

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DELIA A. HALL and DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS ADMINISTRATION MEDICAL CENTER, Martinsburg, WV

*Docket No. 01-1509; Submitted on the Record;  
Issued February 5, 2002*

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DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether appellant established that she sustained a recurrence of disability on or after September 12, 1994.

On February 14, 1994 appellant, then a 45-year-old health technician, filed a notice of traumatic injury alleging that on February 10, 1994 she fell on ice and twisted her back, scraped her left elbow and bumped her left knee. Appellant came under the care of Dr. G. Rafat, a general practitioner, for treatment of a lumbosacral strain and was prescribed medication and a course of physical therapy. The Office of Workers' Compensation Programs accepted the claim for a lumbosacral strain. Appellant received continuation of pay and appropriate compensation for wage loss. She was approved for regular duty and returned to work on July 11, 1994.<sup>1</sup>

On October 4, 2000 appellant filed a claim for a recurrence of disability beginning "[February 10, 1994] until present." Appellant indicated that she last worked on September 12, 1994.

In a statement attached to her claim form, appellant related that, on September 11 and 12, 1994, she had been contacted at home by the president of her union and her supervisor, respectively and told that she was removed from her position and was barred from the Veterans Administration Medical Center (VAMC). Appellant noted that since she was not allowed at the VAMC she had been unable to continue her physical therapy appointments.<sup>2</sup> She indicated that she had been under the care of Dr. William Miller since September 1994.

Appellant submitted a report from Dr. Swami Nathan, a Board-certified neurological surgeon, dated July 21, 2000. Dr. Nathan stated that he had examined appellant "at the request

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<sup>1</sup> In a CA-20 attending physician's report dated July 11, 1994, Dr. Rafat indicated that appellant's back pain was resolving.

<sup>2</sup> A September 12, 1994 treatment note from Dr. Karen Landes, a physical therapist, states that appellant had not been to physical therapy since August 17, 1994 and was being discharged for nonattendance.

of Dr. Miller on July 19, 2000.” Dr. Nathan related that appellant was injured at work and had since been having back and leg pain. He further noted that appellant’s pain had gotten worse within the last six weeks. On physical examination range of motion was listed as being restricted. Dr. Nathan ordered a magnetic resonance imaging (MRI) scan, which confirmed the presence of degenerative disc disease at L5-S1 with spondylolisthesis.

In a September 11, 2000 treatment note, Dr. Nathan indicated that appellant had been on pain medication for ovary and back problems since 1994. On September 18, 2000 he further stated that appellant “has not been able to work since 1994.”

On November 14, 2000 appellant underwent surgery for excision of a large, soft tissue mass posterior to the fascia at the sacral level, a laminectomy at L5-S1, a discectomy L5-S1 and insertion of a pedicle screw at L5 to S1 with posterior lumbar interbody fusion and bone graft.

In a December 13, 2000 letter, the Office advised appellant of the medical and factual evidence required to support her claim for a recurrence of disability.

In a decision dated March 2, 2001, the Office denied appellant’s claim for compensation on the grounds that the evidence was insufficient to establish that appellant sustained a recurrence of disability on or after September 12, 1994 causally related to the February 10, 1994 work injury.

On March 15, 2001 appellant requested reconsideration and submitted additional evidence including laboratory test results, an emergency room/outpatient record dated February 19, 2001, requesting a lumbar spine x-ray, the results of a lumbar spine x-ray dated November 14, 2000, showing a laminectomy and spondylolisthesis at L5-S1, a computerized axial tomography scan on the lumbar spine showing postoperative changes but no gross abnormality and a copy of the March 19, 2001 report of Dr. Nathan that was already of record.

Appellant also submitted an attending physician’s report (Form CA-20) signed by Dr. Nathan on March 19, 2001. In that report, he noted the date of injury as February 10, 1994. Dr. Nathan related that appellant “fell on ice in parking lot landing on buttocks and twisting back [with] severe pain in lower part of back numbness in legs.” He further stated that appellant sustained a broken bone in the back from the impact of the fall on the ice as confirmed by an MRI scan. Dr. Nathan diagnosed a disc rupture, degenerative disc disease and spinal stenosis. He opined that appellant was permanently and totally disabled from work beginning September 9, 1994.

In a physical capacity residual functional capacity questionnaire completed by Dr. Nathan on March 22, 2001, he opined that appellant was permanently disabled due to a lumbar disc rupture and degenerative disc disease with spondylolisthesis at L5-S1.

In an April 4, 2001 decision, the Office denied modification.

The Board finds that appellant failed to establish that she sustained a recurrence of disability on or after September 12, 1994.

An employee who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and

probative evidence that the recurrence of the disabling condition for which compensation is sought is causally related to the accepted employment injury.<sup>3</sup> As part of this burden the employee must submit rationalized medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the current disabling condition is causally related to the accepted employment-related condition and supports that conclusion with sound medical reasoning.<sup>4</sup>

Appellant sustained a lumbosacral strain on February 14, 1994 but returned to her regular duty effective July 11, 1994. The record indicates that appellant worked from July 11 until September 12, 1994, when she was apparently separated from her position. Appellant filed a claim on October 14, 2000 alleging a recurrence of disability on September 12, 1994. Appellant submitted numerous reports and treatment notes from Dr. Nathan indicating that she was disabled from work due to her February 14, 1994 work injury. However, he examined appellant for the first time on July 19, 2000 and provided no discussion of appellant's disability status at the time she left work on September 12, 1994. Dr. Nathan failed to address why appellant would not have been able to continue in the job she held on or after September 12, 1994, but for the fact that she was separated by the employing establishment. Dr. Nathan did not discuss the role of appellant's preexisting degenerative disc disease in relation to her diagnosed disability from work. In the absence of a reasoned medical opinion to support her claim for a recurrence of disability, the Board finds that the Office correctly denied appellant's claim for compensation.

The April 4 and March 2, 2001 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC  
February 5, 2002

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>3</sup> *Bernard Snowden*, 49 ECAB 144 (1977); *see also Jose Hernandez*, 47 ECAB 288 (1996); *Carolyn F. Allen* 47 ECAB 240 (1995)

<sup>4</sup> *Bernard Snowden*, *supra* note 3.