

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of THOMAS W. SCHWARTZ and DEPARTMENT OF THE ARMY,
LETTERKENNY ARMY DEPOT, Chambersburg, PA

*Docket No. 02-143; Submitted on the Record;
Issued October 4, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant sustained a recurrence of total disability on or after July 8, 1999 causally related to his November 16, 1987 employment injury.

The Board finds that appellant has failed to meet his burden of proof to establish that he sustained a recurrence of total disability on July 8, 1999 causally related to his November 16, 1987 employment injury.

When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a limited or light-duty position or the medical evidence of record establishes that he 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 total disability that he cannot perform such light duty. 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 light-duty requirements.¹ Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between his recurrence of disability commencing July 8, 1999 and his November 16, 1987 employment injury.² This burden includes the necessity of furnishing 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 employment factors and supports that conclusion with sound medical reasoning.³

¹ See *Cynthia M. Judd*, 42 ECAB 246, 250 (1990); *Stuart K. Stanton*, 40 ECAB 859, 864 (1989); *Terry R Hedman*, 38 ECAB 222 (1986).

² *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

³ See *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

On November 16, 1987 appellant, then a 37-year-old machinist, sustained a subarachnoid hemorrhage and aggravation of preexisting congenital cerebral arteriovenous malfunction in the performance of duty. He returned to work on September 3, 1996 in a light-duty capacity position as an alarm room operator. Appellant was paid appropriate compensation benefits.

By decision dated October 14, 1997, the Office of Workers' Compensation Programs determined that appellant's light-duty reemployment on September 3, 1996 as an alarm room operator fairly and reasonably represented his wage-earning capacity.

On December 13, 2000 appellant filed a notice of recurrence of disability and claim for compensation alleging that on July 8, 1999 he sustained a recurrence of total disability, which he attributed to his November 16, 1987 employment injury and to the fact that he was terminated from his light-duty position at the employing establishment on July 8, 1999 due to a reduction-in-force (RIF). Appellant enclosed the notification of personnel action and also enclosed reports dated June 29 and 30, 1999 and December 1, 2000, from Dr. James C. Barton, a Board-certified family practitioner and his treating physician.

In his December 1, 2000 report, Dr. Barton, stated that appellant was not employable based on the current problems of visual disturbance, balance difficulty, double vision and chronic pain. He indicated that it was unlikely that these conditions will improve since they had not done so in the past 13 years. Dr. Barton stated that appellant would also have cervical neck arthritis and nerve problems based on his neck pathology.

By letter dated January 4, 2001, the Office requested clarification from the employing establishment with respect to whether appellant's light-duty position was eliminated due to a RIF or withdrawn.

By letter dated September 16, 1999, which was faxed to the Office on January 9, 2001 the employing establishment confirmed that appellant's position was eliminated due to an involuntary separation due to RIF. They confirmed that appellant continued to perform his duties until the date of the RIF.

By decision dated January 17, 2001, the Office denied appellant's claim for recurrence.⁴

By letter dated February 9, 2001, appellant requested an examination of the written record. He indicated that he was not an office clerk at the time of separation but an alarm room operator. Appellant indicated that the employing establishment cancelled the position, but offered that if it had not been for his injury limitations, he could have been placed in one of the continuing vacant positions, based on his service comp date, veterans status, exceptional performance appraisals and qualifications. Appellant stated that the RIF action alone was not why he was separated and explained that it was also due to medical limitations from his injury, because they kept him from being placed in another vacant continuing position.

⁴ The Office found that appellant was involuntarily separated from the agency through a RIF and that appellant was performing his duties up to the date of the separation. The Office's regulations at 20 C.F.R. § 10.509 provides that when a RIF occurs, the Office will proceed to determine the employee's wage-earning capacity.

By letter dated May 29, 2001, the employing establishment responded to appellant's reconsideration request and explained why they were unable to place appellant in another position. The employing establishment confirmed that the light-duty alarm room operation position was cancelled and disagreed that appellant could have been placed in any other vacant position. They also commented on appellant's service comp date, his qualifications and eligibility for other positions and provided information regarding the agency's regulations for placing employees in position. The employing establishment repeated their position that appellant worked up to the date of the RIF and that his position was abolished due to a base realignment and closure and not because he was not fired.

By letter dated June 12, 2001, appellant provided additional comments after his review of the agency's statements. He again indicated that the RIF action was not the only reason for his separation and explained that if he had not been injured at work, he would have qualified for several of the GS-3 positions. He again noted his service comp date and indicated that the employing establishment's actions were wrong and intentionally misleading.

By decision dated August 7, 2001, the Office hearing representative affirmed the Office's January 17, 2001 decision.

In the instant case, appellant alleged that he sustained a recurrence of his employment-related injury when his position was eliminated. Appellant stated that were it not for his injury, he would have qualified for other GS-3 positions because he was qualified, had a preference and exceptional appraisals. Appellant confirmed that he was working up to the time of the RIF and explained that his medical limitations kept him from being qualified for other positions.

Appellant also submitted reports dated June 29 and 30, 1999 and December 1, 2000, from his treating physician. In the December 1, 2000 report, Dr. Barton, who opined that appellant was not employable based on the current problems of visual disturbance, balance difficulty, double vision and chronic pain. He indicated that it was unlikely that these conditions will improve since they had not done so in the past 13 years. Dr. Barton stated that appellant would also have cervical neck arthritis and nerve problems based on his neck pathology. However, he did not explain in any of his reports how appellant continued to work until the date of his RIF. As he did not offer any explanation or rationale, such reports are insufficient to establish causal relationship.⁵ Furthermore, Dr. Barton did not opine that appellant was totally disabled due to a change in the nature or extent of his accepted employment injury or a change in the nature or extent of his light-duty requirements.

As appellant has failed to show either a change in the nature and extent of his injury-related condition or a change in the nature and extent of his light-duty requirements, appellant has failed to meet his burden of proof and the Office properly denied his claim for a recurrence of total disability.

Regarding appellant's claim that he was entitled to compensation benefits for a recurrence of total disability because he was terminated from the employing establishment on July 8, 1999, due to a RIF, the Office's procedures specifically preclude a claim for a recurrence

⁵ *Id.*

of total disability due to a RIF by an employing establishment, which affects both full-duty and light-duty employees.⁶

The August 7, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
October 4, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(b)(2) and 2.1500.7(a)(4) (May 1997); *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.12 (July 1997).