

File Number:
HR10-D-H

RECEIVED JAN 12 2018

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 hearing was held on 11/07/2018. As a result of such hearing, it has been determined that the decision issued by the District Office should be vacated and the case remanded to the district office for further action as explained in the enclosed copy of the Hearing Representative's Decision.

Your case file has been returned to the San Francisco 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 13 SFC
LONDON, KY 40742-8300

Sincerely,

Division of Federal Employees' Compensation

PAUL H FELSER
FELSER LAW FIRM, P.C.
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, January 09, 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
number _____ A Telephone Hearing was held on November 7, 2018.

The issue for determination is whether the claimant in fact sustained an emotional condition in the performance of duty causally related to his employment.

The claimant was employed by the _____ as a
_____ The claimant filed a CA2 Notice of Occupational Disease Claim on
December 11, 2017 claiming that he has worked as an _____ since 1988 and
over 28 years was exposed to traumatic events including the death of fire fighters in 2005
and 2006 and that he was almost killed six times. The claimant stated that he sustained
posttraumatic stress disorder and first became aware of his condition on _____
and realized that it was caused or aggravated by his employment on July 11, 2017.

By letter dated January 3, 2018 the Office requested that the claimant submit additional
factual and medical evidence to establish his claim.

A December 21, 2017 letter from _____ to
Dr. _____ was received in the Office on January 5, 2018 and stated in relevant part.

"We are in receipt of your completed Medical Evaluation Questionnaire, dated
12/16/2017. regarding _____

Your analysis indicates that Mr. _____ is a 'good healthy
individual' and is fully capable of performing all the duties of a _____

However, given that Mr. _____ has been absent from work since early July, 2017 and
has attributed his absence, in part, due to various illnesses (i.e. - diabetes,
depression, PTSD, alcoholism, prescription drug abuse and illicit drug use), we are
concerned that Mr. _____ may not have followed the instructions in the memorandum
associated with this Medical Evaluation Questionnaire. The instructions were, "So that
your physician has sufficient information to respond to the items concerning your
ability to perform your job and accommodations that might be recommended, it is
important that you provide him/her with the attached copy of your position description,
the attached medical evaluation questionnaire, as well as a copy of this
memorandum."

A August 15, 2017 email from the claimant to _____ and _____ was received in
the Office on January 5, 2018 which stated in relevant part,

"I was discharged from _____ where I was treated for depression.

Concurrently I was admitted to _____ I am being treated co-occurring disorders such as PTSD.

The program at _____ runs at least 30 days.

I remain medically unable to work with no prognosis or return to work date."

A October 23, 2017 e-mail to _____ from the claimant was received in the Office on January 5, 2018 that stated in relevant part,

"I apologize for Friday. I am dealing with severe PTSD and still need further treatment.

I am sure Friday and Saturday were incredibly hard.

Please tell _____ I am Ok. I will be getting additional treatment in _____ with no return to work date. I am focusing on treatment for the time being.

I don't plan on filing any further complaints. It's pretty obvious short comings people have--including me. Its [sic] not my Job to Judge people's character deficits. We all have challenges. I need to focus on my own issues.

You're a good _____ You lead an excellent _____
you're one of the best _____ We have an incredibly challenging
job at _____ and your doing a fine Job.

I am not worried about the investigation. I should be held accountable, but we should factor in that I wasn't well at all. I tried to get treatment after the _____ but it didn't work. Absolutely no _____ has been involved. I stopped drinking on July 10, 2003. One of the best decisions I ever made. I thought everyone knew, but I advertised the fact at all."

A August 5, 2017 email from _____ to _____ and _____ was received in the Office on January 5, 2018 and stated, "This message explains what happen to _____ the evening we were looking for him at _____ The email forwarded a August 4, 2017 email from _____ which was sent to _____ and stated:

"Hello _____, my name is _____ I worked at the _____ from _____, I was sponsor on _____ came by my house after not seeming him for 7 years, he was incoherent and not connected to much if any soundness of mind. I took him home (I live in _____)to _____ and the next day to emergency, he was much more connected and coherent. He has moved on to drugs of which I have no experience, I feel so bad for him but I know one thing for sure, he Has to stop the bull, until he accepts responsibility for his train wreck, in my opinion, he will never get well. Because I worked the Park and

love my time there , and the fact I worked with [redacted] and his problem , I feel obligated to inform you of what little or not so little I know of [redacted] I work in the [redacted] , of which I know also suffered their own tragedy not too many months back , I would hate to see and hear of any more befalling

A January 5, 2018 statement from Mr. [redacted] was received which stated in relevant parts,

“At present we are unable to find a clear causal relationship between the claimant's purported illness and the claimant's federal employment. This is, in part, because the medical documentation provided to us as of this date doesn't contain a clear and unequivocal medical rationale showing that the claimed emotional reaction is causally related to the work factors. Rather, it appears that the causes are personal in nature. The preliminary findings indicate that Mr. [redacted] employed in a drug/alcohol testing designated position, has been deceiving both medical professionals and the agency for the last several years regarding his history of mental illness (pre-dating his federal employment), physical trauma (i.e.-head) from off duty accidents/incidents, and history of drug/alcohol abuse and addictions during his federal employment up to the present. Presently, given the claimant's recently acquired eligibility for regular federal employee retirement, this claim appears to be an attempt to deflect responsibility from his personal issues, and place full blame upon the [redacted] in part, for the purpose of personal significant financial gain (see enclosed email “ [redacted] email on financial benefit of OWCP 10 18 2017”).

The claimant has been off work via a mixture of annual leave, sick leave, administrative leave and leave-share since early July, 2017. Throughout this period the claimant has exhibited behavior of mental instability via many emails, voice-messages, and in-person discussions. What follows, for the purpose of brevity, is a sampling of chronological history of the claimant's behavior, statements and other relevant documentation.”

A statement dated March 15, 2018 from [redacted] in relevant part,

“On March 5, 2018 I met with the claimant to discuss his near-continuous absence from work from July, 2017 through present , particularly in the context of his erratic behavior and emailed references to 'drug addiction' beginning on August 2, 2017, which was followed by denials of illicit drug use. I informed the claimant that I was conducting an administrative investigation and that any information the claimant would provide regarding that absence would not be used in a criminal prosecution, and as such, the claimant was required to provide candid and truthful responses. In response to my question asking the claimant if he had any substance abuse issues over the last several months, the claimant initially stated that he was using a prescription medication that, if tested, would give positive results for methamphetamine use. When [redacted] told the claimant that this was not a response to my question, the claimant stated that he had begun using methamphetamine (a Schedule 1 illegal drug) in May, 2017

and had used this drug weekly or every other week for several months through the fall of 2017.”

By decision dated June 12, 2018 the Office denied the claimant’s claim based on the determination that he did not establish that he in fact sustained an injury because he did not establish that any claimed employment incidents in fact occurred. The decision stated in pertinent parts,

“Incident(s) Alleged Which the Office Finds Are Not Factually Established:

1. You claim that over the course of 28 years you were exposed to many traumatic events including the deaths of other _____ which you claim caused your PTSD.”

“In addition, in your email dated 08/02/2017 to _____ you also assert that “I don’t suffer from PTSD. I don’t believe I ever suffered from PTSD. I am an addict and alcoholic”. You also mentioned that “The illness I reported to you in Jan 2016 is drug addiction covered under HIPPA. I was ashamed so I didn’t tell you the entire story. I have been an alcoholic and addict my entire life. I became dependent on Avitan and Ambien while under treatment for stress”.

2. You claim that the traumatic events of the 2016 _____ caused you mental trauma. You state that the mental trauma of the _____ was dominant for over a year, that the mental trauma was triggered recently by the 2017 budget rules, and that you have a classic case of PTSD.”

“You claim that you were almost killed six times.”

The claimant disagreed with the June 12, 2018 decision and requested an Oral Hearing. A Telephone Hearing was held on November 7, 2018. The claimant did not attend the Hearing but was represented by Paul Felser at the proceedings.

As required by Office procedures, a copy of the Hearing Transcript was forwarded to the employing agency to afford them the opportunity to comment on the claimant's testimony. No comments have been received and the time allotted to all parties for the submission of additional evidence has now passed.

At the Hearing Mr. Felser argued that the claimant in fact sustained an injury in the performance of duty. It was explained that in order to accept a claim for a psychiatric or emotional condition that the appellant would need to establish what he claimed in fact occurred with corroborated evidence. It was noted that then the medical evidence would have to establish that the he was diagnosed with a medical condition, which could be related to what he alleged, occurred. It was further explained that it would need to be determined that incidents that occurred in fact happened in the performance of his job duties. It was noted that then the medical evidence would also have to establish that he sustained a condition causally to an incident or incidents that were determined to be factual and occurred in the performance of his job duties for his claim to be accepted.

