

File Number:  
Merit Review4-D-RECO

RECEIVED JUL 29 2019

U.S. DEPARTMENT OF LABOR

OFFICE OF WORKERS' COMP PROGRAMS  
PO BOX 8300 DISTRICT 14 SEA  
LONDON, KY 40742-8300  
Phone: (206) 470-3100

July 24, 2019

Date of Injury:  
Employee:

Dear

This concerns your compensation case and your request for reconsideration received on 10/10/2017.

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 03/30/2018. 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-ESQ  
FELSER LAW FIRM, P.C.  
7393 HODGSON MEMORIAL DR - STE 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 modify the decision of the claimant's loss of wage earning capacity (LWEC) dated March 2, 2004 is warranted.

**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:**

As a \_\_\_\_\_ with the \_\_\_\_\_ you filed a claim for Traumatic Injury on 10/25/1982, indicating you sustained an injury or medical condition(s) on 10/07/1982 as a result of your employment with the \_\_\_\_\_.

Specifically, you stated that while executing a federal warrant at a residence in \_\_\_\_\_ both you and a partner were shot at with automatic weapons. During the exchange of gunfire the subject was killed and a bullet grazed the left side of your forehead. This Office accepted your claim for an open wound of the scalp with complications, post-concussion syndrome, post-traumatic stress disorder and other adjustment reaction. You stopped work on 10/7/1982, and returned to work part time on 12/14/1992 as a \_\_\_\_\_ You worked various jobs until you were hired in the \_\_\_\_\_ limited duty earning \_\_\_\_\_ at \_\_\_\_\_ on 2/28/2000. A formal Lost Wage Earning Capacity (LWEC) decision was issued on 03/02/2004. It was determined that the position of \_\_\_\_\_ fairly and reasonably represented your wage-earning capacity. Of your own volition, you subsequently relocated to \_\_\_\_\_ in January 2014 and on 1/27/2014 started working from home as a \_\_\_\_\_ with \_\_\_\_\_ You resigned from this position on 3/12/2015.

On 03/25/2015 we received your written request for an increase in your disability payments because you could no longer work. However, since a formal LWEC decision has been issued in your case, your claim for totally disability or recurrence of disability has been treated as a request for modification of your formal LWEC decision. Information received with your claim/request consisted of: a medical memo dated 5/1/2015 from Dr. \_\_\_\_\_ requesting an extension to submit a medical report. \_\_\_\_\_ M.D., a psychiatrist, performed a second opinion examination of the claimant and provided his findings in a report dated February 18, 2016.

On 03/23/2016, a formal decision was issued in your case finding our Office could not find any evidence to substantiate that you have met any of the three criteria for modifying a formal LWEC decision. The documentation upon which the decision was based included a Performance Management Program Record of Conference dated 3/12/2015, a completed questionnaire dated 5/4/2015, medical reports from Dr. \_\_\_\_\_ dated 5/20/2015, 8/27/2015, and a personal letter dated 11/16/2015. The second opinion report from Dr. \_\_\_\_\_ dated 02/18/2016.

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After reviewing all available evidence, our Office could not find any evidence to substantiate that you have met any of the three criteria for modifying a formal LWEC decision.

You disagreed with the 03/23/2016 decision and requested by letter/appeal to the Branch of Hearings and Review form received on 10/10/2017. On 10/12/2016 H&R denied modification of the formal WEC decision.

On 10/12/2017 you again disagreed with the decision 10/10/2017 and requested by letter reconsideration.

DISCUSSION OF EVIDENCE: The evidence reviewed in support of your reconsideration request includes, reconsideration request from attorney dated 10/10/2017, medical reports from Dr. [redacted] dated 10/02/2017 and 04/22/2016.

This evidence was reviewed to determine whether any of the three established criteria sufficient to warrant modification of a formal LWEC decision have been met: (1) The original LWEC rating was in error; (2) the claimant has been retrained or otherwise been vocationally rehabilitated; or (3) the claimant's accepted employment-related medical condition has materially changed

Dr. [redacted] a psychiatrist stated in a report dated 10/02/2017 that I am familiar with Mr. [redacted] and the circumstances of his work injury that occurred while he was employed as a [redacted] I was provided with a statement of accepted facts; he was able to be re-employed in various positions with low stress. He worked as a part time [redacted] in a [redacted] He worked briefly as a [redacted] Eventually he was re-trained in the [redacted] He performed as a [redacted] While living in [redacted] he was hypervigilant, isolating himself, and he was continuing to have difficulties even in familiar surroundings. He then moved to [redacted] where he obtained similar work, but eventually even small tasks became more difficult (i.e. [redacted] Mr. [redacted] does have persistent dysthymia and depression and it is related to the original work injury. She indicated that the move has been difficult for the claimant. She stated he works as a [redacted] from his home for [redacted] Working from home leaves him isolated and depressed and he feels he is unable to handle the workload demanded of him by the [redacted] Dr. [redacted] concluded that the claimant's PTSD and depression were exacerbated by his lack of connection and his inability or desire to make friends or to go out of his comfort zone. She further stated he was not close to an uncle who lived on [redacted] October 12, 2016. The death of his uncle did not cause his more recent inability to attempt to continue some form of work. I think his lack of connection and his inability or desire to make friends or go out of his comfort zone is more a response to the PTSD than his move to [redacted] or the death of his uncle. He has recently moved to [redacted] to be near his daughter. He will need ongoing treatment in his new area.

Dr. [redacted] opined, "I think his lack of connection and his inability or desire to make friends or go out of his comfort zone is more a response to the PTSD than his move to [redacted] or the death of his uncle. And once his children did not need him anymore to help support them it was difficult for him to provide a connection and happiness for himself. He has recently moved to [redacted] to be near his daughter." These

