heart failed in ”

BASIS FOR DECISION: The evidence is sufficient to vacate the decision dated because the factual and medical evidence supports you sustained a work related injury due to the duties you performed as a Financial Institution Examiner.

CONCLUSION: Therefore, the decision dated is vacated.

Your case is now accepted for: Aggravation of obstructive hypertrophic cardiomyopathy and Aggravation of ventricular tachycardia.

Division of Federal Employees' Compensation