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U.S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
OFFICE OF WORKERS' COMP PROGRAMS
PO BOX 8300 DISTRICT 50
LONDON, KY 40742-8300
Phone: (202) 693-0045

Date of Injury:
Employee:

Dear Mr. :

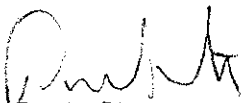
This is in reference to your workers' compensation claim. Pursuant to your request for a hearing, the case file was transferred to the Branch of hearings and Review.

A hearing was held on 01/09/2008. Based upon that hearing, it has been determined that the decision of the District Office should be reversed as outlined in the attached 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
EMPLOYMENT STANDARDS ADMINISTRATION
OFFICE OF WORKERS' COMP PROGRAMS
PO BOX 8300 DISTRICT 16 DAL
LONDON, KY 40742-8300

Sincerely,



Paula Strange
Hearing Representative

DEPARTMENT OF HOMELAND SECURITY
IMMIGRATION & CUSTOMS ENFORCEMENT
FIELD OFFICE DIRECTOR-NEW ORLEANS
1010 EAST WHATLEY ROAD
OAKDALE, LA 71463

PAUL H FELSER
ESQ
7 EAST CONGRESS ST., SUITE 400
SAVANNAH, GA 31401

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 Department of Homeland Security in Oakdale, Louisiana; Case No. _____; Hearing was held on JANUARY 9, 2008 in Atlanta, Georgia.

The issue is whether the claimant sustained an injury in the performance of duty as claimed.

The claimant, _____, born _____, has been employed with the Department of Homeland Security as a law enforcement officer. On October 4, 2006 he filed a timely claim for workers' compensation, claiming that his emotional condition was aggravated by particular aspects of his federal employment. The claimant filed a claim for recurrence, referencing Claim Number _____ which he filed on February 3, 2001, when he was a federal employee of the Forest Service. That claim was accepted for post traumatic stress disorder with anxiety, resolved. That claim has also been combined with the instant record, and to the extent it is deemed appropriate, will be incorporated in the following discussion. The Office determined that the instant case was actually a claim for new injury as the claimant was sighting new work events as the source of the onset of symptoms.

The claimant wrote that following his first injury he was slowly introduced back to full law enforcement duties.

By letters dated June 28, 2007 the District Office of Workers' Compensation Programs requested that the claimant and his employer provide medical and factual evidence in support of the claim.

In a statement submitted to the record the claimant suggested that management had attacked him and other officers who had tried to act ethically. He stated that he was ordered to burn weapons and law enforcement credentials. He also suggested that his performance evaluation was not correct. Other documents submitted suggest that the claimant was also implicating an unnecessary exposure to Tuberculosis and that there was an attempt to chase him out of his position. He also suggested that he was reacting to unethical and inappropriate management actions.

Medical records indicate that Dr. Douglass O'Brady, PhD, treated the claimant for post traumatic stress disorder. Dr. John Ellis, MD, also treated the claimant. He noted on October 23, 2006 that the claimant seemed to have a personality disorder that was exacerbated by employment events. He

stated that the claimant had post traumatic stress disorder directly related to the work events of 2000, and that the claimant had sustained an exacerbation due to subsequent work events. Similarly, Dr. Martin Faitek, PhD, found that the claimant's personality disorder and post traumatic stress disorder were exacerbated by the work events. Dr. Faitek examined the claimant on September 22, 2006.

On August 29, 2007 the Office denied the claim. The Office found that the claimant had not identified compensable factors of employment.

The claimant's attorney, Paul Felser, requested an oral hearing on the claimant's behalf.

Mr. Felser represented the claimant at the Hearing held on January 9, 2007 in Atlanta, Georgia. The claimant testified on his own behalf as well. Mr. Felser stated that the claimant's original condition had never completely resolved. He also acknowledged that additional work events following the claimant's new employment worsened or aggravated the condition. He noted that the claimant had periodic exacerbations of his emotional condition even after he returned to full employment. Various events would trigger anxiety or panic.

The claimant described his duties with the Forest Service and the incident leading to the initial diagnosis of post traumatic stress disorder. He stated that he began working for Homeland Security in 2001. He stated that he had no problems there for the first year and a half. Then he transferred to a different office and the problems began. He stated that in violation of policy officers were wearing their firearms while they processed felons. The claimant explained that this was a forbidden practice in order to preclude a felon from overtaking an officer and stealing his firearm. He stated that this occurred within his immediate surroundings and he sensed great danger. The claimant and Mr. Felser stated that this violation of policy was substantiated by e-mails from _____, the claimant's supervisor's superior. Mr. Felser stated that this was either in the record or would be submitted after the hearing.¹

The claimant also stated that an element of his claim was transporting ten to thirteen felons cross country... "by yourself in the middle of the night with no radio contact, cell phone service was sparse." According to the claimant, policy required two drivers if the trip was long enough that stops would be made prior to the destination. He stated that he was fearful of making these trips alone.

¹ I researched the entire case record for both claims; the e-mails from _____ were not in the records. While Mr. Felser stated that they were submitted following the Hearing, the records do not show them. In the instant claim, however, there is evidence in the form of photographs, showing that the wearing of firearms in the presence of felons is forbidden.

The claimant also noted that beginning in 2002 he had to work in a van that had no controls for air borne pathogens. He stated that he had developed Tuberculosis and he believed that this was due to exposure at work.

Another factor, according to the claimant, was that the room where firearms and ammunition were kept was often left open.

Following the Hearing Mr. Felser submitted a brief summarizing the claimant's claim and the medical evidence submitted. He emphasized that the original condition had not resolved.

I have carefully evaluated all evidence of record, to include the Hearing testimony and the evidence submitted after the Hearing. I find that the claimant has identified compensable factors of employment.

To establish that an emotional condition was sustained in the performance of duty, a claimant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to the condition; (2) medical evidence establishing that he or she has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to the emotional condition.²

In the instant claim the claimant has described his work place and suggested that he was upset with various policies, including safety issues. His testimony at the Hearing provided clarity and specificity to the claim. I find that he has identified the following compensable factors:

-officers wore firearms while processing felons. This occurred in the presence of the claimant. The record indicates that this is in violation of policy. The agency has not contested the claimant's assertion that this occurred near him. I find that this dangerous practice is a compensable factor of employment.

-uniquely driving 10 or more felons long distances.

-driving a van that was not equipped to control for airborne pathogens.

While the claimant's submissions suggest that he was unhappy with many other aspects of his employment, I do not find that he has specifically or clearly identified them. I find that the above

² *Blondell Blassingame*, 48 ECAB ____ (Docket No. 95-2779, issued October 9, 1996); *Beverly Diffin*, 48 ECAB ____ (Docket No. 94-2435, issued October 3, 1996); *John D. Ayers*, 48 ECAB ____ (Docket No. 95-1568, issued April 15, 1997); *Peggy Ann Lightfoot*, 48 ECAB ____ (Docket No. 95-1676, issued May 2, 1997); *Earl D. Smith*, 48 ECAB ____ (Docket No. 95-2749, issued August 13, 1997); *Martha L. Street*, 48 ECAB ____ (Docket No. 95-2440, issued August 20, 1997); *Mary Margaret Grant*, 48 ECAB ____ (Docket No. 95-3043, issued September 25, 1997).

three factors are established and may be considered as eligible for coverage under the Federal Employees' Compensation Act.

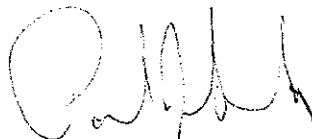
A claimant's burden of proof is not discharged by the fact that he or she has established employment factors that may give rise to a compensable disability under the FECA. To establish an occupational disease claim for an emotional condition, the employee must also submit rationalized medical evidence establishing that he or she has an emotional or psychiatric disorder and that such disorder is causally related to the accepted compensable employment factors.³

In the instant case there is medical evidence implicating the claimant's work duties in the worsening or exacerbation of the post traumatic stress disorder. The evidence also implicates the original injury. The doctors who treated the claimant –Doctors O'Brady, Faitek, and Ellis- all relate the condition in some way to the claimant's federal employment. I note that Dr. Ellis specifically cited the fact that other officers were wearing guns around felons. I find that the evidence is sufficient to demonstrate that the claimant's aggravation of Post Traumatic Stress Disorder is causally related to his employment with the Department of Homeland Security.

The decision dated August 29, 2007 is REVERSED and the case is accepted for aggravation of Post Traumatic Stress Disorder.

MAR 26 2008

DATED:
WASHINGTON, DC



PAULA J. STRANGE
Hearing Representative
for
Director, Office of Workers'
Compensation Programs

³ James D. Zurcher, 48 ECAB ____ (Docket No. 94-2221, issued January 6, 1997);
Michael Ewanichak, 48 ECAB ____ (Docket No. 95-451, issued February 26, 1997).