

This case has previously been before the Board. In a decision dated March 2, 2005, the Board set aside the Office's June 7, 2004 decision after finding that the opinion of an Office referral physician was insufficient to establish the nature and extent of appellant's employment-

related disability.¹ The Board instructed the Office on remand to “secure a medical report containing a reasoned medical opinion on the relevant issue of whether appellant had any period or periods of disability other than January 8 to March 4, 1996 due to her accepted employment injury.” The findings of fact and conclusions of law from the Board’s prior decision are hereby incorporated by reference.

On remand, the Office referred appellant to Dr. Kenneth L. Koenig, a Board-certified psychiatrist, for a second opinion evaluation. In a report dated June 3, 2005, Dr. Koenig questioned the diagnosis of post-traumatic stress disorder by appellant’s attending physician and stated “at best she could be said to have had a short-lived acute stress disorder, which she has long since overcome.” He opined that he was “unable to find that the claimant was totally disabled at any time” since she could have obtained a transfer from her work location or left employment with the employing establishment. Dr. Koenig noted that it appeared that there was a “management-employee problem which was mishandled and escalated into a fight” rather than a psychiatrist problem. He concluded, “I question whether total disability occurred at any time. There may have been a temporary disability at some point, but in the past[,] the claimant was out of work for a period of time, but returned to school soon after that.” Dr. Koenig found that she had no current psychiatric diagnosis, disability or need for further medical treatment. In an accompanying work restriction evaluation, he noted that appellant currently worked “in a job requiring high functioning” and stated “at no time was she permanently disabled.”

By decision dated June 14, 2005, the Office denied appellant’s claim for additional periods of employment-related disability.

LEGAL PRECEDENT

The term disability is defined in the Office’s implementing regulations as the incapacity because of an employment injury to earn the wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity.² Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative and substantial medical evidence.³

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁴ Rationalized medical evidence is medical evidence which includes a physician’s rationalized medical opinion on the issue of whether there is a causal relationship between the claimant’s diagnosed condition and the implicated employment factors. 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

¹ *Barbara A. Palmer*, Docket No. 04-1907 (issued March 2, 2005).

² 20 C.F.R. § 10.5(f); *see e.g.*, *Cheryl L. Decavitch*, 50 ECAB 397 (1999) (where appellant had an injury but no loss of wage-earning capacity).

³ *See Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁴ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁵

When the Office refers a claimant for a second opinion evaluation and the report does not adequately address the relevant issues, the Office should secure an appropriate report on the relevant issues.⁶

ANALYSIS

The Board remanded the case for the Office to obtain a rationalized medical opinion on the issue of whether appellant had any disability for employment due to her accepted condition of adjustment disorder for any period other than January 8 to March 4, 1996. The Office referred her to Dr. Koenig for a determination of the nature and extent of her employment-related disability. In a report dated June 3, 2005, Dr. Koenig indicated that he was unable to find appellant totally disabled because she could have switched positions or found alternative employment. The relevant issue, however, is whether appellant was disabled from the position held at the time of her employment injury.⁷ Dr. Koenig opined that there “may have been a temporary disability at some point” in the past and noted that appellant stopped work “for a period of time.” His opinion that appellant “may have been” temporarily disabled is speculative in nature and thus of diminished probative value.⁸ Additionally, his report is inconsistent as he indicated that he was unable to find appellant disabled at any time but noted that she may have had temporary disability in the past. Consequently, Dr. Koenig’s opinion fails to resolve the relevant issue in this case of the duration of appellant’s employment-related disability.

As the Office sought the opinion of Dr. Koenig, it has the responsibility to obtain an opinion that adequately addresses the issue presented in the case.⁹ Accordingly, the case will be remanded to the Office to secure a reasoned medical opinion on the extent of appellant’s disability due to her accepted employment injury. After such further development as the Office deems necessary, it should issue an appropriate merit decision.

CONCLUSION

The Board finds that the case is not in posture for decision.

⁵ *Leslie C. Moore*, 52 ECAB 132 (2000).

⁶ *Ayanle A. Hashi*, 56 ECAB ____ (Docket No. 04-1620, issued December 27, 2004); *Mae Z. Hackett*, 34 ECAB 1421 (1983).

⁷ *See Marvin T. Schwartz*, 48 ECAB 521 (1997).

⁸ *Ricky S. Storms*, 52 ECAB 332 (2001).

⁹ *See Ayanle A. Hashi*, *supra* note 6.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 14, 2005 is set aside and the case is remanded for further proceedings consistent with this opinion by the Board.

Issued: October 20, 2005
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board