

File Number:  
HR10-D-H

RECEIVED APR 11 2019

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 \_\_\_\_\_ 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 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,

Division of Federal Employees' Compensation

PAUL H FELSER, ESQ.  
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, April 08, 2019

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 \_\_\_\_\_ case  
number \_\_\_\_\_ An oral hearing was held on \_\_\_\_\_*

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The issue for determination is whether the medical evidence is sufficient to establish an emotional condition causally related or consequential to the accepted occupational left foot condition.

The claimant was employed as a \_\_\_\_\_ with the \_\_\_\_\_  
\_\_\_\_\_ in \_\_\_\_\_ when she filed a CA2 Notice of  
Occupational Disease form on \_\_\_\_\_ claiming a stress fracture of the left foot  
which she attributed to overuse from constant standing for long periods with inability to  
move around, walking over five miles per day with heavy packages inside post office, and  
inability to treat swelling and edema in foot while at work. The claimant indicated she first  
became aware of her condition on \_\_\_\_\_ and realized it was related to her  
employment on \_\_\_\_\_. The record reflected the claimant underwent an open  
reduction internal fixation fifth metatarsal, calcaneal bone graft, and mini fluoroscopy on  
\_\_\_\_\_. By decision dated \_\_\_\_\_, the Office accepted the claim for non-  
displaced fracture of fifth metatarsal bone, left foot, non-union.

On \_\_\_\_\_, the Office received correspondence from the claimant's attorney at that  
time requesting expansion of the claim for an aggravation/acceleration of Bipolar II Disorder.  
A \_\_\_\_\_ medical report was submitted from \_\_\_\_\_, PA-C, cosigned by  
psychiatrist \_\_\_\_\_, M.D., noting the claimant was first seen on \_\_\_\_\_, with  
complaints of recurrent mood symptoms, and she was ultimately diagnosed with Bipolar II  
Disorder. It was noted that at a \_\_\_\_\_ routine appointment, the claimant was  
wearing a left foot/ankle boot and stated she was working with an orthopedic specialist. The  
claimant was not seen again until \_\_\_\_\_, when she presented with significant  
depression and anxiety symptoms, worse than when she had been previously seen, many  
of which stemmed from difficulties from her left foot. On that date, the claimant reported she  
had surgery for a fracture and continued to be in daily, problematic pain despite surgical  
repair. It was reported that this pain limited her lifestyle including her ability to work causing  
her financial distress, and she was struggling to complete activities of daily living which only  
compounded her problems both physically and psychologically.

The medical opinion given was that the claimant's physical ailment had led to a deterioration in her mental health, and given the severity of symptoms, she should not be working. It was noted that given her physical limitations, sufficient clinical changes to her symptoms within the near future to allow her to return to her regular employment was not foreseen, although permanent disability for psychiatric reasons was also not implied.

On \_\_\_\_\_, the Office issued a development letter to the claimant advising of the medical evidence needed to establish how a psychological condition was causally related to the accepted left foot fracture. The claimant was also requested to provide factual information regarding any outside stressors, the development of the claimed condition, and the details of all prior emotional conditions and prior treatment.

The Office received a \_\_\_\_\_ medical report countersigned by Dr. \_\_\_\_\_ providing the same information from the \_\_\_\_\_ report and adding the diagnosis of Anxiety Disorder. It was advised that the physical ailment had led to a deterioration in her mental health given that she was now having more anxiety and worsening depression, and that without employment she had struggled with financial means and increased isolation. It was stated that her pre-existing conditions had been compounded by psychosocial stressors linked to being unable to work. The claimant did not provide any factual responses to the development questionnaire.

By decision dated \_\_\_\_\_ the Office denied expansion of the claim for the additional diagnosis of Bipolar II Disorder for the reason the medical evidence was insufficient to establish that it was related to the accepted left foot fracture. The claimant disagreed with this decision and by letter postmarked \_\_\_\_\_ through her current attorney, requested an oral hearing.

Post denial, a new \_\_\_\_\_ medical report was submitted from Board-certified psychiatrist, \_\_\_\_\_, M.D., noting the claimant was seen for an initial psychiatric evaluation on \_\_\_\_\_, with complaints of worsening anxiety and depression. She reported suffering a foot injury over a year ago and now had chronic pain and residual physical limitations. She stated she endured various medical treatments and was physically unable to work, and due to the severe stress of the situation, began experiencing worsening mood symptoms, including sadness, irritability, anger, frustration, trouble sleeping, and inability to concentrate or complete tasks, low motivation, withdrawn and isolative, anxious, worried, and on edge. Dr. \_\_\_\_\_ noted a remote history of physical and sexual abuse, and the current psychosocial stressors including medical, legal, and primary support.

Dr. \_\_\_\_\_ further indicated the claimant had been seeing the same therapist for an extended length of time and was compliant with treatment. She reported that she had preexisting mental diagnoses which included Major Depressive Disorder, Generalized Anxiety Disorder, and rule out Post Traumatic Stress Disorder. Dr. \_\_\_\_\_ opined the work-related injury seemed to have worsened her anxiety and the affective symptoms of her mood disorder as well as precipitated panic attacks. She advised that no formal psychological testing has been performed, but mental status at last appointment included:

well-groomed but ambulated slowly, depressed and anxious mood, blunted affect, easily irritated at times, no evidence of hallucinations or delusions, and good insight and judgement. Dr. [redacted] listed diagnoses of Bipolar Type II Disorder, Generalized Anxiety Disorder, Panic Disorder, Rule out Post Traumatic Stress Disorder, Hypertension, Obstructive sleep apnea, Migraines, and s/p left foot fracture/tendonitis. Dr. [redacted] advised that due to the claimant's affective symptoms she was unable to work and noted the constant pain from her foot injury worsened her emotional state.

The hearing was held via teleconference on [redacted], with the claimant's attorney, Paul Felser, Esquire. Mr. Felser indicated that since the injury and surgery, the claimant had extreme difficulty coping/dealing with the effects of the work-related physical injury. He submitted it had affected her personality, on a day-to-day basis, and had given her feelings of low self-worth and self-esteem, and made her irritable. Mr. Felser noted the claimant's prior counsel very narrowly requested aggravation of the bipolar condition but the evidence continued to develop and took on a broader context, containing additional diagnoses. Mr. Felser advised the core argument was that the claimant had developed a condition as a result of the inability to cope with the effects of the physical injury and the aftermath of the surgery as consequential. He submitted the medical evidence supported it, and quoted from the [redacted] medical report, indicating that taken in the whole context this was broader than just bipolar disorder and her medical provider observed the change in the claimant before and after the surgery. Mr. Felser contended the doctor was clearly describing what was commonly accepted as a condition that had developed as a consequence of an accepted work-related condition and he believed the claimant's burden of proof had been met or it was at least enough to justify further development to address the issue beyond the initial narrow scope of the one bipolar disorder diagnosis. He also referenced the new [redacted] report from Dr. [redacted] which he submitted went directly to the issue of a causal connection and consequential development of an emotional condition related to the physical injury. It was advised the record would remain open for thirty days.

On [redacted], the hearing transcript was issued and the employing agency was given twenty days to provide additional information related to the claim and testimony. No comments were received.

Based on my complete review of the testimony and written evidence of record, the decision is set aside for the reasons set forth below.

Where appellant claims that a condition not accepted or approved by the Office was due to an employment injury, he (or she) bears the burden of proof to establish that the condition is causally related to the employment injury.<sup>1</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the

<sup>1</sup> Jacquelyn L. Oliver, 48 ECAB 232, 235-36 (1996).

established incident or factor of employment. The opinion must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.<sup>2</sup>

The general rule respecting consequential injuries is that, when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause, which is attributable to the employee's own intentional conduct.<sup>3</sup> The subsequent injury is compensable if it is the direct and natural result of a compensable primary injury.<sup>4</sup>

In any case where a pre-existing condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation or precipitation, the attending physician must provide rationalized medical opinion which differentiates between the effects of the employment-related injury or disease and the pre-existing condition.<sup>5</sup>

In the instant case, the Office accepted the \_\_\_\_\_ occupational disease claim for non-displaced fracture of fifth metatarsal bone, left foot, nonunion, and for the open reduction internal fixation fifth metatarsal, calcaneal bone graft, and mini fluoroscopy performed on \_\_\_\_\_. The Office has paid compensation for temporary total disability since the date of surgery. Following acceptance, the claimant's former attorney requested that the claim be expanded for aggravation/acceleration of Bipolar II Disorder. The Office developed the issue and requested specific factual and medical evidence from the claimant. The claimant did not provide the factual information requested pertaining to outside stressors, the development of her condition, or any prior history of emotional conditions and/or treatment. \_\_\_\_\_ and \_\_\_\_\_ medical reports were submitted cosigned by psychiatrist Dr. \_\_\_\_\_ which contained the medical opinion that the claimant's left foot physical ailment led to a deterioration in her mental health, she was having more anxiety and worsening depression, and that without employment she had struggled with financial means and increased isolation. It was reported that the claimant's pre-existing conditions had been compounded by psychosocial stressors linked to being unable to work. The Office denied expansion of the claim for the reason the medical evidence was insufficient to establish that the claimant's emotional condition was caused or worsened by the effects of the \_\_\_\_\_ work injury.

Post denial, a new \_\_\_\_\_ medical report was submitted from psychiatrist, Dr. \_\_\_\_\_, noting the claimant had suffered a foot injury over a year ago and now had chronic pain and residual physical limitations. She stated that due to the severe stress of the situation, the claimant began experiencing worsening mood symptoms. Dr. \_\_\_\_\_ noted a remote history of physical and sexual abuse, and indicated current psychosocial stressors

<sup>2</sup> *John W. Montoya*, 54 ECAB 306 (2003).

<sup>3</sup> *Albert F. Ranieri*, 55 ECAB 598 (2004).

<sup>4</sup> *Carlos A. Marrero*, 50 ECAB 117 (1998); A. Larson, *The Law of Workers' Compensation* § 10.01 (2005).

<sup>5</sup> FECA Procedure Manual, 2-805-3(d)(5).

including medical, legal, and primary support. She documented preexisting diagnoses which included Major Depressive Disorder, Generalized Anxiety Disorder, and rule out Post Traumatic Stress Disorder. Dr. [redacted] advised that no formal psychological testing has been performed, but based on mental status, assessed Bipolar Type II Disorder, Generalized Anxiety Disorder, Panic Disorder, Rule out Post Traumatic Stress Disorder, Hypertension, Obstructive sleep apnea, Migraines, and s/p left foot fracture/ tendonitis. Dr. [redacted] opined the work-related injury seemed to have worsened the claimant's anxiety and her affective symptoms of her mood disorder, and precipitated panic attacks, and that the constant pain from her foot injury worsened her emotional state.

The claimant was not present at hearing in order to provide factual testimony regarding the development of her condition, outside stressors, or any preexisting psychological history or medical treatment. At hearing, her attorney submitted the claimant had developed a consequential condition as a result of the inability to cope with the physical injury and the resultant surgery. He advised the medical evidence documented her conditions were broader than Bipolar II Disorder, and that the medical providers established a causal connection and consequential development of an emotional condition related to the physical injury.

Based on my review, neither Dr. [redacted] nor Dr. [redacted] documented review of any of the claimant's medical records for full knowledge of her physical condition. Their reports also did not provide a sufficient description of the claimant's prior emotional history or psychological testing performed, or sufficient medical rationale as to how the accepted left foot condition/surgery caused or contributed to the additional diagnoses made, particularly differentiating between the claimant's preexisting emotional conditions and the effects of work-related physical condition. However, I find that the psychiatric reports and the uncontroverted medical opinions expressed indicating that the work-related physical injury led to the deterioration or worsening of her emotional condition *prima facie* evidence to warrant further development. It is well established that proceedings under the Federal Employees' Compensation Act are not adversarial in nature, and, while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.<sup>6</sup> The Office has an obligation to see that justice is done.<sup>7</sup>

On remand, the Office should give the claimant an additional fifteen days to provide the factual information requested in the [redacted] development questionnaire for the record. The Office should then refer the claimant, along with a Statement of Accepted Facts and the complete medical records, for a second opinion examination with an appropriate specialist to obtain a comprehensive evaluation for a rationalized medical explanation addressing whether and how the claimant's emotional condition(s) was caused, aggravated, accelerated, or precipitated by the effects of the accepted work-related physical left foot condition/surgery. The accepted definitions of causal relationship should be provided for reference. The specialist should provide a discussion of the claimant's history, the psychological testing performed, and medical reasoning in support of all opinions rendered.

<sup>6</sup> *Udella Billups*, 41 ECAB 260 (1989).

<sup>7</sup> *John J. Carlone*, 41 ECAB 354 (1989).

If aggravation is opined, temporary versus permanent should be addressed. If any additional diagnosis is deemed to be work-related, the physician should address work capacity and the need for further medical treatment. After careful review of the evidence and any additional development deemed necessary, a *de novo* decision should be issued regarding expansion of the claim for a consequential emotional condition.

Accordingly, the decision dated is hereby set aside and remanded to the district office for further development as outlined above.

ISSUED:  
WASHINGTON, D.C.

Hearing Representative  
Branch of Hearings and Review  
For  
Director, Office of Workers'  
Compensation Programs