

FACTUAL HISTORY

This case has previously been before the Board.² The facts and circumstances of the case as set forth in the Board's prior decisions are incorporated herein by reference. The relevant facts are as follows.

On February 2, 2010 appellant, then a 31-year-old former part-time flexible city carrier, filed an occupational disease claim (Form CA-2) alleging major depression, stress, anxiety, fatigue, crying spells and digestive problems due to factors of her federal employment. OWCP accepted that she sustained major depression (single episode) and a generalized anxiety disorder, which arose on or about November 19, 2009. It accepted that appellant had been subjected to three unjustified disciplinary actions that occurred on September 17, November 9, and 19, 2009. Appellant stopped work on November 19, 2009 and OWCP paid her wage-loss compensation for disability from work on the supplemental rolls commencing February 4, 2010 and on the periodic rolls commencing June 6, 2010. On January 23, 2012 she returned to work in a part-time, limited-duty capacity. Appellant eventually increased to a six-hour workday, but then stopped work entirely on June 28, 2012. OWCP paid her appropriate wage-loss compensation.

By decision dated March 5, 2014, OWCP terminated appellant's wage-loss compensation effective March 9, 2014 because she no longer had disability due to her accepted employment conditions as of that date. It based its termination action on a June 28, 2012 report of Dr. David W. Aycock, a clinical psychologist, and a June 19, 2012 report of Dr. Kenneth E. Goolsby, a Board-certified psychiatrist and OWCP referral physician. Appellant appealed to the Board and, by decision dated September 12, 2014, the Board reversed the March 5, 2014 termination decision,³ finding that the reports of Dr. Aycock and Dr. Goolsby were insufficient to establish that appellant's accepted employment conditions no longer caused disability. OWCP resumed paying appellant wage-loss compensation on the periodic rolls.

On February 4, 2015 appellant returned to work in a full-time position as a billing clerk with a private employer providing chiropractic services, and OWCP paid her compensation for loss of wage-earning capacity.

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 indicated that these conditions were not aggravations of any preexisting conditions. He advised that she had been able to function appropriately in an accommodating position as a billing clerk for a private employer.

Appellant stopped work on November 5, 2015 and filed a claim for a recurrence of disability (Form CA-2a) on November 9, 2015, alleging that she sustained a recurrence of disability on November 5, 2015, due to her accepted emotional conditions. On the Form CA-2a she indicated that her original injury had never resolved.

² Docket No. 17-0050 (issued August 2, 2017); Docket No. 14-1161 (issued September 12, 2014).

³ *Id.*

In a November 5, 2015 report, Dr. Aycock indicated that appellant was suffering from her accepted depression and anxiety conditions, and had been experiencing a recurrence of the symptom complex of her original injury. He opined that her depressive and anxiety disorders were directly caused by “her treatment on the job” at the employing establishment. Dr. Aycock maintained that the return of appellant’s symptom complex could not be reasonably attributed to any other cause except her mistreatment by the postmaster at the employing establishment. He found that she was totally disabled as a result of the original injury.

In a November 25, 2015 development letter, OWCP requested that appellant submit additional factual and medical evidence in support of her recurrence of disability claim. It afforded her 30 days to respond.

In response to the development letter, appellant submitted a November 30, 2015 report from Dr. Aycock who found that she sustained a totally disabling recurrence of her original 2009 symptom pattern that was caused by the harassment from her supervisors. He noted that she 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 employment-related injury. Dr. Aycock advised that appellant “began to experience the same symptoms that debilitated her in 2009 with no other explanation beyond a spontaneous recurrence of the injury-related condition.”

Appellant also submitted notes from her psychotherapy treatment sessions. In notes dated November 2, 2015, Dr. Aycock indicated that she reported that she received a performance evaluation from her private employer 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 wanted 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 she reported that she was still struggling with intensified depressive and anxiety symptoms related to her 2009 workplace injury.

Appellant submitted a December 1, 2015 statement in which she indicated that there were no recent events occurring at her private employer that caused her to stop working on November 5, 2015. She maintained 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 her private employer and asserted that her accepted depression and anxiety conditions had never resolved.

In a January 20, 2016 decision, OWCP denied appellant’s claim, finding that she had not met her burden of proof to establish a recurrence of disability commencing 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 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 her employer, such that there was no spontaneous recurrence of the accepted work-related condition.

Appellant disagreed with the January 20, 2016 decision and, on February 10, 2016, she requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

In a February 1, 2016 report, Dr. Aycock opined 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 recurrence of her accepted conditions was not a result of her experiences at her private employer and indicated that her experiences at the clinic were "uniformly positive."

By decision dated July 26, 2016, OWCP's hearing representative affirmed OWCP's January 20, 2016 decision, finding 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.

Appellant appealed to the Board and, by decision dated August 2, 2017,⁴ the Board affirmed OWCP's July 26, 2016 decision.

On October 17, 2017 appellant requested reconsideration of the denial of her recurrence of disability claim. She submitted a March 1, 2018 statement in which she argued that new evidence from Dr. Aycock addressed the perceived deficiencies of his earlier reports.

Appellant submitted an October 10, 2017 letter from Dr. Aycock who advised that she was suffering from the accepted conditions of anxiety disorder and depressive disorder. Dr. Aycock indicated that the letter was written to cure the deficiencies that were previously found in appellant's case. He noted that her accepted work injuries were caused by unjustified disciplinary actions while she was employed as a letter carrier for the employing establishment, actions which were well documented in appellant's original complaint. Dr. Aycock indicated that appellant actually enjoyed her employment experiences at her private employer. He maintained that she was treated well by her employer, got along well with coworkers, and was given work that she could accomplish appropriately. Dr. Aycock indicated that appellant reported no difficulties with her employment at her private employer. He advised that, in November 2015, her anxiety and depressive symptom complex intensified as a result of her personal perceptions of not being adequate to fulfill her job duties. Dr. Aycock asserted that these feelings were not precipitated by any behaviors of appellant's private employer's staff and he noted that she had been evaluated positively by her supervisors there. He opined that the feelings of inadequacy and the intensification of her depression and anxiety were directly related to a recurrence of the mindset she experienced while at the employing establishment. Dr. Aycock indicated that appellant's self-assessment reflected the negativity she underwent when she was injured at the employing establishment, *i.e.*, the injury that was accepted by OWCP. He maintained that she could not shake these perceptions or the anxious and depressive conditions they spawned and, therefore, she was reinjured and could not sustain her job with private employer.

⁴ *Supra* note 2.

By decision dated June 28, 2019, OWCP denied modification of its prior decision, finding that appellant had not submitted sufficient medical evidence to establish a recurrence of disability, commencing November 5, 2015, causally related to her accepted emotional conditions. It determined that the evidence submitted on reconsideration was not sufficient to modify the prior denials of her claim “because the evidence on file does not support your recurrence of disability beginning [November 5, 2015] was directly related to the original accepted work injury.” OWCP noted, “[t]here were new intervening factors that had an impact on your emotional condition that contributed to your disability.”

On July 29, 2009 appellant requested reconsideration of the June 28, 2019 decision and submitted a July 22, 2019 statement, in which she argued that her disability beginning November 5, 2015 was entirely related to a spontaneous recurrence of the emotional conditions she suffered at the employing establishment in 2009.

By decision dated September 16, 2019, OWCP denied modification of the June 28, 2019 decision.

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 compensable injury or illness and without an intervening injury or new exposure in the work environment.⁵ This term also means an inability to work because a light-duty assignment made specifically to accommodate an employee’s physical limitations, and which is necessary because of a work-related injury or illness, is withdrawn or altered so that the assignment exceeds the employee’s physical limitations. A recurrence does not occur when such withdrawal occurs for reasons of misconduct, nonperformance of job duties, or a reduction-in-force.⁶

An employee who claims a recurrence of disability due to an accepted employment-related injury has the burden of proof to establish by the weight of the substantial, reliable, and probative evidence that the disability for which he or she claims compensation is causally related to the accepted injury. This burden of proof requires that a claimant furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that, for each period of disability claimed, the disabling condition is causally related to the employment injury, and supports that conclusion with medical reasoning.⁷ Where no such rationale is present, the medical evidence is of diminished probative value.⁸

When an employee who is disabled from the job he or she held when injured on account of employment-related residuals returns to a limited-duty position or the medical evidence of record establishes that he or she can perform the limited-duty position, the employee has the burden

⁵ 20 C.F.R. § 10.5(x); *see J.D.*, Docket No. 18-1533 (issued February 27, 2019).

⁶ *Id.*

⁷ *J.D.*, Docket No. 18-0616 (issued January 11, 2019); *see C.C.*, Docket No. 18-0719 (issued November 9, 2018).

⁸ *H.T.*, Docket No. 17-0209 (issued February 8, 2018).

of proof to establish by the weight of the reliable, probative, and substantial evidence a recurrence of total disability and to show that he or she cannot perform such limited-duty work.⁹ As part of this burden, the employee must show a change in the nature and extent of the injury-related condition, or a change in the nature and extent of the limited-duty job requirements.¹⁰

ANALYSIS

The Board preliminarily notes that it is unnecessary to consider the evidence appellant submitted prior to the issuance of OWCP's July 26, 2016 decision, which was considered by the Board in its August 2, 2017 decision. Findings made in prior Board decisions are res judicata absent further merit review by OWCP under section 8128 of FECA.¹¹ 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 employment injury.

Appellant submitted an October 10, 2017 letter from Dr. Aycock who advised that she was suffering from the accepted conditions of anxiety disorder and depressive disorder, which were caused by unjustified disciplinary actions while she was employed as a letter carrier for the employing establishment. Dr. Aycock indicated that she actually enjoyed her private employment experiences. He maintained that appellant was treated well by her private employer, got along well with coworkers, and was given work that she could accomplish appropriately. Dr. Aycock indicated that she reported no difficulties with her private. He advised that, in November 2015, appellant's anxiety and depressive symptom complex intensified as a result of her personal perceptions of not being adequate to fulfill her job duties. Dr. Aycock asserted that these feelings were not precipitated by any behaviors of her private employer's Clinic staff and he noted that she had been evaluated positively by her supervisors there. He opined that the feelings of inadequacy and the intensification of her depression and anxiety were directly related to a recurrence of the mindset she experienced while at the employing establishment. Dr. Aycock indicated that appellant's self-assessment reflected the negativity she underwent when she was injured at the employing establishment. He maintained that she could not shake these perceptions or the anxious and depressive conditions they spawned and, therefore, she was reinjured and could not sustain her job with her private employer.

The Board finds that Dr. Aycock's October 10, 2017 report is of limited probative value with respect to appellant's recurrence of disability claim because he failed to provide a rationalized medical opinion 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 report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition/level of disability has an employment-related cause.¹² Dr. Aycock

⁹ See *D.W.*, Docket No. 19-1584 (issued July 9, 2020); *S.D.*, Docket No. 19-0955 (issued February 3, 2020); *Terry R. Hedman*, 38 ECAB 222 (1986).

¹⁰ *C.B.*, Docket No. 19-0464 (issued May 22, 2020); see *R.N.*, Docket No. 19-1685 (issued February 26, 2020).

¹¹ *C.M.*, Docket No. 19-1211 (issued August 5, 2020).

¹² See *T.T.*, Docket No. 18-1054 (issued April 8, 2020); *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

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 did not sufficiently describe the basis for the recurrence of her accepted employment conditions. Dr. Aycock only generally noted, without elaboration that appellant was subjected to unjustified disciplinary actions while she was employed as a letter carrier for the employing establishment.

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.¹³ Dr. Aycock did not adequately describe appellant's work circumstances during her private employment or otherwise sufficiently explain why appellant's emotional condition commencing in November 2015 was not related to her private work or other nonwork-related causes. Importantly, 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 her private employer. In this regard, Dr. Aycock's October 10, 2017 report is of limited probative value regarding appellant's recurrence of disability claim because it is not based on a complete and accurate factual and medical history. 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.¹⁴

As appellant has not submitted medical evidence establishing a recurrence of disability, commencing November 5, 2015, causally related to her accepted emotional conditions, the Board finds that she has not met her burden of proof.

On appeal, appellant alleges that OWCP misinterpreted the evidence of record, including Dr. Aycock's various reports. As explained above, Dr. Aycock's reports did not provide sufficient medical rationale to support recurrence, therefore, appellant has not met her burden of proof.

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 employment injury.

¹³ See *supra* note 6.

¹⁴ See *supra* note 8. See also *M.W.*, Docket No. 20-0881 (issued January 13, 2021).

ORDER

IT IS HEREBY ORDERED THAT the September 16, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 5, 2021
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board