

File Number:
HR11-D-H

RECEIVED JUL 10 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 preliminary review has been completed, and it has been determined that the case is not in posture for a hearing at this time. The decision of the District Office has been vacated and returned to the district office for further action as explained in the attached Remand Order.

Your case file has been returned to the Kansas City 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 11 KCM
LONDON, KY 40742-8300

Sincerely,

Electronically Signed

Hearing Representative

PAUL H FELSER
FELSER LAW FIRM
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.

Washington DC, July 03, 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*

*Merit consideration of the case file was completed in Washington D.C. Based on this review,
the decision of the district office dated , is set aside for the reasons set forth
below.*

The issue for determination is whether the medical evidence establishes the
traumatic injury claim should be expanded for an emotional condition.

The claimant was employed as a visual information specialist with the
when she filed a CA1 Notice of Traumatic
Injury form claiming on , she slipped on stairs in the stairwell, injuring her
neck and back. The Office accepted the claim for lumbar disc protrusion, L4-5 and L5-S1,
and cervical disc protrusion, C6-7. The claimant stopped work following the injury and then
returned to regular duty on . She stopped work completely on
The Office accepted the recurrence of disability and began paying compensation
for temporary total disability, placing the claimant on the periodic roll. The claimant remained
under the care of pain medicine physician, M.D.

The Office doubled the instant claim into master case, , which was for a traumatic
injury on , accepted for left shoulder sprain, adhesive capsulitis, and closed
dislocation, and intervertebral disc disorder with myelopathy, cervical region. The claimant
underwent left shoulder surgeries on and . Under another
subsidiary case, the claimant sustained a traumatic injury on
which the Office accepted this claim for left shoulder sprain/strain.

In the claimant contacted the Office regarding coverage for a psychiatric
condition. On , the Office issued a development letter to the claimant advising of
the additional evidence needed to consider an emotional condition causally related to the
injury. It was noted the claimant had been previously awarded 70% VA
disability benefit for service-connected adjustment disorder with depressed mood on
The Office received a psychological evaluation from
Ph.D., obtained to address a potential trial of a spinal cord stimulator. Dr.
diagnosed the claimant with pain disorder and major depressive disorder. In a
report, Dr. advised the claimant required treatment of her pain and that her
depression was secondary to her pain.

On [REDACTED], the Office issued a letter to the claimant's attorney allowing fifteen additional days to provide all information requested in the [REDACTED] development letter. An [REDACTED] report from Dr. [REDACTED] opined that while the claimant's depression was multifactorial, the most significant cause of her depression was from the back pain, and that it had been aggravated and exacerbated by workplace issues and treatment by her employer. In a [REDACTED] report [REDACTED] Ph.D., indicated that he had seen the claimant for nine outpatient interventions and had reviewed prior records of a Dr. [REDACTED] from [REDACTED] which documented she had a healthy baseline level of emotional functioning prior to [REDACTED] Dr. [REDACTED] noted the claimant initially presented with symptoms of major depression and severe anxiety and that her condition had deteriorated, with development of Post-Traumatic Stress Disorder. Dr. [REDACTED] attributed this to precipitating stressors associated with ongoing interactions with her employer.

A [REDACTED] report from psychiatrist, [REDACTED] M.D., gave the history that the claimant had major depression with significant anxiety that had waxed and waned over the years but had gotten significantly worse since the past fall. He stated the claimant's ongoing stress was related to her problems at work because of interactions with the VA and fear of being forced to return to work to that environment. Dr. [REDACTED] stated that although her problems started with a fall at work and resultant back pain, her emotional state was related to these employment related problems at least as significant as her ongoing back pain and was likely worsening her back pain. He reiterated his opinion that almost all, or all, of the claimant's extreme distress and poor functioning was due to employment related problems. In progress reports, Dr. [REDACTED] continued to report the secondary diagnosis of adjustment disorder with anxiety/depression. His treatment plan remained "lifelong use of Class II or II opioid therapy", and he maintained her off work.

In [REDACTED] correspondence, the claimant's current attorney contended the Office had not considered the diagnosed emotional conditions. On [REDACTED] the Office issued another development letter to the claimant for a consequential emotional condition. A [REDACTED] report from Dr. [REDACTED] was received in which he stated the claimant's major depression had gotten significantly worse since her injury at work in the fall of [REDACTED] He stated it was likely that her psychiatric problems had been made worse by her work related injury and the subsequent problems dealing with workers' compensation and other agencies.

On [REDACTED] the Office's District Medical Advisor (DMA), [REDACTED] M.D., reviewed the records and opined the Office should not accept a consequential behavioral health diagnosis as related to the [REDACTED] work injury. An [REDACTED] report from Dr. [REDACTED] was later received in which he indicated the claimant's major depression had been essentially stable before her work injury, and as a result of her injury, she had dealt regularly with chronic pain associated with her work injuries. Dr. [REDACTED] opined it was very likely that her psychiatric problems and general functioning had been made worse by her work related injury and related chronic pain.

On [REDACTED] the Office issued a development letter directly to Dr. [REDACTED] to review the DMA report and to differentiate between her preexisting condition and the effects of the work injury in relation to an emotional condition. In a [REDACTED] response, Dr. [REDACTED]

elaborated that prior to the injury the claimant was well groomed and rarely cried at all. Since the injury she no longer groomed and cried for a large part of every appointment. Dr. [redacted] stated that she appeared from her gait to be in significant pain which was never the case prior to the fall. Dr. [redacted] contended the DMA was offering a specific psychiatric diagnostic impression for a patient he had never seen and was basing it on a singular assessment from a psychologist in 2009 and an orthopedic surgeon in 2011. Dr. [redacted] indicated he was troubled by Dr. [redacted] comments regarding the claimant and contended he had personally evaluated her for more than ten hours prior to the work injury and for more than ten hours since. He indicated he was also a board-certified psychiatrist for more than twelve years and was in a much better position to offer a psychiatric diagnostic impression. Dr. [redacted] opined the claimant was having great difficulty coping with the effects of the work-related injury, and was diagnosed with major depressive disorder which had been significantly and persistently worse since the work-related injury and made worse by the effects of the work related injury. By [redacted] letter, the Office advised the case was being prepared for a second opinion.

The claimant was referred for a second opinion examination on [redacted] with Board-certified psychiatrist, [redacted] M.D., who failed to provide his report. In [redacted] correspondence, the attorney again requested expansion of the claim for a work-related emotional condition. He provided an updated report from Dr. [redacted] dated [redacted] maintaining his medical opinion that it was very likely the claimant's psychiatric problems and general functioning had been made worse by her work related injury and the related pain.

The Office later received a [redacted] report in which Dr. [redacted] advised the claimant suffered from severe depression which was related to her chronic pain as a result of the work related injuries. He indicated the claimant was unable to work because her pain had not responded sufficiently to medical management, which caused depression and the claimant was hopeless regarding her future. Dr. [redacted] recommended the depression be treated and continued to support a trial of spinal cord stimulation to determine if she could be weaned off the opioid medications. He advised the claimant continued to have pain and suffering because of her injuries, and had progressed into severe depression. Dr. [redacted] reiterated she was unable to work in any capacity due to intractable pain and severe depression. He stated that chronic pain was a disease that progressed with chemical changes in the spinal cord and brain and caused dysfunction, physically, psychologically, and socially. Dr. [redacted] opined the acute pain caused by the injury had progressed to chronic pain syndrome and permanent disability.

On [redacted] the claimant was seen for an Office-directed second opinion examination with board-certified psychiatrist, [redacted] M.D. Dr. [redacted] provided the claimant's history, and his psychiatric/mental exam findings. He diagnosed degenerative disc disease, anxiety, and depression, and noted the claimant presented as a picture of absolute misery – both psychological and physical. Dr. [redacted] noted there were several problems with attributing her deterioration to the event of [redacted] based on her presentation reported by Dr. [redacted] in [redacted] and her current driver license picture, the Office-directed examinations that found her subjective symptoms were not congruent with objective findings, and the delay in her attributing her pain to the [redacted] injury.

Dr. [redacted] advised his finding was that the claimant was severely psychologically impaired now by depression and anxiety and other psychological processes. He noted she subjectively felt impaired by severe pain which was not substantiated by orthopedic evaluations. Dr. [redacted] indicated the [redacted] fall may reasonably have caused a worsening of pain, but not the persistent, disabling pain she described or such intense pain without more obvious objective findings. He discussed two psychological hypotheses as to the cause of her current symptoms – malingering for financial gain, or a complex set of psychological processes involving a characterologic predisposition to feel mistreated and a disposition triggered by conflict with supervisors and the VA and workers compensation systems, legitimately believing she continued to suffer from the injury. Dr. [redacted] stated her psychological condition was caused by the [redacted] event in the way he described, but noted that it was not hard to hypothesize other episodes that could have had a similar effect. Dr. [redacted] opined her psychological condition prevented her from any type of work as she was too depressed, anxious and pain intolerant, which he did not expect to change.

On [redacted] the Office requested a supplemental report from Dr. [redacted] to address whether there were sound unequivocal findings to support the claimant's pre-existing emotional condition was aggravated or accelerated due to the injury or that it was a natural progression of her service-connected emotional condition; a medical opinion as to how she was able to give consent, handle financial affairs and live independently based on her reported difficulties; and whether a reported DUI on [redacted], which was contrary to her claims that she did not drive or drink, changed his opinions regarding disability from all work. In a [redacted] supplemental report, Dr. [redacted] opined he did not believe the claimant's deterioration in the last quarter of [redacted] was a natural progression of her service-connected preexisting emotional condition. He stated her condition was aggravated and accelerated during that time. Dr. [redacted] indicated the causal role played by the incident was not self-evident and was why he offered the two hypotheses. He noted that her presentation did appear to be inconsistent with an ability to handle her affairs independently and also noted a DUI contradicted the claimant's testimony to him regarding her inability to drive due to her physical condition. Dr. [redacted] questioned from what chemical she was intoxicated, and noted he was suspicious of the claimant's account but was limited to the evidence she presented and the provided records, so he was basically making inferences based on inconsistencies and comparisons to his general knowledge of people disabled by physical injury and by psychological processes. Dr. [redacted] also questioned what an investigation or video might reveal.

The Office received a current [redacted] report from Dr. [redacted] advising the current diagnoses were major depressive disorder, recurrent without psychosis, and chronic adjustment disorder with depression and anxiety, and maintaining his opinion that the claimant had not had resolution of the pain and emotional distress related to the work related injury. An [redacted] report from pain management physician, [redacted], M.D., noted the claimant's current diagnoses were cervical disc disorder with myelopathy and lumbar disc disorder with myelopathy, cervical and lumbosacral spondylosis, disorder of the bursa, right shoulder, and severe depression. Dr. [redacted] opined her condition was progressing and she was totally disabled because of the depression and now suffering from chronic pain disease.

By decision dated _____, the Office denied expansion of the claim for an emotional condition, finding that the weight of medical evidence of Dr. _____ did not establish a consequential emotional condition connected to the _____ work incident. The Office identified Dr. _____ as a referee examination and was given special weight. The claimant disagreed with this decision and by letter postmarked _____, through her attorney, requested an oral hearing.

Based on my preliminary review of the evidence, the case is not in posture for hearing and the _____ decision must be set aside for the reasons set forth below.

Where appellant claims that a condition not accepted or approved by the Office was due to his employment injury, he bears the burden of proof to establish that the condition is causally related to the employment injury.¹ 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 established incident or factor of employment. The opinion of the physician 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.²

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.³ The subsequent injury is compensable if it is the direct and natural result of a compensable primary injury.⁴

In assessing medical evidence, the number of physicians supporting one position or another is not controlling; the weight of such evidence is determined by its reliability, its probative value and its convincing quality. The factors that comprise the evaluation of medical evidence include the opportunity for and the thoroughness of, physical examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.⁵

In the instant case, the claimant's treating Board-certified psychiatrist, Dr. _____, has provided medical reports over the years that her preexisting emotional conditions were aggravated and made worse by the effects of the _____ work injury and her resultant pain. The claimant's pain management physician has also reported consistently

¹ *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

² *William E. Enright*, 31 ECAB 426, 430 (1980).

³ *Albert F. Ranieri*, 55 ECAB 598 (2004).

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

⁵ *Connie Johns*, 44 ECAB 560, 570 (1993).

that her depression was due in part to the injury-related back pain and that she has developed chronic pain syndrome. The Office eventually obtained a second opinion examination in 2015 from Board-certified psychiatrist, Dr. _____, which was used as the basis of the denial to expand the claim for a consequential emotional condition.

Based on my review, while Dr. (_____) indicated in a supplemental report that there were inconsistencies in the claimant's presentation and he was suspicious of her accounts, he also opined that there was some connection to the _____ work injury initially and that he did not believe it was a natural progression of her service-connected emotional conditions. Dr. _____ also provided two hypotheses as to the cause of her current condition, but did not conclusively opine or establish that there was never any medical connection to the work injury. Although the Office attempted to obtain clarification, his medical opinions and discussion were speculative and lacking in any definitiveness to carry the weight of medical evidence. Procedurally, the Office also improperly assigned Dr. _____ the special weight accorded to a referee specialist, when his examination was obtained as a second opinion. While Office recited Dr. _____ report, there was insufficient discussion as to why his opinions would outweigh those of Dr. _____ an equal specialty. The Office must inform claimants correctly and accurately of the grounds on which a decision rests, so as to afford them an opportunity to meet, if they can, any defect appearing therein.⁶

On remand, the Office should obtain a new second opinion examination with an appropriate specialist to obtain a rationalized and definitive medical opinion addressing the relationship between the effects of the accepted _____ work injury and the claimant's emotional conditions by direct causation, aggravation, acceleration, or precipitation, by any degree. The accepted definitions of causal relationship should be provided for reference. The specialist should address the claimant's work capacity and recommendations for medical treatment. After careful weighing of the evidence and any additional development deemed necessary, a *de novo* decision should be issued regarding expansion of the claim for an emotional condition.

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

ISSUED:

WASHINGTON, D.C.

Electronically Signed

Hearing Representative
For
Director, Office of Workers'
Compensation Programs

⁶ *Sylena Wilkes*, Docket No. 05-1402 (issued June 2, 2006).