

File Number:  
HR10-D-H

RECEIVED JUN 26 2017

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 Dallas 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 16 DAL  
LONDON, KY 40742-8300

Sincerely,

Electronically signed

Hearing Representative

PAUL FELSER, ESQ  
FELSER LAW FIRM, P.C.  
QUEENSBOROUGH BANK BUILDING  
7393 HODGSON MEMORIAL DRIVE STE 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.*

Washington DC, June 21, 2017

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

---

The issue for determination is whether the District Office properly denied expansion of the claim to include an emotional condition.

born is employed as a Rural Carrier with the  
in He filed Form CA-2 for an Occupational Disease  
claimed to be related to factors of his federal employment. The claim is approved for a  
lumbar sprain, aggravation of pre-existing lumbar spondylosis with myelopathy, and  
displacement of lumbar intervertebral disc without myelopathy.<sup>1</sup>

Mr. began treating with M.D. of the Spine Institute of Louisiana.  
Conservative treatment modalities were prescribed.

A CA-20/20a Attending Physician's Report was completed by family practitioner,  
M.D. on He diagnosed low back pain and depression. Anti-  
depressant medication was prescribed. In a separate note of Dr.  
opined that the claimant's depression had come about secondary to his chronic low back  
pain. In a follow-up note of he stated that Mr. was treated for  
depression beginning due to his back pain.

In a report of Dr. stated that the claimant had presented him with  
paperwork from his primary care doctor within which he was diagnosed with depression.

In a report of Dr. recommended anterior and posterior fusion at  
the L4-5 and L5-S1 level with reduction of spondylolisthesis. This request was forwarded to  
the District Medical Advisor (DMA) for review. In a response of DMA  
M.D. opined that a second opinion was necessary to address this request.

In accordance with this recommendation, the Office referred Mr. for a second  
opinion evaluation which took place on with board certified orthopedist

---

<sup>1</sup> The claimant was noted to have first injured his back in when he was pushing a heavy  
container and slipped, causing it to roll towards him.

M.D. It was his opinion that the requested procedure was not warranted. In his report, he included anxiety and depression under the claimant's past medical history.<sup>2</sup>

Following the second opinion, the Office forwarded the case back to the District Medical Advisor on . A response dated was received from Dr.

He recommended an impartial examination.

The Office subsequently declared a conflict in medical opinion between attending physician Dr. and second opinion examiner Dr. Mr. was seen for an impartial exam on with M.D. He opined that the requested surgical procedure was warranted. This report was forwarded to DMA Dr.

concluded that the procedure was within the realm of accepted medical practice.

A report dated was received from Dr. He noted that the claimant was being followed for low back syndrome, lumbar sprain, and thoracic/lumbar, spondylosis with myelopathy. He went on to state that Mr. had also developed an emotional condition secondary to his "substantial physical injuries." This was due to his inability to cope with the pain and physical limitations resulting from his work related injuries." He diagnosed neuropathy, depression, insomnia and anxiety.

Based upon the report of Dr. the claimant underwent anterior retroperitoneal exposure of L4-5 and L5-S1 for anterior lumbar interbody fusion. Surgery was performed on May 27, 2014.

Following the surgery, Mr. came under the care of board certified psychiatrist M.D. In a report of he stated that the claimant had no prior psychiatric history. He had been injured on while employed for the postal service. He was pushing a large heavy container into the truck when his foot slipped and the container slid back but he managed to hold it in place. A few months later he lifted a box of wires which caused the same pain again. The claimant reported worsening depression, irritability and decreasing patience. He also reported worsening concentration and forgetfulness. He cited anxiety attacks and increased crying spells. He stated that he could not drive for too long due to pain. The claimant's stressors were listed as "Severe stress due to family, friends, relationship, educational, economic, occupational, housing, legal and health concerns." Dr. Jyoti diagnosed recurrent severe major depressive disorder, anxiety, and impulse control disorder. The claimant was referred for psychotherapy.

At a follow-up appointment on Dr. indicated that the claimant had an episode of depression a week prior. His concentration was improved with Ritalin and he was sleeping well with Ambien. His anxiety was described as being "Okay." Mr. reiterated that he never felt depressed before the accident. Dr. stated that he was totally disabled and required further medical management, including psychotherapy before maximum medical improvement could be determined.

<sup>2</sup> As indicated previously, the claimant's attending physician began referencing complaints of an emotional condition in . The date of injury in the instant case is

The claimant was seen for another second opinion exam on [redacted] with board certified orthopedist [redacted] M.D. He documented the history of injury and indicated that Mr. [redacted] had also developed depression and anxiety problems. It was his opinion that he continued to suffer residuals of the work injury. He remained disabled.

The claimant continued to treat with Dr. [redacted] for his back complaints and with Dr. [redacted] for his emotional condition. At an appointment on [redacted] Dr. [redacted] indicated that the claimant had reached maximum medical improvement with regard to his back. A Functional Capacity Evaluation was recommended. He also noted that the claimant had anxiety and depression issues.

At a follow-up with Dr. [redacted] on [redacted] Mr. [redacted] reported that his depression was about the same but he was doing better with his memory. He also reported some paranoia. His diagnoses remained major depressive disorder (recurrent episode with psychotic features), anxiety state, and impulse control disorder. He remained disabled.

The Office subsequently received a narrative report dated [redacted] from Dr. [redacted] regarding a consequential emotional condition. He noted that the claimant had injured his back while employed with the postal service. At the time of exam, he had thought blocking, forgetfulness and impaired cognition. He was diagnosed with major depressive disorder (recurrent severe), anxiety and impulse control disorder. A cognitive disorder also needed to be ruled out. Dr. [redacted] noted that the claimant had no prior history of any psychiatric problems prior to the injury.

Mr. [redacted] advised Dr. [redacted] that he had been suffering from worsening depression, irritability, decreased patience, worsening concentration and forgetfulness. He complained of being overwhelmed and having anxiety attacks. He was started on Lexapro for depression and Ritalin for cognitive treatment. He was also continued on Ambien for sleeping. Due to a subsequent worsening of his depression, his medication was increased. He was also placed on Cymbalta. Dr. [redacted] disabled Mr. [redacted] from work and continued to recommend psychotherapy although this had not been approved. In conclusion, he opined,

"Based on the foregoing, it is my medical opinion that Mr. [redacted] is presently suffering from Major Depressive Disorder (Recurrent, Severe), Anxiety Disorder NOS, Impulse Control Disorder and Cognitive Disorder, secondary to his inability to cope with the effects of his work-related physical injuries. Prior to his injury, he was fully functional for his age. Since his injury, the level of his activity and his enjoyment of life have been severely diminished. As indicated, he has experienced great difficulty in dealing with these changes, mentally and emotionally."

Upon receipt of Dr. J [redacted] report, the Office forwarded the case to the District Medical Advisor for review. A response dated [redacted] was received from DMA [redacted] M.D. It was his opinion that the claimant's diagnosed emotional conditions were unrelated to the instant case. He reviewed the [redacted] report of Dr. [redacted] but stated that the file lack detailed psychiatric information to support that Mr. [redacted] suffered from the diagnoses outlined in Dr. J [redacted] report. He further stated,

"The report from \_\_\_\_\_, MD (Psychiatrist) does not contain detailed psychiatric information such as a detailed psychiatric history; the specific dates of treatment by Dr. \_\_\_\_\_ with the corresponding mental status exam findings at each of the treatment dates along with dates of initiation of treatment with psychotropic medications and dates in which the medications were changed. Additionally, the report does not list what symptoms the claimant was experiencing that met diagnostic criteria for major depressive disorder, recurrent severe, anxiety disorder, not otherwise specified, impulse control disorder, not otherwise specified, and cognitive disorder, not otherwise. Furthermore, although Dr. \_\_\_\_\_ indicates that the claimant suffers from a cognitive disorder, there are no cognitive assessments provided (i.e., neuropsychological testing, MMSE, or the MOCA) to assess for the presence of such cognitive deficits."

By decision dated \_\_\_\_\_ the Office denied expansion of the claim to include an emotional condition on the basis that the evidence failed to establish that this was caused, aggravated, accelerated or precipitated by the work injury or effects thereof."

The claimant disagreed with this decision and an oral hearing was requested by his attorney, Paul Felser, Esq. A telephone hearing was held on \_\_\_\_\_ Mr. \_\_\_\_\_ was not in attendance however he was represented by Mr. Felser at the proceeding.

Mr. Felser was explicit in stating that Mr. \_\_\_\_\_ had no history of any prior emotional conditions. He argued that there is no evidence in file which would support that he had any such problems. He also argued that DMA Dr. \_\_\_\_\_ whose opinion the Office relied upon in their denial, only reviewed three reports at the time the case was reviewed. Therefore, Mr. Felser argued that the DMA was not supplied with adequate information upon which to render an opinion on causation. He stated that the file is well documented with reports from Dr. \_\_\_\_\_, Dr. \_\_\_\_\_ and Dr. \_\_\_\_\_, all of which support that Mr. \_\_\_\_\_ was suffering from and treating for an emotional condition secondary to his back condition.

The record remained open for 30 days in order to afford the claimant the opportunity to submit additional evidence. 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.

Based upon the hearing testimony, together with the written evidence of record, I find that the decision of \_\_\_\_\_ should be *SET ASIDE and REMANDED*.

Where an employee 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>3</sup>

Under certain circumstances, an injury occurring outside performance of duty may affect the compensability of an already accepted injury. A consequential injury is one which occurs

<sup>3</sup>Jaja K. Asaramo, 55 ECAB (Docket No. 03-1327, issued January 5, 2004).

because of weakness or impairment caused by a work-related injury, and it may affect the same part of the body as the original injury or a different area altogether. The basic 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 likewise arises out of the employment, unless it is the result of an independent intervening cause attributing the second condition.<sup>4</sup> Therefore, the subsequent injury can be compensable if it is the direct and natural result of the compensable primary injury. Where there is no direct relationship between an employment-related injury and a subsequent nonemployment injury, the second injury is an independent, intervening incident and is not compensable.

The instant case was filed for an Occupational Disease claimed to be related to factors of Mr. employment. It is formally approved for a lumbar sprain, aggravation of pre-existing lumbar spondylosis with myelopathy, and displacement of lumbar intervertebral disc without myelopathy.

The claimant has alleged that he developed an emotional condition as a consequence of his accepted physical injuries. However, the Office denied expansion of the claim on on the basis that the medical evidence failed to support that the diagnosed conditions were caused, aggravated, accelerated or precipitated by the work injury or effects thereof.

On review, I find that the decision of the District Office must be set aside as further medical development is required in order to assess whether Mr. developed a consequential emotional condition due to the effects of his work related injury. While the evidence from Dr. is insufficient to establish the claim outright, it does support an uncontroverted inference between the accepted conditions on the claim and the development of the claimant's diagnosed emotional condition.

As explained previously, the first medical documentation in file which mentions the claimant's complaints of anxiety is a CA-20/20a dated from Dr. Mr. continued to complain about anxiety and depression from that point forward. In subsequent notes of and he was said to have depression secondary to his back pain.

In a report Dr. noted that the claimant had a back condition and had also developed an emotional condition secondary to his substantial physical injuries. This was due to his inability to cope with the pain and physical limitations that resulted from the accepted conditions on the claim. Mr. was ultimately referred to psychiatrist Dr. At the time of his initial exam on Dr. confirmed that he had no history of any prior psychiatric problems. He documented the development of the claimant's back condition and noted that he subsequently began experiencing anxiety, depression, and cognitive issues. Mr. continued to see Dr. on a regular basis from that point forward.

<sup>4</sup>Kathy A. Kelley, 55 ECAB 206 (2004); Carlos A. Marerro, 50 ECAB 170 (1998).

