



## **FACTUAL HISTORY**

On November 5, 2003 appellant, then a 47-year-old procurement clerk, filed an occupational disease claim alleging that he sustained a “Reoccurrence of job-related stress” due to factors of his federal employment.

By decision dated February 20, 2004, the Office denied appellant’s claim after finding that he failed to establish an emotional condition in the performance of duty. It determined that he had not identified any compensable work factors.

On February 27, 2004 appellant requested an oral hearing, which was held on September 2, 2004. In an April 25, 2005 decision, an Office hearing representative set aside the February 20, 2004 decision. She found that appellant had established as compensable employment factors that he worked in a noisy environment without adequate ear protection and was assigned computer work without receiving requested training. The hearing representative remanded the case for the Office to prepare a statement of accepted facts and refer him for a second opinion examination to determine whether he sustained an emotional condition due to the accepted work factors and, if so, the nature and extent of any disability.

On July 11, 2005 the Office referred appellant, together with the case record and a statement of accepted facts, to Dr. Ronald J. Wauters, a Board-certified psychiatrist, for a second opinion examination. It requested that Dr. Wauters address the causal relationship between any diagnosed emotional condition and the employment factors accepted as compensable and the duration of any work-related disability. On August 4, 2005 Dr. Wauters diagnosed recurrent, severe major depressive disorder. He opined that appellant’s preexisting depression was exacerbated by the identified incidents set forth in the statement of accepted facts. Dr. Wauters related, “As far as an opinion on the duration and extent of any disability, at this point [appellant] does not trust the agency or any government agency. It is doubtful that he would trust any large entity. Given [appellant’s] depression, his anger, his frustration, and his level of distrust, it would be difficult for him to be employed in most circumstances.” Dr. Wauters opined that appellant had been “ill for quite some time” with exacerbations before and during employment. He stated that it was “difficult or impossible to predict the length of his depression or the timing or length of any improvements.”

On October 4, 2005 the Office accepted appellant’s claim for an aggravation of preexisting depression condition. On November 30, 2005 appellant filed a claim for wage loss February 17, 2004 to November 30, 2005.<sup>2</sup>

In a report dated April 25, 2006, Dr. John Lierly, a clinical psychologist, related that he treated appellant in a group setting for anger management. Appellant told him about his difficulties with supervisors at work and his numerous medical problems.

By decision dated March 3, 2008, the Office denied appellant’s claim for compensation for disability from February 17, 2004 to November 30, 2005. It noted that Dr. Wauters found that appellant’s disability was hard to determine as it was preexisting.

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<sup>2</sup> Appellant resigned from the employing establishment on February 17, 2004.

On March 8, 2008 appellant requested a review of the written record. He submitted a report dated August 6, 2006 Dr. Billy W. Evans, a Board-certified internist, diagnoses included major depression and panic disorder with agoraphobia. Dr. Evans found that appellant was “unable to engage in sustained work activity on a regular consistent daily basis” due to pain and symptoms of depression.

By decision dated July 7, 2008, an Office hearing representative affirmed the March 3, 2008 decision. She found that the medical evidence failed to establish that appellant was disabled from February 17, 2004 to November 30, 2005 due to his accepted employment injury.

### **LEGAL PRECEDENT**

The term disability as used in the Federal Employees’ Compensation Act<sup>3</sup> means the incapacity because of an employment injury to earn the wages that the employee was receiving at the time of injury.<sup>4</sup> Whether a particular injury caused an employee disability for employment is a medical issue which must be resolved by competent medical evidence.<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup>

Proceedings under the Act are not adversarial in nature, nor is the Office a disinterested arbiter.<sup>8</sup> While the claimant has the responsibility to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.<sup>9</sup> Once the Office has begun an investigation of a claim, it must pursue the evidence as far as reasonably possible. It has the obligation to see that justice is done.<sup>10</sup> When the Office selects a physician for an opinion, it has an obligation to secure, if necessary, clarification of the physician’s report.<sup>11</sup> Where the Office

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<sup>3</sup> 5 U.S.C. §§ 8101-8193; 20 C.F.R. § 10.5(f).

<sup>4</sup> *Paul E. Thams*, 56 ECAB 503 (2005).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

<sup>8</sup> *Vanessa Young*, 55 ECAB 575 (2004).

<sup>9</sup> *Peter C. Belkind*, 56 ECAB 580 (2005).

<sup>10</sup> *Richard E. Simpson*, 55 ECAB 490 (2004).

<sup>11</sup> *See Peter C. Belkind*, *supra* note 9; *Steven P. Anderson*, 51 ECAB 525 (2000).

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>12</sup>

### ANALYSIS

Appellant filed a claim alleging that he sustained stress causally related to his federal employment. He further claimed that he was disabled due to stress February 17, 2004 to November 30, 2005. On April 25, 2005 an Office hearing representative found that appellant had established as compensable employment factors that he worked in a noisy environment without adequate hearing protection and was assigned computer work without training. She instructed the Office to refer him for a second opinion examination to determine whether he sustained an emotional condition due to the compensable work factors and, if so, the nature and extent of any disability. The Office referred appellant to Dr. Wauters. Based on Dr. Wauters' opinion, it accepted his claim for an aggravation of preexisting depression. The Office found, however, that Dr. Wauters' report was insufficient to show that appellant was disabled beginning February 17, 2004 due to his accepted employment injury.

In his August 4, 2005 report, Dr. Wauters diagnosed recurrent, severe major depression. Regarding the duration of disability, he related that it would be difficult for appellant to be employed given his depression, anger and mistrust. Dr. Wauters opined that appellant had experienced exacerbations of his condition before and during his employment but that it was "difficult or impossible to predict the length of his depression or the timing or length of any improvements." His opinion is insufficient to resolve the question of whether appellant was disabled from February 17, 2004 to November 30, 2005.

Proceedings under the Act are not adversarial in nature and the Office is not a disinterested arbiter. Once the Office undertakes to develop the medical evidence further, it has the responsibility to do in a manner that will resolve the relevant issues in the case.<sup>13</sup> In accordance with instructions from the hearing representative, it requested that Dr. Wauters address the nature and extent of any employment-related disability. As the Office sought the opinion of Dr. Wauters, it has the responsibility to obtain an opinion that adequately addresses the issue presented.<sup>14</sup> Accordingly, the case will be remanded to the Office to obtain a reasoned medical opinion on the extent of any disability due to the accepted employment injury. After such further development as deemed necessary, the Office should issue an appropriate merit decision.

### CONCLUSION

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

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<sup>12</sup> *Ayanle A. Hashi*, 56 ECAB 234 (2004); *Mae Z. Hackett*, 34 ECAB 1421 (1983).

<sup>13</sup> *Id.*

<sup>14</sup> See *Ayanle A. Hashi*, *supra* note 12.

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 7, 2008 decision of the Office of Workers' Compensation Programs is set aside. The case is remanded for further proceedings consistent with this opinion of the Board.

Issued: February 24, 2011  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board