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U.S. DEPARTMENT OF LABOR

OFFICE OF WORKERS' COMP PROGRAMS  
PO BOX 8300 DISTRICT 13 SFC  
LONDON, KY 40742-8300  
Phone: (415) 241-3300

September 17, 2013

Date of Injury:  
Employee:

Dear Mr. \_\_\_\_\_ :

This concerns your compensation case and your request for reconsideration received on 12/17/2012.

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 12/19/2011. Based on the information received, the decision is now vacated.

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

Sincerely,

Barbara Kennedy  
Senior Claims Examiner

PAUL FELSER  
ATTORNEY-AT-LAW  
PO BOX 10267  
SAVANNAH, GA 31412

***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.***

**NOTICE OF DECISION**  
**Claimant Name:**  
**Case Number:**

**ISSUE:** The issue for determination is whether the evidence presented is of sufficient probative value to modify the decision dated 12/19/2011 with respect to a claimed emotional/psychiatric condition.

**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.

**BACKGROUND:** On \_\_\_\_\_ you filed a claim for Traumatic Injury indicating you sustained an injury or medical condition on \_\_\_\_\_ as a result of your employment.

OWCP accepted your claim for SPRAIN OF NECK, 847.0; SPRAIN OF BACK, LUMBAR REGION, 847.2.

On 12/19/2011 a formal decision was issued in your case finding the evidence of record failed to support that you were disabled for work as of 07/14/2011 and continuing. The documentation upon which the decision was based included the medical reports from Dr. \_\_\_\_\_ and Dr. \_\_\_\_\_.

The reason for the decision was that the reconsideration examiner did not feel that the additional evidence was sufficient to modify the previous decision that had denied wage loss benefits effective \_\_\_\_\_ and continuing.

In early 2012, the District Director reviewed this case and determined that there was sufficient evidence on an orthopedic basis to award compensation for temporary total disability retroactive to \_\_\_\_\_. Therefore, that part of the decision of 12/19/2011 that denied wage loss benefits was set aside. You currently receive such benefits. OWCP awarded them retroactively to \_\_\_\_\_.

The District Director did not feel that the medical evidence established the existence of a psychiatric condition that was proximately caused by the accepted orthopedic injuries. He recommended that you review your appeal rights.

You disagreed with the 12/19/2011 decision on this particular issue and requested reconsideration thru your attorney by letter/appeal request form received on 12/17/2012. Since the District Director has already set aside that part of the decision that denied the wage loss benefits, this decision will focus on the claimed psychiatric condition.

**DISCUSSION OF EVIDENCE:** The evidence reviewed in support of your second reconsideration was Dr. \_\_\_\_\_ report of \_\_\_\_\_ and your attorney's legal arguments of 12/17/2012.

In your attorney's letter of 12/17/2012, he argues that your various cases should be combined and he cites a section of Federal Employees' Compensation Act (FECA)/OWCP Procedure Manual that recommends same. I will simply note that the current statement of accepted facts in this case does make reference to the previous work injuries. This reconsideration examiner does not subscribe to the notion that "more" is always "better". The fact remains that OWCP never accepted any of your previous claims for any condition that was more serious than a sprain. Moreover, you did return to full duty from the previous injuries. Finally, this particular section of Procedure Manual was last revised in March of 2000. At that time, almost all of our

files were paper files. Since 2001, all of our cases have been imaged. (Most active older cases have a paper part and an imaged part.) All of your cases are imaged records. What worked with paper records does not work as well with imaged records. I have copied into the current case the narrative medical reports and results of diagnostic tests from your other orthopedic injuries. I did not copy the handwritten chart notes and physical therapy notes since most of them are rather difficult to read and rather brief. I am not of the opinion that the hundreds of documents from your other cases, many of which are administrative in nature need to be incorporated into your current claim. The relevant information is what OWCP accepted with respect to your previous injuries and what the medical evidence says about them. The various administrative documents regarding your various claims for wage loss benefits mostly have temporal significance. They document your medical condition at the time they were generated. They are relevant to for the purposes for which they were submitted. But, they do not contribute to any current understanding of your present medical condition. In fact, they would just be unnecessary "clutter".

On the question of an emotional or psychiatric condition, I would note that following the first work injury of \_\_\_\_\_, a motor vehicle accident, you were seen by a chiropractor, \_\_\_\_\_, DC. In his first report of 09/30/2004, Dr. \_\_\_\_\_ noted that your medical history included asthma, sinus trouble, allergies, high blood pressure, serious (not otherwise specified) injury, and **mental/emotional difficulty**. Dr. \_\_\_\_\_ did not elaborate upon the nature or extent of the seriousness of the other medical conditions that he mentioned. His report then focuses on his findings relative the then current injury claim.

On 10/13/2004, \_\_\_\_\_, MD evaluated you at the request of Dr. \_\_\_\_\_. In this report, Dr. \_\_\_\_\_ noted that, in the past, you had been given some Wellbutrin for some problems at the job. At the time of his evaluation, you were no longer using this medication, which is a well-known anti-depressant medication. Dr. \_\_\_\_\_ then notes in his review of systems that there was a history of depression. The balance of Dr. \_\_\_\_\_ report then reports on the physical findings. At the time of his evaluation, Dr. \_\_\_\_\_ did not believe that you needed any prescription medication for any condition related to your injury.

On 02/22/2005, a different physician, \_\_\_\_\_, DO, evaluated you. At that time he stated that you complained of pain in various body parts. He also stated that you had suffered a stress-related disorder from your current work environment. He recommended a psychological evaluation with Richard Truhill, a local counselor. Dr. \_\_\_\_\_ did order various tests, including MRI's, NCV's, and an EMG. The findings from these tests were "unremarkable".

There is no report from Mr. \_\_\_\_\_ in your file and there is no mention of further psychological issues in Dr. \_\_\_\_\_ subsequent reports thru June of 2005, when you were released for full duty.

Your next work related injury occurred on \_\_\_\_\_, when you partially fell thru the sheetrock ceiling onto a beam during a search in an attic that was part of a crime scene. The initial medical reports are "unremarkable" in terms of documenting an emotional or psychiatric difficulty with respect to either this accident or the previous one. However, on 09/24/2007, over one year later, OWCP did receive a report, dated 09/17/2007, from \_\_\_\_\_ a licensed professional counselor (LPC). On this occasion, Ms. \_\_\_\_\_ did report that you were taking the Wellbutrin for symptoms of depression that she ascribed to your pain and inability to function normally because of your most recent on-the-job injury. Ms. \_\_\_\_\_ noted that you had met with a psychiatrist in 1999 because of issues of work-related stress. She also noted that you had participated in a multi-disciplinary program in 2005 that had included some

counseling. You had participated at the recommendation of one of your physicians who had treated you for your first work injury of 2004. She noted that the objective medical findings from the MRI's, and other medical tests had been minimal. Ms. \_\_\_\_\_ diagnosed you with a pain disorder associated with your general medical condition and with psychological factors. She also diagnosed a depressive disorder, not otherwise specified (NOS). She noted that you had ineffective coping skills and that various bio-psycho-social factors were interfering with your recovery.

You subsequently participated in a work-hardening program and returned to full duty with your previous employer in early March of 2008. It is not known from the records available in your case whether there was any counseling associated with this program. If there was, the records do not mention same.

You were involved in another work-related motor vehicle accident on \_\_\_\_\_. I did not find any medical records in this case that referred to any emotional condition or which suggested you received treatment or should receive treatment for any emotional condition secondary to these injuries.

Your most recent OWCP case was for another motor vehicle accident on \_\_\_\_\_. Initially, there was no medical treatment for any condition that might be described as "emotional" or psychological. On 07/28/2011, \_\_\_\_\_, MD, a board certified psychiatrist, evaluated you. For the record, one of your orthopedic surgeons for this injury is \_\_\_\_\_, MD. (In other words, these two physicians have the same last name.) Unless I state otherwise, my references to Dr. \_\_\_\_\_ reports are to reports of \_\_\_\_\_, MD, the psychiatrist.

In his report of that same date, Dr. \_\_\_\_\_ noted the history of your various orthopedic injuries. He also noted that you reported a recurrence of psychiatric symptoms following your most recent accident about two months after it occurred. Dr. \_\_\_\_\_ noted that although you were released to return to work, you were still having pain. Additionally, the driver of the other vehicle made a false accusation that triggered an internal affairs investigation at your place of employment that you considered unwarranted. You also noted that you were placed on a Performance Improvement Plan because of "misconduct" and "poor performance" that you disputed. Dr. \_\_\_\_\_ then reviewed your overall work history and noted that you had filed three discrimination law suits against your employer and prevailed in all of them. Dr. \_\_\_\_\_ diagnosed a depressive disorder, not otherwise specified. He noted that the pain associated with your injuries was the predominant cause of your emotional symptoms rather than the issues involving the Internal Affairs investigation or the performance/misconduct issues that you described. Dr. \_\_\_\_\_ also stated that you were temporarily totally disabled on a psychiatric basis.

Subsequently, your orthopedic surgeon referred you for pain management services with \_\_\_\_\_, MD, who began a program that included prescribing some rather powerful narcotic medications as well periodic epidural injections.

On 09/08/2011, Dr. \_\_\_\_\_, submitted a supplemental medical report in which he restated that the most recent occupational injury was the cause of your current psychiatric condition. There are no further medical reports on file from Dr. \_\_\_\_\_ until his report of 11/15/2012.

On 07/14/2012, your spouse succumbed to ovarian cancer.

On 11/15/2012, Dr. [redacted] submitted another medical report at the request of your attorney. In this report, Dr. [redacted] noted that the Internal Affairs Investigation in December of 2011 had exonerated you from the charge of making threats towards the motorist who had caused the accident of 03/18/2010. The Internal Affairs investigation did find that your behavior towards this person had been "discourteous". Dr. [redacted] also noted the demise of your spouse from ovarian cancer in [redacted]. He noted that your grief from this event was normal and subsiding, but still present. Dr. [redacted] noted that you lived alone and you were "not seeing anyone".

He stated that your mental status examination was within normal limits with no impaired reality testing. You did not report to him any auditory or visual hallucinations. He reported that you did not experience panic attacks or engage in obsessive rituals. He estimated your intellectual functioning to be in the normal to bright range and that you were oriented to time and place. He stated that you did not have any suicidal or psychotic thoughts about harming yourself or others. He noted that you were capable of handling normal activities of daily living including shopping, local driving, cooking, house cleaning, and attending to normal financial matters, such as paying bills, etc. He reported that you still had some anxiety, tension, depression, and irritability that you attributed to the physical pain from your orthopedic injuries. He noted that you had been taking Wellbutrin off and on for a period of several years. He concluded that the constant pain was sufficient cause, by itself, for the recurrence of your depression. He did state that the Internal Affairs investigation and the placement on a Performance Improvement Plan had been aggravating factors at the time, but implied that they were not significant at present, given that you had not worked for the employer since [redacted]. Dr. [redacted] concluded that you had a temporary partial disability for your regular occupation on a psychiatric basis. He recommended some cognitive therapy to improve your coping skills.

**Recommendation:** Based upon the above reports, I do find that there is sufficient evidence to accept your claim for a depressive disorder, not otherwise specified. I would authorize the cognitive therapy for the six to twelve sessions indicated. However, I also recommend a more thorough evaluation of the possible role of other medications, particularly pain medications, as many medications are known to have adverse psychiatric effects. There is no discussion of the amount of pain medication that you are using in Dr. [redacted] reports. I would note that your subjective complaints of pain are disproportionate to the objective findings as demonstrated from the recent MRI's, nerve conduction testing, etc. Your current treatment program for "pain" is medically controversial, given the paucity of the objective findings.

**BASIS FOR DECISION:** The evidence is sufficient to modify the decision dated 12/19/2011 because the medical evidence establishes the existence of a depressive disorder secondary to the physical injuries. However, I do recommend that there be a more comprehensive medical evaluation that likely should include psychological testing with an emphasis whether the current treatment regime is medically appropriate.

**CONCLUSION:** Therefore, as the evidence presented of sufficient probative value to alter the decision dated 12/19/2011. That part of the decision that denied the claim for a psychiatric condition is set aside.

Barbara Kennedy  
Senior Claims Examiner