

File Number:
Merit Review4-D-RECO

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April 23, 2020

Date of Injury:
Employee:

Dear

This concerns your compensation case and your request for reconsideration received on

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 [redacted]. Based on the information received, the decision is now vacated.

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

Sincerely,

Division of Federal Employees' Compensation

PAUL H FELSER
FELSER LAW FIRM, PC
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 Traumatic Injury indicating you sustained an emotional condition as a result of your employment as a supply technician with the in . Specifically, you stated that the emotional condition occurred due to inappropriate physical contact with a manager during a closed door meeting.

On a formal decision was issued in your case finding, your claim was denied on the fourth basic element, Performance of Duty.

The documentation upon which the decision was based included; a note signed by you allowing OWCP to speak with your spouse concerning your claim dated Your statement that inappropriate physical contact was initiated by a supervisor while in a meeting in his office A VA Incident Report dated reporting , inappropriate physical contact, position description, leave and earnings statement dated FINCP employee responsibilities and confirmation receipt dated Authorization of union representation and release of information dated VA Police Investigative Report dated reporting an assault on including Report of Contact received investigative report concluded that all the elements of assault were not met and there was no assault, Statement from dated stating that his office is across from Mr. office and he did not see Mr. enter or leave Mr. office on , Statements from dated and stating that Mr. shared some of the meeting between he, the union and Mr. but he did not mention that there were any other meetings with Mr. that day, E-mails between Mr. and Mr. dated concerning scheduling a meeting, Letter from Mr. ELR Specialist to Mr. , FLRA dated The reason for the decision was, the requirements had not been met for establishing that you sustained an emotional condition that arose during the course of employment and within the scope of compensable work factors as defined by the FECA.

You disagreed with the decision and requested reconsideration by letter/appeal request form received on

On the Branch of Hearing and Review affirmed the prior decision but modified to reflect denial based on causal relationship rather than performance of duty.

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A cursory review of the evidence in file supports the claimant's allegations of

We have received medical evidence, an emotional condition must be supported by an opinion from a psychiatrist or clinical psychologist. Because clinical psychologists are not licensed to treat physical disorders or prescribe medication, an opinion from a psychiatrist must be obtained where a physical component is present, a functional overlay is implicated and/or medication is used. The medical evidence was sufficient to establish prima facie, therefore a second opinion was scheduled.

The second opinion specialist is required to take into account the past history of mental problems or personal non-work related stressors. Therefore is provided an accurate history of what occurred at work; the substantiated facts vs. the unsubstantiated allegations, and the substantiated facts that are factors of employment and those that are not; and any non-work related stressors.

DISCUSSION OF EVIDENCE: The evidence reviewed in support of your reconsideration request includes:

Letter from _____ PhD. dated _____ and _____

VA Hospital notes 81 pages.

Agency Email dated _____ the agency confirms _____ is not working in the same position with the same responsibilities and oversight as described by the claimant. _____ currently works as _____ at the _____. The claimant would not be required to interact with _____. The claimant has not returned to work.

Second opinion report dated _____ signed by Dr. _____. Dr. _____ was provided with a statement of accepted facts of the case, medical records for information of a behavioral or psychiatric nature, as well as an diagnostic interview.

Dr. _____ states, the results of psychological or personality testing, he scores a 36 on the WHODAS 2.0, H130, H215 to 20, H310 to 15. The diagnoses: Posttraumatic stress disorder. This claimant has a history of boundary violations dating back to childhood. He was sexually assaulted while in the military on two occasions. He acknowledges symptoms of posttraumatic stress disorder following his assaults including nightmares, flashbacks, startle, hypervigilance. It is noted he opines the claimant meets criteria for borderline personality disorder, because he is reporting abandonment issues. He notes idolization and devaluation, feeling he cannot trust others. He has had recurrent suicidal behavior including self-mutilating behaviors, affective instability, chronic feelings of emptiness, transient dissociative symptoms. It is my impression that non-work related factors are causing his posttraumatic stress disorder. It is my opinion that posttraumatic stress disorder is a more appropriate diagnosis than generalized anxiety. Please see the above description regarding prior traumas including as a child and being sexually assaulted in the military. It is my impression that non-work related factors are causing his posttraumatic stress disorder. It is my opinion that posttraumatic stress disorder is a more appropriate diagnosis than generalized anxiety. Please see the above description regarding prior traumas including as a child and being sexually assaulted in the military. I would estimate that this claimant's resolution of symptoms of posttraumatic stress disorder will

File Number:
Merit Review4-D-RECO

take a minimum of eight to twelve months. I do not believe he meets criteria for bipolar disorder.

BASIS FOR DECISION: The evidence is sufficient to vacate the decision dated because the medical evidence establishes that a pre-existing condition was temporarily aggravated, by the incident.

CONCLUSION: Therefore, the decision dated is vacated.

Your case is now accepted for POST-TRAUMATIC STRESS DISORDER, (TEMPORARY AGGRAVATION).

Division of Federal Employees' Compensation