# United States Department of Labor
# Employees' Compensation Appeals Board

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| **B.P., Appellant** | ) | |
| **and** | ) | **Docket No. 07-2170** |
| | ) | **Issued: May 8, 2008** |
| **U.S. POSTAL SERVICE, POST OFFICE, Aptos, CA, Employer** | ) | |

*Appearances:*
*Appellant, pro se*
*Office of Solicitor,* for the Director

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

### *JURISDICTION*

On August 22, 2007 appellant filed a timely appeal from an August 10, 2007 merit decision of the Office of Workers' Compensation Programs denying her claim for disability compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

### *ISSUE*

The issue is whether appellant was disabled from employment due to her accepted condition of adjustment disorder for any period other than January 8 through March 4, 1996.

### *FACTUAL HISTORY*

This case has previously been before the Board. By decision dated March 2, 2005, the Board set aside a June 7, 2004 decision, finding that the opinion of the second opinion physician did not resolve the issue of the nature and extent of appellant's employment-related disability.[1]

[1] Docket No. 04-1907 (issued March 2, 2005).

In the second appeal, the Board set aside a June 14, 2005 decision.[2] The Board determined that the opinion of the Office referral physician was speculative and insufficient to resolve the issue of the duration of appellant's disability due to her employment injury. On appeal, for the third time, the Board set aside a January 3, 2006 decision after finding that the Office had not provided the referral physician with a complete statement of accepted facts.[3] The Board instructed the Office to obtain a reasoned opinion on the issue of whether she was disabled due to her accepted condition of adjustment disorder for any period other than January 8 to March 4, 1996. The findings of fact and conclusions of law from the prior decisions are hereby incorporated by reference. The facts relevant to the issue now before the Board will again be set forth.

On January 10 and July 6, 1996 appellant filed occupational disease claims alleging that she sustained an emotional condition due to factors of her federal employment. The Office assigned the claims file numbers 131099124 and 131112496. The Office accepted as compensable employment factors that on December 8, 1995 appellant parked a long life postal vehicle into a parking space without a spotter and that from December 27, 1995 to January 5, 1996 a coworker left a sarcastic note on her letter case. Appellant stopped work on January 8, 1996 and returned to work on March 4, 1996. She again stopped work on June 1996 and did not return. In a report dated June 14, 2002, Dr. Gary Gibbs, an osteopath and Board-certified psychiatrist, diagnosed post-traumatic stress disorder (PTSD). He attributed appellant's PTSD in part to her backing her vehicle without a spotter and a coworker placing a sarcastic card on her case. Dr. Gibbs found that she was disabled for work. In a report dated September 15, 2002, Dr. John R. Gillette, a Board-certified psychiatrist and Office referral physician, diagnosed a psychiatric condition due to work factors which he found ceased within a few months of the date she stopped work in June 1996. Based on his opinion, the Office accepted that appellant was disabled due to adjustment disorder from January 8 to March 4, 1996. In a report dated October 31, 2002, Dr. Gibbs related that appellant was totally disabled for work due to "the two compensable incidents which were previously mentioned." Appellant claimed compensation for disability beginning June 1996. At the instruction of the Board in decisions dated March 2 and October 20, 2005 and July 6, 2006, the Office undertook further development of the claim to determine whether appellant had any employment-related disability beginning June 1996.

On October 5, 2006 the Office referred appellant, together with an updated statement of accepted facts, to Dr. Denis A. Clegg, a Board-certified psychiatrist, for a second opinion examination. On November 3, 2006 Dr. Clegg reviewed the statement of accepted facts with appellant and discussed her history of illness. He noted that the Office accepted that she was disabled from the accepted condition of adjustment disorder from January 8 to March 4, 1996. Dr. Clegg stated:

> "I see from March to June 1996 a continuing power struggle by [appellant] with management. She was not afraid of asserting her opinion and demanding what she thought was entitled to her. It is my opinion she discontinued work in June 1996, not because she was excessively fearful or overwhelmed with anxiety,

[2] Docket No. 05-1454 (issued October 20, 2005).

[3] Docket No. 06-591 (issued July 6, 2006).

but because [appellant] was angry to how she was being treated. As such, the best diagnosis in June 1996 would be employee management problem, which is not a compensable diagnosis. I am of the opinion she was not disabled by an adjustment disorder in June 1996 causing disability…. [Appellant] left her job in June 1996 because of an employee management conflict. The SOAF [statement of accepted facts] does not support her complaints of discrimination, nor does it support any behavior on the part of management that would be considered excessively threatening to her safety…. In summary, it is my opinion there was no period of psychiatric disability in June 1996 which would have required her to leave work."

By decision dated August 10, 2007, the Office denied appellant's claim for disability beginning June 1996 on the grounds that the weight of the evidence, as represented by the opinion of Dr. Clegg, established that she had no employment-related disability due to her accepted condition of adjustment disorder for any period other than January 8 through March 4, 1996.

## ***LEGAL PRECEDENT***

The term disability as used in the Federal Employees' Compensation Act[4] means the incapacity because of an employment injury to earn the wages that the employee was receiving at the time of injury.[5] Whether a particular injury caused an employee disability for employment is a medical issue which must be resolved by competent medical evidence.[6] When the medical evidence establishes that the residuals of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in the employment held when injured, the employee is entitled to compensation for any loss of wage-earning capacity resulting from such incapacity.[7] The Board will not require the Office to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employee's to self-certify their disability and entitlement to compensation.[8]

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.[9] 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

[4] 5 U.S.C. §§ 8101-8193; 20 C.F.R. § 10.5(f).

[5] *Sean O'Connell*, 56 ECAB 195 (2004).

[6] *Paul E. Thams*, 56 ECAB 503 (2005).

[7] *Id*.

[8] *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

[9] *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.[10] Neither the fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[11]

## ***ANALYSIS***

The Office accepted that appellant was disabled from employment due to her accepted condition of adjustment disorder from January 8 to March 4, 1996. She returned to work on March 4, 1996 but stopped work again in June 1996 and did not return. On June 14, 2002 Dr. Gibbs diagnosed PTSD due to backing her vehicle without a spotter and the placing of sarcastic cards by a coworker. He indicated that appellant became unable to work. In a report dated October 31, 2002, Dr. Gibbs opined that she was permanently disabled from work at the employing establishment due to the compensable employment factors. He did not, however, provide any rationale for his conclusion that appellant was disabled from work. Medical conclusions unsupported by rationale are of diminished probative value.[12] Consequently, Dr. Gibbs' opinion is insufficient to meet appellant's burden of proof.

The Office further developed the claim; however, the Board found that the reports from the referral physicians were insufficient to resolve the issue of the extent of appellant's disability. Following the last Board remand, on October 16, 2006 the Office referred appellant to Dr. Clegg for a second opinion examination. In a report dated November 3, 2006, Dr. Clegg noted that the Office had accepted that appellant was disabled from January 8 to March 4, 1996 due to her accepted condition of adjustment disorder. He provided a thorough review of the factual and medical evidence and the statement of accepted facts. Dr. Clegg found that she was not disabled by her accepted condition of adjustment disorder when she stopped work in June 1996. He explained that she stopped work in June 1996 because of anger over a dispute with management rather than a diagnosable psychiatric condition. Dr. Clegg's opinion is detailed, well-rationalized and based on a complete and accurate statement of accepted facts. Thus, his report constitutes the weight of the medical evidence and establishes that appellant had no disability after March 4, 1996 due to her work injury of adjustment disorder.[13]

[10] *Leslie C. Moore*, 52 ECAB 132 (2000).

[11] *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

[12] *Jacquelyn L. Oliver*, 48 ECAB 232 (1996).

[13] Appellant submitted new medical evidence with her appeal. The Board has no jurisdiction to review new evidence on appeal; *see* 20 C.F.R. § 501.2(c). Appellant can submit this evidence to the Office and requested reconsideration under 5 U.S.C. § 8128.

## ***CONCLUSION***

The Board finds that appellant has not established that she was disabled after March 4, 1996 due to her accepted employment injury.

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated August 10, 2007 is affirmed.

Issued: May 8, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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