



## **FACTUAL HISTORY**

This case has previously been before the Board.<sup>2</sup> The facts and circumstances outlined in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

Appellant, a 38-year-old former part-time flexible city carrier, has an accepted occupational disease claim for generalized anxiety disorder and major depression (single episode), which arose on or about November 19, 2009. OWCP accepted that she had been subjected to three unjustified disciplinary actions that occurred on September 17, November 9, and 19, 2009.<sup>3</sup> Appellant stopped work on November 19, 2009 and received disability compensation on the daily rolls beginning February 4 until June 6, 2010 when she was placed on the periodic rolls.

On January 23, 2012 appellant returned to work in a part-time (four hours/day), limited-duty capacity. She eventually increased to a six-hour workday, but then stopped work entirely on June 28, 2012. OWCP paid disability compensation.

In a March 5, 2014 decision, OWCP terminated appellant's wage-loss compensation effective March 9, 2014 because she had no disability due to her accepted work injury after that date. It based its termination action on a June 28, 2012 report of Dr. David W. Aycock, Ph.D., an attending psychologist, and a June 19, 2012 report of Dr. Kenneth E. Goolsby, a Board-certified psychiatrist and OWCP referral physician.

By decision dated September 12, 2014, the Board reversed OWCP's March 5, 2014 termination decision.<sup>4</sup> It found that OWCP had not met its burden of proof to terminate appellant's wage-loss compensation, effective March 9, 2014, because the June 28, 2012 report of Dr. Aycock and the June 19, 2012 report of Dr. Goolsby were not sufficient to establish that appellant's accepted work conditions no longer caused disability. The Board's September 12, 2014 decision is incorporated herein by reference. Appellant was returned to the periodic rolls.

On February 4, 2015 appellant returned to work in a full-time position as a billing clerk with Arrowhead Clinic, a private employer providing chiropractic services, and she received compensation for loss of wage-earning capacity from OWCP. The position involved entering data into a computer, updating and maintaining patient records, mailing claims to insurance companies, and verifying insurance information.

In a September 15, 2015 report, Dr. Aycock noted that appellant's current diagnoses were depressive disorder, not otherwise specified, and anxiety disorder, not otherwise specified, and

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<sup>2</sup> Docket No. 14-1161 (issued September 12, 2014).

<sup>3</sup> In the first incident, the employing establishment charged appellant for absence without leave (AWOL), and in the latter two incidents appellant had been cited for failure to follow instruction(s) and unsatisfactory performance. The employing establishment's dispute resolution team determined that the above-noted incidents were unjustified, and therefore, rescinded all three disciplinary actions.

<sup>4</sup> See *supra* note 2.

indicated that these conditions were not aggravations of any preexisting conditions. He advised that appellant had been able to function appropriately in an accommodating position as a billing clerk for Arrowhead Clinic. Dr. Aycock noted that another attending physician prescribed psychotropic medication for her.

Appellant stopped work on November 5, 2015 and filed a claim for a recurrence of disability (Form CA-2a) alleging that she sustained a recurrence of disability that date due to her accepted emotional conditions. On the Form CA-2a she indicated that her original injury had never resolved and she noted that her symptoms of depression and anxiety “increased in severity and became overwhelming” while she worked for the Arrowhead Clinic.

In a November 5, 2015 report, Dr. Aycock indicated that appellant was suffering from the accepted depression and anxiety conditions and noted that she had been working in an accommodating position on a full-time basis at the Arrowhead Clinic. He indicated that her condition had deteriorated and that she was experiencing a recurrence of the symptom complex of her original injury. Dr. Aycock reported that appellant’s current symptoms included depression, anxiety, sleep disturbance, fear, worry, concentration and memory deficits, motivational deficits, lethargy, and sadness for no apparent reason. He advised that these symptoms had once again become debilitating and that an attending physician from the Department of Veterans Affairs was managing her medication which she needed to take daily “merely to cope.” Dr. Aycock noted that appellant continued to suffer from the same depressive and anxiety disorders that “have resulted in her accepted injury-related condition.” He indicated that it was his professional opinion that appellant’s depressive and anxiety disorders were directly caused by “her treatment on the job” at the employing establishment. Dr. Aycock advised that he based his opinion on the return of her symptom complex that occurred in response to harassment by her postmaster. He noted that appellant was progressing very well until she was “once again exposed to the hostile work environment.” Appellant’s depressive and anxiety disorders could not be reasonably attributed to any other cause except her mistreatment by the employing establishment. Dr. Aycock indicated that appellant could not cope with the demands of any work environment, including her billing clerk job, and posited that she was totally disabled as a result of the original injury.

In a November 25, 2015 letter, OWCP requested that appellant submit additional factual and medical evidence in support of her recurrence claim. It advised that a recurrence of disability was defined, in part, as a work stoppage caused by a spontaneous change in the medical condition which resulted from a previous injury or occupational illness without an intervening injury or new exposure to factors causing the original illness. OWCP requested that appellant complete and return a development questionnaire that asked her to describe her work activities since returning to work on February 4, 2015 and to detail what events caused her to stop work on November 5, 2015.

In response to the development letter, appellant submitted a November 30, 2015 report from Dr. Aycock noting that he first saw appellant on April 18, 2011 after she had sustained an injury in her letter carrier job due to “systemic harassment by her supervisor that did not relent until she was forced to file” an OWCP claim. Dr. Aycock indicated that appellant’s symptom pattern at her first appointment included depression, anxiety, sleep disturbance, concentration and memory deficits, fear of being mistreated at work, reliving her workplace trauma, worry,

lethargy, short temper, motivational deficits, and sadness. He noted that these symptoms precluded her from performing any work activities and required her to take psychotropic medication. Dr. Aycock reported that appellant's current symptoms included depression, anxiety, sleep disturbance, dreams of her workplace trauma, fear, worry, concentration and memory deficits, motivational deficits, lethargy, and sadness for no apparent reason. He found that she was having a recurrence of her original 2009 symptom pattern that was caused by the treatment from her supervisors at the employing establishment, including the inability to retain information well enough to complete work tasks, to generate enough energy to maintain concentration for any appreciable period, and to maintain appropriate relationships with coworkers and supervisors.

Dr. Aycock felt that appellant's current inability to function in any job was a direct result of her 2009 employment injury. He indicated that she had returned to a private-sector job and worked there on a full-time basis for nine months. Dr. Aycock noted that appellant reported that she enjoyed her job and performed it well until October 2015 when her depressive and anxiety symptoms returned with memories and dreams of her original work-related injury. He indicated that there was no reason to suspect that issues related to her current job intervened to cause the relapse. Dr. Aycock noted that appellant's current job was a source of encouragement rather than a stressor. He advised that she "began to experience the same symptoms that debilitated her in 2009 with no other explanation beyond a spontaneous recurrence of the injury-related condition." Dr. Aycock determined that appellant had to remain on her psychotropic medication and continue with psychotherapy.

Appellant also submitted notes from her psychotherapy treatment sessions. In notes from a November 2, 2015 session, Dr. Aycock indicated that she reported that she received a performance evaluation from the Arrowhead Clinic containing a rating of three out of five in all but one area. He noted that appellant reported that her functioning was deteriorating and that her depression and anxiety were returning. Appellant worried that her disability was returning to a more intense level. Dr. Aycock indicated that she reported that she was not working as quickly or proficiently as her supervisor wished and that she felt overwhelmed in her job each day. On November 5, 2015 he indicated that appellant reported that her symptoms were intensifying and he believed that she was now disabled from work. On November 30, 2015 Dr. Aycock noted that appellant reported that she was still struggling with intensified depressive and anxiety symptoms related to her 2009 workplace injury. Appellant reported having intermittent dreams of the mistreatment from the employing establishment.

Appellant completed and submitted the development questionnaire that OWCP sent her on November 25, 2015. She noted that there were no recent events occurring at the Arrowhead Clinic that caused her to stop working on November 5, 2015 and asserted that she stopped work due to suffering a recurrence of her 2009 symptoms of depression and job-related stress caused by the employing establishment. Appellant indicated that she enjoyed working for Arrowhead Clinic and reported that her duties included entering data into a computer, filing, verifying insurance, answering telephones, and engaging in other clerical work. She asserted that these activities had nothing to do with her recurrence of disability. Appellant felt that her current disability was due to her original 2009 illness because she was doing well in her new job and there were no new stressors from the job that caused her to dislike or leave her new employer.

She indicated that symptoms from her accepted depression and anxiety conditions never resolved and that they worsened over time.

In a January 20, 2016 decision, OWCP denied appellant's claim finding that she failed to meet her burden of proof to establish a recurrence of disability on or after November 5, 2015 due to her accepted emotional conditions. It determined that Dr. Aycock's reports did not contain sufficient medical rationale to establish such a recurrence of disability. OWCP indicated that a recurrence of disability was defined as a spontaneous change in the medical condition which resulted from a previous injury or occupational illness without an intervening injury or new exposure to factors causing the original illness. It noted that the medical evidence of record, including treatment notes from November 2015, supported that there were intervening causes that contributed to appellant's inability to continue working at the Arrowhead Clinic such that there was no spontaneous recurrence of the accepted work-related condition, as had been opined by Dr. Aycock in his November 30, 2015 report. OWCP indicated that the evidence of record showed that appellant had been exposed to new factors following her return to private employment on February 4, 2015.

Appellant disagreed with OWCP's January 20, 2016 decision and, on February 10, 2016, she requested a review of the written record by an OWCP hearing representative. She asserted that her current disabling problems constituted a spontaneous change in her accepted emotional conditions without an intervening injury.

In a February 1, 2016 report, Dr. Aycock indicated that he was dismayed by OWCP's January 20, 2016 decision and posited that appellant's condition exactly corresponded with a definition of recurrence of disability contained in that decision, namely a spontaneous change in the medical condition which resulted from a previous injury or occupational illness without an intervening injury or new exposure to factors causing the original illness. He noted that the recurrence of her accepted conditions was not a result of her experiences at the Arrowhead Clinic and indicated that her experiences at the clinic were "uniformly positive." Dr. Aycock noted that appellant's recurrence was caused by a spontaneous return of her symptom complex that was precipitated by her original employment injury. Appellant's symptom complex had again become overwhelming and she could not cope with the demands of any employment setting, including her work as billing clerk. Dr. Aycock found that she was totally disabled as a result of the original 2009 injury at the employing establishment.

By decision dated July 26, 2016, OWCP's hearing representative affirmed OWCP's January 20, 2016 decision. She determined that appellant failed to meet her burden of proof to establish a recurrence of disability on or after November 5, 2015 due to her accepted emotional conditions. The hearing representative found that Dr. Aycock did not provide adequate medical rationale in support his opinion that appellant sustained such a recurrence of disability on November 5, 2015. She indicated that Dr. Aycock failed to adequately explain why appellant's current symptoms were completely a result of her 2009 injury, rather than being related to a new intervening exposure in her private employment. The hearing representative noted that Dr. Aycock did not address the psychotherapy notes which indicated that appellant did, in fact, react to her performance evaluation at the Arrowhead Clinic.

## LEGAL PRECEDENT

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.<sup>5</sup> Recurrence of disability also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.<sup>6</sup> Generally, a withdrawal of a light-duty assignment would constitute a recurrence of disability where the evidence established continuing injury-related disability for regular duty.<sup>7</sup> A recurrence of disability does not apply when a light-duty assignment is withdrawn for reasons of misconduct, nonperformance of job duties, downsizing, or the existence of a loss of wage-earning capacity determination.<sup>8</sup> Absent a change or withdrawal of a light-duty assignment, a recurrence of disability following a return to light duty may be established by showing a change in the nature and extent of the injury-related condition such that the employee could no longer perform the light-duty assignment.<sup>9</sup>

Where an employee claims a recurrence of disability due to an accepted employment-related injury, he or she has the burden of establishing that the recurrence is causally related to the original injury.<sup>10</sup> This burden includes the necessity of furnishing evidence from a qualified physician who concludes that the condition is causally related to the employment injury.<sup>11</sup> The physician's opinion must be based on a complete and accurate factual and medical history and supported by sound medical reasoning.<sup>12</sup>

## ANALYSIS

Appellant's accepted conditions include generalized anxiety disorder and major depression (single episode), which arose on or about November 19, 2009. She established that her former employer subjected her to three unjustified disciplinary actions that occurred on September 17, November 9, and 19, 2009. Appellant last worked for the employing

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<sup>5</sup> 20 C.F.R. § 10.5(x).

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

<sup>7</sup> *Id.*; Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.6a(4) (June 2013).

<sup>8</sup> 20 C.F.R. §§ 10.5(x), 10.104(c) and 10.509; *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.2b (June 2013).

<sup>9</sup> *Theresa L. Andrews*, 55 ECAB 719, 722 (2004).

<sup>10</sup> 20 C.F.R. § 10.104(b); *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.5 and 2.1500.6 (June 2013).

<sup>11</sup> *See S.S.*, 59 ECAB 315, 318-19 (2008).

<sup>12</sup> *Id.* at 319.

establishment in June 2012. On February 4, 2015 she returned to work as a full-time, billing clerk with the Arrowhead Clinic, a private employer providing chiropractic services. Appellant stopped work on November 5, 2015 and soon afterward filed a claim for recurrence of disability (Form CA-2a) seeking lost wages beginning November 5, 2015. She explained that the original employment injury never resolved, and over time her symptoms increased in severity and became too overwhelming. OWCP denied appellant's recurrence claim by decisions dated January 20 and July 26, 2016.

The Board finds that appellant has failed to submit medical evidence sufficient to establish a recurrence of disability on or after November 5, 2015 due to her accepted emotional conditions. She did not submit a medical report containing a rationalized opinion that related the claimed recurrence of disability to her accepted employment injury.

In support of her claim for a recurrence of disability due to her accepted emotional conditions, appellant submitted several reports from her psychologist, Dr. Aycock.

In a November 5, 2015 report, Dr. Aycock indicated that appellant was suffering from the accepted depression and anxiety conditions and noted that she had been working in an accommodating position on a full-time basis at the Arrowhead Clinic. He indicated that appellant's condition had deteriorated and that she was experiencing a recurrence of the symptom complex of her original injury.<sup>13</sup> Dr. Aycock noted that appellant continued to suffer from the same depressive and anxiety disorders that "have resulted in her accepted injury-related condition" and posited that her depressive and anxiety disorders were directly caused by "her treatment on the job" at the employing establishment. He advised that he based his opinion on the return of her symptom complex that occurred in response to harassment by her postmaster and indicated that her depressive and anxiety disorders could not be reasonably attributed to any other cause except her mistreatment by the employing establishment. Dr. Aycock found that appellant was totally disabled as a result of the original injury.

The Board notes that Dr. Aycock failed to provide a rationalized medical opinion in this report explaining his conclusion that appellant's claimed recurrence of disability beginning November 5, 2015 was due to her accepted emotional conditions, major depression (single episode) and generalized anxiety disorder. The Board has held that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale.<sup>14</sup> Dr. Aycock did not describe appellant's accepted depression and anxiety conditions in any detail or explain the medical process through which they could have caused disability on or after November 5, 2015. He indicated that his opinion was supported by the fact that appellant's symptom complex in late-2015 was similar to her symptom complex in 2009, but he did not adequately explain why appellant's symptom complex was not related to factors other than those associated with the accepted work conditions.

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<sup>13</sup> Dr. Aycock reported that appellant's current symptoms included depression, anxiety, sleep disturbance, fear, worry, concentration and memory deficits, motivational deficits, lethargy, and sadness for no apparent reason.

<sup>14</sup> *C.M.*, Docket No. 14-88 (issued April 18, 2014).

In OWCP's regulations, a recurrence of disability is defined, in part, as "an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness."<sup>15</sup> Dr. Aycock did not adequately describe her work circumstances at the Arrowhead Clinic and he did not discuss his own psychotherapy notes from November 2015 in which appellant reported events suggesting she might have reacted to factors associated with her work at the Arrowhead Clinic.<sup>16</sup> In this regard, Dr. Aycock's November 5, 2015 report is of limited probative value regarding appellant's recurrence claim because it is not based on a complete and accurate factual and medical history.<sup>17</sup> The Board has held that a report on a medical question is of limited probative value if it is not based on a complete and accurate factual and medical history.<sup>18</sup>

In a November 30, 2015 report, Dr. Aycock noted that he first saw appellant on April 18, 2011 after she sustained an injury in her letter carrier job due to "systemic harassment by her supervisor that did not relent until she was forced to file" an OWCP claim. He found that she had a totally disabling recurrence of her original 2009 symptom pattern that was caused by the treatment from her supervisors. Dr. Aycock noted that appellant reported that she enjoyed her new job and performed it well until October 2015 when her depressive and anxiety symptoms returned with memories and dreams of her original work-related injury. He indicated that there was no reason to suspect that issues related to her current job intervened to cause the relapse. Dr. Aycock noted that appellant's current job was a source of encouragement rather than a stressor. He advised that she "began to experience the same symptoms that debilitated her in 2009 with no other explanation beyond a spontaneous recurrence of the injury-related condition."

In a February 1, 2016 report, Dr. Aycock posited that appellant's condition exactly corresponded with the definition of a recurrence of disability, namely a spontaneous change in the medical condition which resulted from a previous injury or occupational illness without an intervening injury or new exposure to factors causing the original illness. He noted that the

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<sup>15</sup> See *supra* note 6.

<sup>16</sup> For example, in notes from a November 2, 2015 psychotherapy session, Dr. Aycock indicated that appellant reported that she received a performance evaluation from the Arrowhead Clinic containing a rating of three out of five in all but one area and that she was not working as quickly or proficiently as her supervisor wished.

<sup>17</sup> Moreover, Dr. Aycock suggested that appellant's accepted emotional conditions, major depression (single episode) and generalized anxiety disorder were caused by harassment from a postmaster in 2009. The Board notes, however, that it has not been established that a postmaster harassed appellant in 2009. It has only been accepted that a postmaster committed error/abuse in administrative matters by issuing appellant wrongful disciplinary actions on September 17, November 9, and 19, 2009. See generally *Matilda R. Wyatt*, 52 ECAB 421 (2001); *David W. Shirey*, 42 ECAB 783, 795-96 (1991).

<sup>18</sup> *E.R.*, Docket No. 15-1046 (issued November 12, 2015). Dr. Aycock indicated that appellant was progressing very well until she was "once again exposed to the hostile work environment," but he did not describe the particular hostile work environment to which he referred. In a September 15, 2015 report, Dr. Aycock had noted that appellant's current diagnoses were depressive disorder (not otherwise specified) and anxiety disorder (not otherwise specified), and indicated that these conditions were not aggravations of any preexisting conditions. However, he did not provide any further discussion in support of his suggestion that these conditions were related to appellant's accepted emotional conditions.

recurrence of her accepted conditions was not a result of her experiences at the Arrowhead Clinic and indicated that her experiences at the clinic were “uniformly positive.”

The Board notes that Dr. Aycock’s November 30, 2015 and February 1, 2016 reports are of limited probative value regarding appellant’s claimed recurrence of disability because they contain deficiencies similar to those noted in Dr. Aycock’s November 5, 2015 report. Dr. Aycock did not completely and accurately describe the accepted work injuries and their cause(s). He made reference to harassment from supervisors that has not been accepted by OWCP. Dr. Aycock also did not completely and accurately describe appellant’s work circumstances at the Arrowhead Clinic and he did not adequately explain why her problems in November 2015 were not due to an intervening injury or new exposure from her private employment at the Arrowhead Clinic. He did not describe the medical process through which appellant’s accepted medical conditions could have caused disability on or after November 5, 2015.<sup>19</sup>

For these reasons, appellant failed to submit sufficient medical evidence to establish a recurrence of disability on or after November 5, 2015 due to her accepted emotional conditions.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish a recurrence of disability commencing November 5, 2015, causally related to her accepted emotional conditions.

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<sup>19</sup> On appeal appellant argues that Dr. Aycock’s reports are sufficient to establish her claim for a recurrence of disability, but the Board has explained why they lack adequate medical rationale on causal relationship to establish her claim.

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 26, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 2, 2017  
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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