

File Number:  
HR11-D-H

RECEIVED SEP 06 2016

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 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

Sincerely,

Electronically signed

Hearing Representative

PAUL H FELSER  
FELSER LAW FIRM PC  
QUEENSBOROUGH BANK BUILDING  
7393 HODGSON MEMORIAL DRIVE  
SUITE 102  
SAVANNAH, GA 31406

*If you have a disability (a substantially limiting physical or mental impairment), please contact our office/claims examiner for information about the kinds of help available, such as communication assistance (alternate formats or sign language interpretation), accommodations and modifications.*

Washington DC, September 01, 2016

U.S. DEPARTMENT OF LABOR  
Office of Workers' Compensation Programs

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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  
Washington, D.C, Case number

*Merit consideration of the case file was completed on  
review, the decision of the district office dated  
set forth below.*

*Based on the  
is set aside for the reasons*

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The issue for consideration is whether the claimant suffered an Occupational Disease as defined by the Federal Employees' Compensation Act.

born is employed as a  
with the Office of in Washington,  
D.C. He filed Form CA-2 for an Occupational Disease claimed to be related to factors of his  
federal employment. He claimed hypertrophic obstructive cardiomyopathy with ventricular  
tachycardia due to work-related stress. He became aware of his condition on  
and realized that it was related to his federal employment on  
According to the CA-2, sought initial medical treatment on and  
stopped work on

In a statement received along with the CA-2 form, explained that his cardiac  
condition was originally diagnosed in . This required implantation of a defibrillator. This  
condition reportedly worsened with the stress and nature of his job. He cited stress from  
traveling over 60% of the time as well as stress from his role as Union President.

The Office also received emergency room discharge instructions dated from  
St. Vincent's Medical Center. The reason for the claimant's visit was listed as ventricular  
tachycardia. also submitted FMLA paperwork dated from  
M.D. which diagnosed ventricular tachycardia. He was restricted from travel  
and stressful situations.

The Office also received a medical report from Dr on however  
there is no author date listed on this correspondence. She diagnosed Hypertrophic  
Obstructive Cardiomyopathy with Ventricular Tachycardia. It was her opinion that the  
claimant's work environment contributed to the degradation of this condition. Dr.  
cited work stressors including travel away from home, examining financial institutions with

tight deadlines and being in the spotlight under public scrutiny. She opined that this contributed to his rapid increased heartbeats and stress within the heart. Dr. [redacted] stated that the claimant would not be able to tolerate the environment he was previously employed in. His condition was described as rare and very serious.

On [redacted] the Office issued a development letter to [redacted] advising him of the factual and medical evidence needed to prevail in his claim for benefits. A letter was also sent to the employing agency requesting their review and comment. In particular, they were asked to review the claimant's statement which had been received on [redacted]

In response, [redacted] submitted an eight page statement dated [redacted]. He explained that he has hypertrophic obstructive cardiomyopathy with ventricular tachycardia. He also claimed post-traumatic stress disorder due to the fact that his implantable cardioverter defibrillator (ICD) fired six times. This device had been implanted on [redacted]. He explained that leading up to his attack on [redacted] he had been dealing with final negotiations for the fiscal year, reports that needed to be finished, ensuring pay and bonuses were processed properly, and dealing with an election cycle. He also cited the "stressful everyday rigors" of his job.

[redacted] had previously been employed with the FDIC but left due to the stressful workload. His last day of employment with them was on [redacted]. He was hired with the Consumer Financial Protection Bureau (CFPB) on [redacted]. From [redacted] to [redacted] he worked solely as a Financial Institution Examiner. He stated that this was an extremely stressful role. As part of his job he had to travel for over 200 days per year. He had tight deadlines with little to no supervisory instruction or training. He stated that he had no clear guidance or published manuals on how to examiner certain institutions because they had never been examined before. Specifically, under new legislation the CFPB started examining new institutions including payday lenders, debt collectors, and credit bureaus. However, a training program was not put in to place until [redacted]. [redacted] also claimed stress from the fact that the promotion and performance review systems at the agency were revamped because of poor and discriminatory ratings. In particular, he claimed that he had been told when he was hired that he would be promoted yearly to make up for the reduction in pay from leaving his job with the FDIC. However, he claimed that he was only promoted once over the course of four years. He explained that these things, in combination with his role as union president starting in 2013 caused his stress to increase. He stated,

"Representing everyone in such a precarious environment that included leading the negotiations, pay raise discussions, remuneration of back pay for the poor performance reviews, and every other part of the job I had to accomplish as Union President, this environment was both toxic and stressful. When combined with the everyday role of regular work until late 2014, and the total and absolute pressure of Equal Opportunity complaints, testifying before Congress, and the pressure of leadership in such a toxic environment, the progression and building of stress over the

last two years, for a normal person would have been tough to overcome. For someone with my condition, it is deadly.”

also indicated that in [redacted] he had filed an EEO complaint against the CFPB and management for sex and sexual orientation discrimination. He stated that discrimination was not established however the agency was advised that their “process” was incorrect and additional training was required. They were also told that they could not investigate individuals for simply being gay, lesbian, bisexual or transgender.

Ir [redacted] became the interim Chapter 335 President of the [redacted]. He continued to work as an Examiner during this time as well. He was officially elected to the union position in [redacted]. He claimed that the Chapter Executive Board was nasty to his leadership team and himself.

He stated that on [redacted] he received a letter from [redacted] which instructed him to stop harassing the field VP. [redacted] argued that he was just trying to explain to the member how poor of a job she was doing.

From [redacted] to [redacted] alleged that multiple Unfair Labor Practices were filed against him. He stated that all were dismissed however the claims of mistreatment of women persisted. He stated,

“One major point was bargaining our very first contract. I choose members of the Board to sit with us in bargaining and eventually, as related in previous emails they believed they run the Chapter rather than the President that is how our by-laws worked. Eventually we voted on a contract. There were accusations of voter fraud although none were proven. I had to write a blog to explain to all members what was happening. These are included in the attachments. They tried to pass an amendment wholly unconstitutional where the Board could sue members with their own dues monies. [redacted] stepped in and refuted that amendment wholly. However, this led to Politico picking up a story about Union strife at the CFPB and the first time the Board went to the press, who always goaded and wrote stories about the CFPB. This was a first at [redacted] as well. Subsequently more stories were filed and more complaints between the Union leadership. All the while members were generally shielded from the true nature of most of the back and forth as I choose to take the high road upon advice of [redacted]. The ULP story hit the press in December.

[redacted] stated that in [redacted] 100% of his official time was spent working for the NTEU Chapter 335. This was reportedly agreed upon by his employer.

In [redacted] the claimant made his allegations of discrimination public. He testified to the House Subcommittee on oversight and investigations about discrimination at the CFPB. He also testified on behalf of eight African American females and other minorities. He stated that while this was the right thing to do, he lost the union election in [redacted]

In conclusion, the claimant argued that his job involved demanding deadlines and he was subject to harassment from a hostile work environment. He claimed that he was falsely accused of mistreating women, threatened with physical violence, compared to Hitler and chastised by the press. He argued that his employer did nothing to protect him. He stated that he always did the right thing and followed the rules with the best interests of the union membership at heart. However, he was called foul mouthed by the press and a dictator by the Board. This, along with working his regular job as an Examiner, eventually led to the filing of this claim.

A statement dated \_\_\_\_\_ was received from \_\_\_\_\_ a co-worker of \_\_\_\_\_. It was her opinion that his heart condition was made considerably worse due to the "enormity of abuse" he endured at work. She indicated that his role as President of the \_\_\_\_\_ involved a high level of stress and responsibility. She also stated that deliberate actions were taken to permanently damage his reputation.

A statement dated \_\_\_\_\_ was received from the claimant's attorney Paul Felser, Esq. He noted that the claimant was employed as a Financial Institution Examiner however he also served as President of the Nati \_\_\_\_\_. He noted that the Office had questioned the voluntary nature of this position however he pointed to Chapter 2-0804-16 of the FECA Procedure Manual which supports that the claimant's service in this capacity was considered to be in the performance of duty. Mr. Felser noted that the claimant's employment required extensive travel, public speaking and testifying before Congress. While \_\_\_\_\_ has a history of prior treatment for his cardiac condition, Mr. Felser argued that this would not preclude him from receiving benefits for an aggravation of this condition.

By decision dated \_\_\_\_\_ the Office denied the claim stating that the evidence was insufficient to establish that the claimant's medical condition was causally related to the accepted work event(s).

It is important to note that prior to the denial the claimant had submitted several hundred pages of medical documentation pertaining to his cardiac condition. The Office provided a detailed account of the specific evidence received in their denial decision. However, the Board has held that until a claimant has identified incidents or occurrences that are alleged to have arisen out of the employment for compensation purposes, it is unnecessary to address the medical evidence.<sup>1</sup> This will be addressed further in this decision.

The claimant disagreed with the \_\_\_\_\_ decision and an appeal was requested by his attorney, Mr. Felser. In accordance with this request, I have conducted an initial review of the file and find that the case is not in posture for a hearing at this time.

Based on my review of the file, the decision of the District Office dated \_\_\_\_\_ should be *SET ASIDE* and the case file *REMANDED* for further development.

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<sup>1</sup> Richard J. Dube, Docket No. 91-672. Issued September 26, 1991.

In an emotional condition claim, an employee has the burden of establishing by the weight of reliable, probative and substantial evidence that the mental condition for which she claims compensation was caused or adversely affected by factors of her federal employment. To establish that she sustained an emotional condition in the performance of duty, appellant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; (2) medical evidence establishing that she has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.<sup>2</sup>

In cases involving emotional conditions, the Employees' Compensation Appeals Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.<sup>3</sup> If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.<sup>4</sup>

The first issue to be addressed is whether the claimant has cited factors of employment that contributed to his alleged condition or disability. Where the disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within the coverage of the Act.<sup>5</sup>

On review, I find that the Office failed to adjudicate the factual component of the claim. Specifically, the claim was denied on the basis that the evidence failed to establish that Mr. Cauldwell's medical condition was related to the accepted factors of employment. This is referred to as the Causal Relationship element. However, the Office failed to make a finding of fact to determine which factors of employment, if any, were compensable. In fact, the decision of \_\_\_\_\_ makes no reference to the specific work stressors the claimant has alleged to be the cause for his condition. The Office erred in denying the case on a medical basis before they addressed the factual component of the claim.

On \_\_\_\_\_ the Office received a statement from \_\_\_\_\_ within which he provided a brief description of the employment factors believed to be the cause for his condition. He cited stress from the travel requirements of his job as well as stress from his role as Union President. The Office developed the claim for additional information regarding the specific factors of employment he was alleging to have caused, aggravated, accelerated or precipitated his cardiac condition. A letter was also sent to the employing agency for their review and comment.

<sup>2</sup> Wanda G. Bailey, 45 ECAB 835 (1994); Kathleen D. Walker, 42 ECAB 603, 608-09 (1991).

<sup>3</sup> Norma L. Blank, 43 ECAB 384 (1992).

<sup>4</sup> Id.

<sup>5</sup> Lillian Cutler, 23 ECAB 125 (1976)

In response, \_\_\_\_\_ submitted an eight page statement dated \_\_\_\_\_ within which he outlined the work stressors believed to have contributed to his diagnosed condition. The Office acknowledged receipt of this information however no further discussion ensued regarding the information contained therein. Additionally, there is no statement in the file from the employing agency addressing this evidence nor does it appear that they were provided with a copy of this documentation. Therefore, the employing agency must be allowed the opportunity to review the claimant's statement and offer comments relative to the allegations made therein. This is crucial in corroborating the veracity of \_\_\_\_\_ claims.

Conclusively, I find that the Office has not adequately addressed the claimant's specific allegations, as outlined on Form CA-2 and in his statement dated \_\_\_\_\_. Specifically, the Office initially erred in failing to send a copy of \_\_\_\_\_ statements to the employing agency for review. Despite this, they proceeded in issuing a decision on the claim without making a proper finding of fact as to whether or not the incidents identified by the claimant occurred as alleged and if so, whether or not they are considered compensable. This was improper.

Upon return of the case file, the Office must address the factual evidence of record and initiate further development. Specifically, the Office must review the statements submitted by \_\_\_\_\_ 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.

Consistent with the above, the decision of the District Office dated \_\_\_\_\_ is set aside and the case is **remanded** for further action consistent with this decision.

ISSUED:

WASHINGTON, D.C.

Electronically signed

\_\_\_\_\_  
 Hearing Representative  
 for  
 Director, Office of Workers'  
 Compensation Programs