

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

K.J., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
North Metro, GA, Employer**

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**Docket No. 14-1161
Issued: September 12, 2014**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On April 23, 2014 appellant filed a timely appeal from the March 5, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP) terminating her compensation. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 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 OWCP met its burden of proof to terminate appellant's wage-loss compensation effective March 9, 2014 on the grounds that she had no disability due to her accepted work injuries after that date.

FACTUAL HISTORY

On May 28, 2010 OWCP accepted that appellant, then a 31-year-old letter carrier, sustained major depression (single episode) and generalized anxiety disorder due to her work. It

¹ 5 U.S.C. §§ 8101-8193.

accepted that her conditions were caused by three wrongful disciplinary actions: a September 17, 2009 notice of disciplinary action for absence without leave; a November 9, 2009 notice of disciplinary action for failing to follow instructions and unsatisfactory performance; and a November 19, 2009 notice of disciplinary action for failing to follow instructions and unsatisfactory performance. Appellant stopped work on November 19, 2009. She received disability compensation on the periodic rolls.

Effective November 22, 2011, OWCP terminated appellant's wage-loss compensation and medical benefits based on the opinion of an OWCP referral physician that she ceased to have work-related residuals as of that date. In a June 14, 2012 decision, an OWCP hearing representative reversed the termination determination on the grounds that the opinion of OWCP's referral physician was not based on a complete and accurate statement of accepted facts. Appellant's compensation was restored and she was placed on the periodic rolls.

On January 23, 2012 appellant returned to limited-duty work at the employing establishment for four hours a day. She eventually worked her way up to six hours a day. Appellant received partial wage-loss compensation for the portion of each eight-hour day that she did not work. She stopped work on June 28, 2012 and received total disability compensation.

In a June 28, 2012 report, David Aycock, Ph.D., an attending clinical psychologist, advised that he had treated appellant on a regular basis. He stated, "Due to the recent events at her workplace, her stress levels have elevated significantly and [appellant] is unable to discharge her work duties at present. It is undetermined when she will be capable of returning to her work responsibilities."

In June 2012, OWCP referred appellant to Dr. Kenneth E. Goolsby, a Board-certified second opinion psychiatrist, for an examination and opinion on her work-related residuals. In a June 19, 2012 report, Dr. Goolsby discussed appellant's medical history, including the accepted conditions of major depression (single episode) and generalized anxiety disorder. He noted that the statement of accepted facts showed that these conditions were accepted as being caused by three wrongful disciplinary actions dated September 17, November 9 and 19, 2009. Dr. Goolsby reported the findings of his examination and diagnosed major depression (single episode without psychotic features) and generalized anxiety disorder. He found that there continued to be multiple objective findings to support the diagnosis of major depressive disorder, including depressed mood, decreased energy, prolonged depressed mood, decreased energy, decreased concentration, anhedonia, feeling of hopelessness and helplessness and fleeting suicidal thoughts. Dr. Goolsby noted that appellant also met many of the criteria for generalized anxiety disorder, including experiencing excessive anxiety, difficulty controlling worrying, restlessness, fatigue, difficulty concentration, irritability and sleep disturbance. He stated that it was his "impression that these conditions were caused by the compensable factors of employment as described in the statement of accepted facts" and that appellant's "psychiatric condition has not resolved as evidenced by her continued diagnosis of major depressive disorder and generalized anxiety disorder." Dr. Goolsby determined that appellant's major depressive disorder and generalized anxiety disorder had not resolved due to a lack of an aggressive psychopharmaceutical management program for her depressive symptoms. He stated that

appellant was currently unable to work in any capacity due to her recurrent major depressive disorder and generalized anxiety disorder.

In an October 9, 2012 report, Dr. Aycock stated that appellant's diagnoses were depressive disorder and anxiety disorder and noted that these conditions were still medically present, unresolved and disabling. He noted that these conditions were not aggravations of any preexisting conditions and that appellant's functioning had not returned to her preinjury status. Appellant currently was disabled from all employment settings. He noted that she attempted to return to work from January to June 2012, but that her symptom complex returned in force.

In treatment reports dated March 5 to November 19, 2013, Dr. Aycock reiterated that appellant's diagnoses were depressive disorder and anxiety disorder. He noted that these conditions were still medically present, unresolved and disabling.

In August 2013, OWCP again referred appellant to Dr. Goolsby, for an examination and opinion on her work-related residuals.² In an August 19, 2013 report, Dr. Goolsby provided findings that were similar to those in his June 19, 2012 report. He diagnosed major depression (single episode without psychotic features) and generalized anxiety disorder and stated the conditions were caused by the 2009 disciplinary actions mentioned in the statement of accepted facts. Dr. Goolsby again advised that the conditions had not resolved due to a lack of an aggressive psychopharmaceutical management program for appellant's depressive symptoms. He stated that appellant was currently unable to work in any capacity due to her recurrent major depressive disorder and generalized anxiety disorder.

In a January 24, 2014 letter, OWCP advised appellant that it proposed to terminate her wage-loss compensation on the grounds that she ceased to have disability due to the accepted work conditions.³ It stated that the proposed termination action was supported by the June 28, 2012 report of Dr. Aycock and the June 19, 2012 report of Dr. Goolsby. OWCP suggested that appellant sustained a new work-related emotional condition by indicating that "the events leading up to the [June 28, 2012] work stoppage were associated with her new work factors not associated with the [November 9, 2009] work events." It provided her 30 days to submit evidence or argument challenging the proposed termination action.⁴

In a March 5, 2014 decision, OWCP terminated appellant's compensation effective March 9, 2014. It found that she had no disability due to her accepted work injuries after that date. It indicated that the June 28, 2012 report of Dr. Aycock and the June 19, 2012 report of Dr. Goolsby supported this action.

² It is unclear why OWCP undertook a second referral to Dr. Goolsby without asking him to clarify his June 19, 2012 report.

³ OWCP did not provide any indication that it would terminate appellant's medical benefits.

⁴ OWCP stated that a formal wage-earning capacity determination was issued on July 25, 2012. However, there is no indication that such a determination has been made. The record contains a July 25, 2012 instructional letter explaining appellant's compensation rate, but this does not constitute a formal wage-earning capacity determination.

LEGAL PRECEDENT

Under FECA, once OWCP has accepted a claim it has the burden of justifying termination or modification of compensation benefits.⁵ OWCP may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.⁶ OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁷

ANALYSIS

On May 28, 2010 OWCP accepted that appellant sustained major depression (single episode) and generalized anxiety disorder due to her work due to three wrongful disciplinary actions dated September 17, November 9 and 19, 2009. Appellant stopped work on November 19, 2009 and received disability compensation on the periodic rolls. On January 23, 2012 appellant returned to limited-duty work for the employing establishment for four hours per day and she eventually worked her way up to six hours per day. She stopped work on June 28, 2013 and began to receive total disability compensation.

OWCP terminated appellant's wage-loss compensation effective March 9, 2014 on the grounds that she had no disability due to her accepted work injuries after that date. It based its termination action on a June 28, 2012 report of Dr. David Aycock, an attending clinical psychologist, and a June 19, 2012 report of Dr. Goolsby, a Board-certified psychiatrist serving as an OWCP referral physician.

The Board finds that OWCP did not meet its burden of proof to terminate appellant's wage-loss compensation effective March 9, 2014. The June 28, 2012 report of Dr. Aycock and the June 19, 2012 report of Dr. Goolsby do not establish that appellant's accepted work conditions no longer caused disability.

In a June 28, 2012 report, Dr. Aycock stated, "Due to the recent events at her workplace, her stress levels have elevated significantly and [appellant] is unable to discharge her work duties at present. It is undetermined when she will be capable of returning to her work responsibilities." The Board finds that this report does not support the termination of appellant's wage-loss compensation. Dr. Aycock did not provide an opinion that appellant's accepted conditions of major depression (single episode) and generalized anxiety disorder were no longer causing disability. OWCP suggested that the June 28, 2012 report established that appellant sustained a new emotional condition due to work factors encountered when she returned to part-time work in early 2012. However, Dr. Aycock's did not provide a clear opinion on this matter. Moreover, he explicitly stated in numerous treatment reports of record that appellant continued to have disability due to her accepted work conditions. In an October 9, 2012 report, Dr. Aycock stated that appellant's diagnoses were depressive disorder and anxiety disorder and noted that the

⁵ V.C., 59 ECAB 490 (2008); *Charles E. Minniss*, 40 ECAB 708, 716 (1989).

⁶ *Id.*

⁷ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

conditions were still medically present, unresolved and disabling. He stated that appellant's functioning had not returned to preinjury status and she currently was disabled from all employment settings.

OWCP also determined that Dr. Goolsby's June 19, 2012 report supported its termination action. The Board notes that the physician provided an opinion that appellant's accepted work conditions had not resolved. Dr. Goolsby discussed the accepted conditions of major depression (single episode) and generalized anxiety disorder and noted that the statement of accepted facts provided that the conditions were accepted as being caused by three wrongful disciplinary actions from 2009. He diagnosed major depression (single episode without psychotic features) and generalized anxiety disorder and posited that these conditions had not resolved due to a lack of an aggressive psychopharmaceutical management program for appellant's depressive symptoms.⁸ Dr. Goolsby stated that appellant was currently unable to work in any capacity due to her recurrent major depressive disorder and generalized anxiety disorder.

For these reasons, the Board finds that OWCP did not meet its burden of proof to terminate appellant's wage-loss compensation effective March 9, 2014.

CONCLUSION

The Board finds that OWCP did not meet its burden of proof to terminate appellant's wage-loss compensation effective March 9, 2014 on the grounds that she had no disability due to her accepted work injuries after that date.

⁸ Dr. Goolsby stated that it was his "impression that these conditions were caused by the compensable factors of employment as described in the statement of accepted facts" and that appellant's "psychiatric condition has not resolved as evidenced by her continued diagnosis of major depressive disorder and generalized anxiety disorder." He also produced an August 19, 2013 report in which he provided findings that were similar to those contained in his June 19, 2012 report.

ORDER

IT IS HEREBY ORDERED THAT the March 5, 2014 decision of the Office of Workers' Compensation Programs is reversed.

Issued: September 12, 2014
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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