



that the report of Dr. Kenneth L. Koenig, a Board-certified psychiatrist and Office referral physician, was inconsistent and speculative and thus insufficient to resolve the relevant issue of the extent of appellant's disability due to her accepted condition of adjustment disorder.<sup>2</sup> The Board remanded the case for the Office to obtain a reasoned opinion regarding the extent of her employment-related disability. The findings of fact and the conclusions of law from the prior decisions are hereby incorporated by reference.

By letter dated November 8, 2005, the Office requested that Dr. Koenig provide a reasoned opinion regarding the period, if any, that appellant was disabled due to her accepted employment injury. The Office did not specify the accepted employment injury. The Office enclosed a statement of accepted facts (SOAF) dated April 11, 2005 which did not provide that the claim was accepted for adjustment disorder.

In a report dated November 30, 2005, Dr. Koenig related that he had reviewed the April 11, 2005 SOAF and that his prior findings remained unchanged. He opined that, due to appellant's swift recovery after leaving the employing establishment and her statements to him regarding past events, he believed that Dr. Gibbs diagnosis of PTSD (post-traumatic stress disorder) was in error. Dr. Koenig found that she either sustained an acute stress disorder or no psychiatric condition. The physician stated:

“Instead, it is much more likely in my judgment that this situation could have been seen in more of an employment event context as a work[-]related conflict between employee and supervisor rather than as a psychiatric problem of [appellant]. If that had happened appropriate efforts could have been made to try to correct that work problem rather than labeling [her] as ‘disabled’ and her having a psychiatric diagnosis of any kind.”

Dr. Koenig indicated that, while as stated in his prior report she may have had a temporary disability due to a stress disorder, it was most likely a conflict between an employee and supervisor which was “poorly resolved and led to [her] being unable to function in this particular work situation as it was structured, not because of her level of psychiatric disability but because of the continued dysfunctional work situation.” He again related that the PTSD diagnosis was in error and noted that she quickly resumed a successful work and life after she left the employing establishment.

By decision dated January 3, 2006, the Office denied appellant's claim for temporary total disability after March 4, 1996 due to her accepted condition of adjustment disorder.

### **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.<sup>3</sup> Whether a

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<sup>2</sup> *Barbara A. Palmer*, Docket No. 05-1454 (issued October 20, 2005).

<sup>3</sup> 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).

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.<sup>4</sup>

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.<sup>5</sup>

The Office's procedure manual provides as follows:

“When the [Office] medical adviser, second opinion specialist or referee physician renders a medical opinion based on a statement of accepted facts which is incomplete or inaccurate or does not use the statement of accepted facts as the framework in forming his or her opinion, the probative value of the opinion is seriously diminished or negated altogether.”<sup>6</sup>

### ANALYSIS

In the prior appeal, the Board remanded the case for the Office to obtain a rationalized medical report on the issue of the extent of appellant's employment-related disability due to her accepted condition of adjustment disorder. On remand, the Office requested that Dr. Koenig review an enclosed April 11, 2005 SOAF and address the periods that she was disabled due to her employment injury. In the SOAF, however, the Office failed to specify that it had accepted appellant's claim for adjustment disorder with a period of disability from January 8 to March 4, 1996. The Office provides a physician with a SOAF to assure that the medical specialist's report is based upon a proper factual background.<sup>7</sup> The SOAF must include the date of injury, claimant's age, the job held on the date of injury, the employer, the mechanism of injury and the claimed or accepted conditions.<sup>8</sup> Office procedures further indicate that, when an Office medical adviser, second opinion specialist or referee physician “renders a medical opinion based on a SOAF which is incomplete or inaccurate or does not use the SOAF as the framework in forming his or her opinion, the probative value of the opinion is seriously diminished or negated altogether.”<sup>9</sup> In a report dated November 30, 2005, Dr. Koenig indicated that he disagreed with the diagnosis of PTSD for appellant and found that she either sustained an acute

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<sup>4</sup> See *Fereidoon Kharabi*, 52 ECAB 291 (2001).

<sup>5</sup> *Ayanle A. Hashi*, 56 ECAB \_\_\_\_ (Docket No. 04-1620, issued December 27, 2004); *Mae Z. Hackett*, 34 ECAB 1421 (1983).

<sup>6</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.3 (October 1990).

<sup>7</sup> *Helen Casillas*, 46 ECAB 1044 (1995).

<sup>8</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Statements of Accepted Facts*, Chapter 2.809.12 (June 1995); see also *Darletha Coleman*, 55 ECAB \_\_\_\_ (Docket No. 03-868, issued November 10, 2003).

<sup>9</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.3 (October 1990).

stress disorder or no emotional condition. Dr. Koenig, however, did not base his medical opinion on a complete SOAF which included the Office's September 25, 2002 acceptance of an adjustment disorder with a period of total disability from January 8 to March 4, 1996. As the physician rendered his opinion based on incomplete factual information, it is of limited probative value. The Office has the responsibility to obtain from its referral physician an evaluation that will resolve the issue involved in this case.<sup>10</sup> Accordingly, the Board finds that the case must be remanded for further medical development as Dr. Koenig's opinion is of diminished probative value as it was based on an incomplete SOAF.

On remand the Office should prepare a complete, accurate and updated SOAF and refer appellant to an appropriate medical specialist for examination and a reasoned opinion of whether she sustained disability from employment for any period other than January 8 to March 4, 1996 due to her accepted condition of adjustment disorder. Following such further development as deemed necessary, the Office shall issue a *de novo* decision.

### **CONCLUSION**

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

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated January 3, 2006 is set aside and the case is remanded for further proceedings consistent with this decision by the Board.

Issued: July 6, 2006  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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

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<sup>10</sup> *Richard F. Williams*, 55 ECAB \_\_\_\_ (Docket No. 03-1176, issued February 23, 2004).