

File Number:
Merit Review4-D-RECO

RECEIVED NOV 27 2017

U.S. DEPARTMENT OF LABOR

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

November 22, 2017

Date of Injury:
Employee:

Dear

This concerns your compensation case and your request for reconsideration received on 02/21/2017.

We have evaluated the evidence submitted and have reviewed the merits of your case under 5 U.S.C. 8128. . It is determined that the evidence of record warrant modification of the decision dated 02/22/2016. Based on the information received, the decision is now vacated.

Also, Form CA-1032 is being sent separately for your completion. Please complete and return the form to this office if you wish to receive compensation benefits for wage loss from 08/19/2015 to 12/11/2015.

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

Sincerely,

Senior Claims Examiner

PAUL H FELSER
ESQ
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.

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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 02/22/2016.

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 12/11/2014 you filed a claim for Traumatic Injury indicating you sustained an injury or medical condition on _____ as a result of your employment as a _____ for the _____. You were aboard Liberty Launch Otori Maru #12 in Sasebo, Japan when you fell when liberty launch boat hit bouy. You returned to work on 12/08/2014. Your claim was accepted for medial epicondylitis, left; sprain of back lumbar region; and unspecified internal derangement of knee. You stopped work sustaining a recurrence of disability on 05/01/2015 and returned to work full time with restrictions on 05/27/2015. You lost intermittent time from work and compensation for wage loss and leave buy back was paid.

In a medical letter dated 06/30/2015, your treating physician, Dr. _____ noted he was referring you to a psychiatrist because you seems to be under quite a bit of stress and the reason he referred you to a psychiatrist is due to an increase inpatient's anxiety and depression you are experiencing ever since the accident.

On 09/07/2015, we received your claim for temporary total disability from 08/19/2015 to 12/11/2015. The back of the form indicated that you were out of work for mental reasons which have not been accepted.

In a medical note dated 09/03/2015 signed hv _____, M.S. noted that you have been under the direct care of Dr. _____ from 08/24/2015 through 09/04/2015 and the current services you were being provided hinders your ability to return to work.

On the discharge summary, Dr. _____ noted you had been very depressed and having suicidal thoughts. She stated you had an accident on the job about 8 months ago and has had incredible about of pain ever since then. She noted you were still depressed and tearful at discharge but was no longer suicidal. She stated you had some psych testing is also indicative of pain disorder and if not conversion disorder. She stated you were discharged on 08/19/2015.

In a medical note dated 09/10/2015 signed by _____ M.S. noted that you were currently receiving intensive outpatient service under the direct care of Dr. _____. She stated your treatment for major depressive disorder with psychotic features is ongoing, your prognosis is guarded and will be re-evaluated on 12/11/2015.



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A letter dated 10/02/2015 requested further medical evidence in support of your claim for temporary total disability.

Subsequently, you were referred to Dr. _____, a board certified orthopedic surgeon, for a second opinion examination. The purpose of the referral was to determine the nature and extent of the accepted left medial epicondylitis, lumbar strain and right knee internal derangement and whether you can continue working the modified job. Dr. _____ saw you on 08/12/2015. In his report, he diagnosed you with status post contusion left elbow, resolved, with subsequent development of lateral epicondylitis, lumbar degenerative disc disease and herniated disc with right SI strain and contusion and sprain right knee. He stated the left medial epicondylitis is resolved. The lumbar strain is basically lumbosacral/SI strain and is ongoing from the work injury. He stated he see no indication that the L2-L3 disc abnormally noted on the MRI would not be related to your work comp injury or clearly causing your current symptoms and with respect to the right knee, he noted the right knee on the job injury has resolved. He stated he do not believe you are capable of performing your date of injury job, if only due to your mental state. He stated he agree with the recommendations for neuropsychiatric evaluation and with respect to the back claim would limit your ability to safely go offshore. He stated you can continue your modified desk job. On 09/10/2015 Dr.

_____ referred you for a functional capacity evaluation (FCE). In his supplemental report dated 10/20/2015, he stated the FCE would appear that you were self-limiting of your activities and even more so of your perceived disability are the major contributors to your limited function. He noted given you perceived disability and self-limiting activities, the benefit of therapy would be minimal and not warranted the driving and effort and you would be better off doing exercises on your own. He recommended a trail of bed-side joint injection and if this did not result in significant relief you were considered at maximum medical improvement.

In a medical letter dated 12/03/2015, Dr. _____ noted your increased mental health issues resulting from work related accident occurring on _____. She discussed your prior stressors and she noted since the 12/07/2017 accident your symptoms have become exacerbated to the point of requiring inpatient hospitalization and more intensive outpatient treatment. She noted she suspected you have Bipolar II that has gone undiagnosed but believed the marked increased in severity of symptoms is a result of the accident on _____.

On 02/12/2016, a formal decision was issued in your case denying your claim for compensation from 08/19/2015 and continuing because the medical evidence of record does not indicate that you have an emotional condition medically connected to the work injury of 12/07/2014.

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On 02/22/2016, a formal decision was issued in your case finding that the evidence was insufficient to establish you sustained a consequential emotional condition due to weakness or impairment caused by your already accepted work-related injury/illness. The documentation upon which the decision was based included a medical report from Dr. [REDACTED] dated 12/06/2015. The reason for the decision was explained as:

"Although additional evidence was received, it was insufficient to support expansion of your claim to include a consequential injury because your present condition is a result of an undiagnosed Bipolar II condition which is pre-existing. Dr. [REDACTED] stated that your symptoms became exacerbated to the point of requiring inpatient hospitalization and more intensive outpatient treatment. Dr. [REDACTED] has not explained how your injury and fall on [REDACTED] caused your Bipolar condition. Dr. [REDACTED] has not indicated that she is a psychiatrist or licensed psychologist. She has not provided her medical specialty."

You disagreed with the 02/22/2016 decision and requested reconsideration by letter/appeal request form received on 02/21/2017.

DISCUSSION OF EVIDENCE: The evidence reviewed in support of your reconsideration request includes a physical therapy note dated 02/23/2016, pain institute follow up reports dated 02/29/2016, 04/04/2016, 04/25/2016, 05/02/2016, 06/01/2016, 08/29/2016, 11/21/2016, 12/05/2016, and 02/13/2017. Follow up reports from Dr. [REDACTED] dated 07/25/2016, 08/02/2016, 01/23/2017, and 02/04/2017, chest x-ray dated 01/20/2017 and [REDACTED] notes dated 01/20/2017. These reports pertain to your accepted sprain of back, unspecified internal derangement of knee and left medial epicondylitis conditions.

We also received letter from Mr. Felser dated 02/21/2017 explaining the basis for your request, along with medical evidence.

In the 08/02/2016 report, addressed to Mr. Felser, Dr. [REDACTED] noted your mechanism of injury and complaints since the time of the injury. She noted the symptoms you have been treated for directly correlate with bulging disc in your back as well as your right SI joint pain and dysfunction. She noted you underwent some physical therapy until it was stopped and you underwent injection into your lumbar spine as well as SI joint which are appropriate for your SI joint conditions. She also noted that it is appropriate for you to continue psychiatric treatment. She noted she reviewed the second opinion report from Dr. [REDACTED] and she stated she feels that your low back and SI joint dysfunction is directly related to your injury and the herniations in your low back correlated significantly with your clinical symptoms and findings. She stated she agrees that your elbow condition as well as your knee condition have resolved but your continued limitations with your ability to perform your work duties are most significantly limited because of your back condition including bulging disks at L2-3 and L5-S1 as well as the right SI joint dysfunction and she also stated she feels that your depression as a result of your injuries has limited you as well.

In his 02/21/2017 letter, Mr. Felser argued that you have established at the very least a prima facie case of causal connection regarding acceptance of your emotional condition. He submitted medical evidence from Dr. [REDACTED], Dr. [REDACTED], and Dr. [REDACTED] and therapy notes ranged from 06/22/2015 to 02/04/2017 in support of your emotional claim including Dr. [REDACTED] specialty.

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In your case, I find a prima facie claim is established and the evidence is sufficient to require further medical development. Accordingly, a second-opinion evaluation was arranged with Dr. [redacted] a board certified psychiatrist, who examined you on 10/19/2017 and noted her history of injury. She diagnosed major depressive disorder, recurrent, severe without psychotic symptoms, anxiety disorder unspecified, R/O bipolar II disorder, pain disorder with related psychological factors, and mild cognitive impairment, so stated. Dr. [redacted] stated, "There is a direct causal relationship between the accident occurring on [redacted] and Ms. [redacted] primary diagnosis of major depression. Had it not been for the accident, the symptoms of depression which were precipitated by pain resulting from the injuries obtained would not have likely occurred. The feelings of hopelessness, low self-esteem, guilt, and shame from loss of lifestyle and identity are a direct result of the accident induced injuries. The etiology of the cognitive impairment is unclear but most likely due to cognitive changes associated with anxiety and depression, which along with irritability are a direct result of negative feelings after the accident. She does have a predisposition for depression due to the episode in her 20's. This however does not mean that a depressive episode would definitely have occurred despite the accident. The severe stress associated with the accident and subsequent mood changes were substantial factors causing her depression." She recommended continued interpersonal psychotherapy and pharmacologic management. While Dr. [redacted] noted the accident occurring on [redacted] appears to be a typo as she accurately noted the correct date of accident occurring on [redacted] under the history of present illness in her report and attempted to make corrections to the date of injury throughout her report.

Dr. [redacted] has comprehensively explained with medical rationale that your major depressive disorder was directly caused by your work accident of 1 [redacted] and affirmed this medical finding in her report on 10/19/2017.

BASIS FOR DECISION: Based upon the second opinion report provided by Dr. [redacted] on 10/19/2017, and the medical evidence of record establishes that you have work-related residuals and disability attributable to the accepted [redacted] work injury, thus, the evidence is sufficient to vacate the prior decision dated 02/22/2016.

Of note, because your treating physician, Dr. [redacted] disagreed with the second opinion, Dr. [redacted] opinion regarding your low back condition, has created a conflict in the medical opinions. Dr. [redacted] noted your accepted lumbar strain is basically lumbosacral/SI strain and ongoing and he see no indication that the L2-3 disc noted on the MRI would be related to the injury or clearly causing your current symptoms; whereas Dr. [redacted] noted your low back and SI joint dysfunction is directly related to your injury and the herniations in your low back including disc bulging disc L2-3 and L5-S1. Accordingly, a third opinion (referee examination) would be warranted until this conflict in the medical opinions is addressed. Dr. [redacted] and Dr. [redacted] both agree that your accepted knee condition and elbow conditions have resolved.

CONCLUSION: Therefore, the decision dated 02/22/2016 is vacated.

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Your case is now approved for consequential major depressive disorder and is opened for medical and compensation benefits. Form CA-1032 will be sent to you for completion. Once this form is returned, you will be offered an election of benefits, if applicable, and your entitlement to wage loss compensation benefits will be considered for payment.

Tonya Taylor
Senior Claims Examiner

File Number:
CA-1008 (New Condition)-D-ACC

U.S. DEPARTMENT OF LABOR

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

November 22, 2017

Date of Injury:
Employee:

Dear Ms.

This is to notify you that the accepted conditions in your case have been updated. Your claim has been accepted for the following additional condition(s): MAJOR DEPRESSIVE DISORDER, ICD10 F33.3. A list of all accepted conditions in your case is below.

<u>Diagnosed condition(s)</u>	<u>ICD code(s)</u>
MEDIAL EPICONDYLITIS, LEFT	ICD09 72631
SPRAIN OF BACK, LUMBAR REGION	ICD09 8472
UNSPECIFIED INTERNAL DERANGEMENT OF KNEE	ICD09 7179

Please advise all medical providers who are treating you for this injury of the newly accepted condition(s) with ICD code(s). Accurate coding facilitates timely bill processing.

If the current accepted condition(s) need to be revised or additional complications related to the current accepted condition(s) need to be added, your physician should explain in writing, with medical rationale, the relationship between any additional condition and the work injury or the current accepted condition(s) noted above.

As a reminder, OWCP must approve in advance any surgery or procedure other than emergency surgery (that is, a procedure which must be performed right away to preserve life or the function of an organ or body part). You (or your medical provider) should contact OWCP for authorization at least 30 days before the intended date of the procedure. We will advise you of the information needed to determine whether OWCP can authorize the requested procedure. Medical providers should contact our medical authorization and bill processing contractor (Conduit) for all authorizations and billing questions. Automated information is available 24 hours per day at 1-866-335-8319 or online at <http://owcp.dol.acs-inc.com>. The medical authorization fax line is 1-800-215-4901. If you, your physician, or other medical providers require direct contact with a customer service representative, you may call 1-844-493-1966, Monday – Friday, 8am – 8pm EST.

If you have any questions regarding your claim, you may contact the Office at the phone number and address listed above. Note that you can also view your case and compensation claim status, billing updates including reimbursements, coverage limitations, and other information on line via the Claimant Query System (CQS) at <http://owcp.dol.acs-inc.com>. General information can be obtained on the Department of Labor website at <http://www.dol.gov/owcp/dfec/index.htm>.

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CA-1008 (New Condition)-D-ACC

Sincerely,

Tonya Taylor
Senior Claims Examiner

PAUL H FELSER
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7393 HODGSON MEMORIAL DRIVE
SUITE 102
SAVANNAH, GA 31406

