U. S. DEPARTMENT OF LABOR

# Employees' Compensation Appeals Board

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In the Matter of THOMAS A. CROW and TENNESSE VALLEY AUTHORITY, BROWNS FERRY NUCLEAR PLANT, Decatur AL

*Docket No. 99-1455; Submitted on the Record;*
*Issued December 5, 2000*

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DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM, A. PETER KANJORSKI

The issue is whether appellant established that he sustained a recurrence of disability beginning September 26, 1997, causally related to the employment injury of October 19, 1993.

On October 20, 1993 appellant, then a 48-year-old rehabilitation maintenance mechanic, filed a notice of traumatic injury and claim for compensation alleging that he sustained an injury on October 19, 1993 when he was walking around a secretary's desk and his right knee popped, twisted and gave way.[1] Appellant was initially treated by Dr. Marc Michaud, an orthopedic surgeon. Magnetic resonance imaging revealed a partial right knee meniscus tear and degenerative changes. The Office approved the claim for a right knee meniscus tear. Appellant underwent a partial medial meniscectomy and chondroplasty of the mediofemoral condyle on November 9, 1993. He lost intermittent time from work during the period October 21 to November 4, 1993. He stopped work entirely on November 5, 1993. From November 5, 1993 until January 25, 1994 appellant received compensation for wage loss for total disability. He returned to work on January 25, 1994.[2] Appellant subsequently was terminated from his position effective September 26, 1997 due to a reduction-in-force.

On September 24, 1997 appellant filed a claim for a recurrence of disability beginning September 26, 1997.

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[1] Appellant sustained a right knee injury at work on June 7, 1984 when he slipped down a ladder and landed on grating 15 feet below. Appellant underwent a right knee arthroscopy and received compensation for wage loss. He next injured his left wrist during 1986 working as a pipe fitter. The Office of Workers' Compensation Programs also approved that claim. He later strained his right knee at work on July 20, 1998 when he was carrying a desk and felt a sharp pain in his knee. The record indicates that appellant returned to work in 1991 as a rehabilitation maintenance mechanic and the Office issued a loss of wage-earning capacity determination based on that position and appellant's left wrist injury.

[2] Appellant received a schedule award for 25 percent permanent impairment of the right lower extremity for the period January 10, 1996 to May 27, 1997.

Appellant submitted a copy of a June 16, 1997 notice issued by the employing establishment, advising him that his position as a rehabilitation maintenance mechanic was being eliminated due to a reduction-in-force effective September 26, 1997.

In a one-line letter dated October 6, 1997, Dr. John M. Cuckler, a Board-certified orthopedic surgeon, stated: " [appellant] is currently disabled from performing his usual duties as a pipe fitter due to arthritis of the knees, and most recently, his continuing recovery from right knee surgery."

In an October 20, 1997 report, Dr. Phillip Wright, a Board-certified orthopedist, stated:

> "Today I saw [appellant] for a follow-up evaluation. He requested I provided information supporting his condition that he is unable to return to work as a pipe fitter. Because of the problems related particularly to his right hand and wrist in addition to other problems related to his vision and upper and lower extremities, he is unable to return to work as a pipe fitter indefinitely."

On February 7, 1998 appellant filed a CA-7 claim for continuing compensation for wage loss beginning September 28, 1997.

In an April 1, 1998 letter, the Office advised appellant of the medical and factual evidence required to establish a claim for recurrence of disability.

In an April 24, 1998 report, Dr. Cuckler noted that appellant first came under his care on May 23, 1994, at which time appellant was recovering from an arthroscopy and experienced severely limited ambulatory capacity. He discussed appellant's history of injury beginning in 1984, noting that appellant had changed positions from a pipe fitter to a "rehabilitation" pipe fitter which was an entirely sedentary job. Dr. Cuckler diagnosed that appellant suffered from bilateral knee arthritis, which prevented him from performing anything but occasional walking or standing. He stated that appellant was unable to work as a pipe fitter based on his physical restrictions. Dr. Cuckler noted, however, that appellant could perform sedentary work with a 10-pound lifting restriction.

In an April 28, 1998 report, Dr. William M. Reid, a Board-certified internist, stated that appellant continued to be disabled "with respect to everyday employment due to a marked combined muscoskeletal pain syndrome in the setting of osteoarthritis and post-traumatic arthritis and probably dermatomyositis."

Appellant also submitted letters from the employing establishment regarding services to be provided for the career transition of reduction-in-force employees, along with a December 1, 1998 decision issued by the Social Security Administration (SSA). The SSA decision found appellant to be totally disabled beginning May 20, 1997 due to degenerative joint disease and osteoarthritis of the knee and back. It was noted that appellant could perform sedentary work with a 10-pound lifting restriction, but that appellant was not able to perform his former job of a pipe fitter and did not have transferable skills to perform other work within his residual functional capacity.

In a June 2, 1998 decision, the Office denied appellant's claim for a recurrence of disability.[3]

Appellant requested a hearing, which was held on November 18, 1998.

In a February 1, 1999 decision, an Office hearing representative affirmed the Office's June 2, 1998 decision.

The Board finds that appellant failed to establish that he sustained a recurrence of disability on or after September 26, 1997 causally related to his October 19, 1993 employment injury.[4]

Where appellant claims a recurrence of disability due to an accepted employment-related injury, he or she has the burden of establishing 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 or 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 the disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.[5]

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he or she can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative, and substantial evidence a recurrence of disability and show that he or she cannot perform such light duty. As part of this burden, the employee must show either a change in the nature and extent of the injury-related condition, or a change in the nature and extent of the light-duty requirements.[6]

The regulations at section 10.509(a)[7] state as follows:

> "In general, an employee will not be considered to have experienced a compensable recurrence of disability as defined in section 10.5(x) merely because his or her employer has eliminated the employee's light-duty position in a reduction-in-force or some other form of downsizing. When this occurs, OWCP

[3] The Office also issued a decision on the same date finding that appellant's job of a rehabilitation maintenance mechanic with wages of $754.62 per week fairly and reasonably represented his wage-earning capacity effective January 1994.

[4] Appellant submitted new evidence subsequent to the Office's January 26, 1999 decision, but the Board is not permitted to review that evidence as it was not before the Office at the time it issued its final decision; *see* 20 C.F.R. § 501.2(c).

[5] *Dennis J Lasanen*, 43 ECAB 549 (1992); *Robert H. St. Onge*, 43 ECAB 1169 (1992). *See* 20 C.F.R. § 10.104 (1999).

[6] *Gus N. Rodes*, 46 ECAB 518 (1995).

[7] 20 C.F.R. § 10.509(a) (1999) entitled "If an employee's light-duty job is eliminated due to downsizing, what is the effect on compensation?"

> will determine the employee's wage-earning capacity based on his or her actual earnings in such light-duty position if this determination is appropriate on the basis that such earnings fairly and reasonably represent the employee's wage-earning capacity and such a determination has not already been made."

In this case, appellant began a job as a rehabilitation maintenance mechanic in 1991, which represented a light-duty assignment granted to him based on medical restrictions associated with a left wrist injury. The Office specifically found that position to be suitable and issued a loss of wage-earning capacity determination consistent with that position. Most recently, in a June 2, 1998 decision, the Office determined that the job of rehabilitation maintenance mechanic fairly and reasonably represented appellant's wage-earning capacity with respect to his accepted right knee injury. The Office found that based on actual wages earned that appellant had no loss of wage-earning capacity.

When appellant returned to his light-duty job in January 1994, following his right knee injury, he continued to work as a rehabilitation maintenance mechanic until that position was eliminated due to a reduction-in-force. As indicated in the above-referenced regulation, this reduction-in-force did not entitle appellant to total disability compensation.

In support of his claim, appellant has not submitted rationalized medical evidence explaining how he became disabled from performing the job of a rehabilitation maintenance mechanic. Because appellant was working in a light-duty position, he bears the burden of proof to establish that he is no longer able to perform the physical requirements of that last job in order to establish a recurrence of disability. None of the medical evidence supports such a finding. Dr. Cuckler, appellant's treating physician, specifically stated in an April 24, 1998 report that, appellant was capable of performing sedentary work, consistent with the type of work he performed as a rehabilitation maintenance mechanic. The report of Drs. Wright and Reid did not provide rationale to support their stated conclusions that appellant sustained disability as of September 26, 1997. The SSA decision also acknowledged that appellant could perform sedentary work, although it considered appellant to be disabled from his prior job as a pipe fitter. The Board finds that appellant has failed to carry his burden of proof in establishing that he sustained a recurrence of disability beginning September 26, 1997.

The decision of the Office of Workers' Compensation Programs dated February 1, 1999 is hereby affirmed.

Dated, Washington, DC
December 5, 2000

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member