

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARK A. BERLAND and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Iron Mountain, MI

*Docket No. 02-1195; Submitted on the Record;
Issued June 2, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant sustained a recurrence of disability on December 27, 1999 causally related to his accepted employment injury.

On September 23, 1999 appellant, a 44-year-old registered nurse, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that his employment duties aggravated his left knee osteoarthritis. He identified December 14, 1987 as the date he first became aware of his condition.¹ Appellant stopped work on June 7, 1999 and he returned to work in a limited-duty capacity on August 31, 1999.² The Office of Workers' Compensation Programs accepted appellant's claim for aggravation of left knee osteoarthritis and paid appropriate wage-loss compensation.

Appellant filed a notice of recurrence of disability (Form CA-2a) on January 14, 2000. He identified December 27, 1999 as the date of recurrence of disability. The Office denied the claimed recurrence of disability by decision dated May 4, 2000. However, on November 7, 2000, the Office hearing representative set aside the May 4, 2000 decision and remanded the claim for further development.

¹ Appellant stated that at age 16 he sustained an osteochondral fracture of the lateral condyle of the left knee and in 1972 he underwent a lateral meniscectomy of the left knee. Appellant further stated that, in December 1987, he was diagnosed with advanced osteoarthritis of the left knee and was advised to avoid work that required a lot of activity.

² On July 30, 1999 Dr. James A. Batti, a Board-certified family practitioner, advised that appellant was able to return to work with "minimal walking or standing" and no lifting probably for the next three months. In a report dated August 16, 2000, Dr. Batti recommended that appellant do only minimal walking, standing and avoid constant up and down activities. He suggested a desk job with resources available in the same room. Dr. Batti continued to impose similar restrictions through November 1999. The employing establishment indicated that appellant's limited duty consisted of working two hours doing telephone triage and extra hours to obtain educational credits needed for employing establishment purposes. He was also noted to have worked on several special projects.

On remand, the Office obtained an April 3, 2001 supplemental report from Dr. Robert H.N. Fielden, a Board-certified orthopedic surgeon and Office referral physician.³ Dr. Fielden stated that appellant's knee condition was being aggravated by weight bearing activities such as walking or climbing stairs, but there was probably no progression of the condition with nonweight bearing activities. He further stated that the work aspect of the aggravation had ceased since appellant stopped working in December 1999. Dr. Fielden opined that appellant's modified work duties were within his capabilities and he further noted that appellant would do that much or more just being at home without further aggravation of the knee. Dr. Fielden also stated that the aggravation to appellant's knee was not permanent in nature. He explained that the aggravation was only an irritation of the knee during periods of excessive standing or walking and that this irritation was superimposed on progressive degenerative changes. Dr. Fielden stated that appellant's work duties were no more significant than the activities of daily living and thus, were a natural progression not a work-related permanent aggravation.

Appellant was also examined on April 12, 2000 by Dr. Norman L. Pollak, a Board-certified orthopedic surgeon and Office referral physician, who diagnosed left knee degenerative arthritis, secondary to an old football injury and its subsequent operations in the early 1970s. He opined that appellant was incapable of performing the duties of a registered nurse. However, Dr. Pollak reviewed appellant's modified duties and concluded that appellant was capable of performing those duties on December 27, 1999 and presently. Additionally, Dr. Pollak provided work restrictions of 2 hours of walking per day, maximum lifting of 15 pounds and no squatting, kneeling or ladder climbing.

By decision dated June 21, 2001, the Office denied appellant's claim for recurrence of disability. Appellant requested a hearing and, in a decision dated February 26, 2002, the Office hearing representative affirmed the June 21, 2001 decision.

The Board finds that appellant failed to establish that he sustained a recurrence of disability on December 27, 1999 causally related to his December 14, 1987 accepted employment injury.

When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position, or the medical evidence of record establishes that he can perform the light-duty position, the employee has the burden of establishing by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show 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 employment-related condition or a change in the nature and extent of the light-duty job requirements.⁴

³ Dr. Fielden previously examined appellant in March 2000 and, in a report dated March 29, 2000, he opined that appellant was not totally disabled and was capable of walking on flat surfaces and sitting or stand as required. He also noted that long periods of standing, squatting or climbing were not recommended and that appellant was not yet a candidate for total knee replacement.

⁴ *Mary A. Howard*, 45 ECAB 646 (1994); *Terry R. Hedman*, 38 ECAB 222 (1986).

At the time of his claimed recurrence of disability on December 27, 1999, appellant worked as a modified registered nurse. His particular duties included telephone triage, which consisted of receiving telephone calls, problem solving, computer entry of notes and delivering messages to appropriate clinics. Except for message delivery, the majority of appellant's duties were performed while sitting at a desk. Appellant's modified duties also included attending employee training seminars and reviewing educational videotapes, which essentially involved sitting in a chair. The employing establishment also assigned appellant a number of special projects, all of which were predominantly sedentary in nature involving telephone work other clerical duties. The employing establishment created the modified position after reviewing the physical limitations imposed by appellant's treating physician, Dr. Batti.

The Office referral physicians, Drs. Fielden and Pollak, were each of the opinion that appellant was capable of performing the duties of a modified registered nurse on or about December 27, 1999. Although appellant's treating physician, Dr. Batti, stated that he had been unable to return to work since December 27, 1999, due to left knee pain and disability, none of the physician's various treatment notes and reports provide a clear and rationalized explanation attributing appellant's current condition to his accepted employment injury.

In his most recent report dated January 9, 2001, Dr. Batti addressed appellant's disability status as of December 27, 1999 and noted that appellant's knee was aggravated by the light duty he was performing at the time. Dr. Batti noted that appellant's left knee became locked, swollen and he was unable to bear weight on the leg. Appellant reportedly advised Dr. Batti that he had been walking for charts to a different floor of the hospital and standing at the copy machine for extended periods of time. Dr. Batti stated that he instructed appellant not to return to work until his knee was sufficiently recovered.

Appellant was also seen in consultation by Drs. F. Michael Saigh, a Board-certified family practitioner and Franklin H. Sim, a Board-certified orthopedic surgeon. While Dr. Saigh indicated that appellant had been unable to work since December 1999, his various reports do not adequately explain how appellant's current condition is causally related to his accepted employment injury. Dr. Sim examined appellant on October 10, 2000 and diagnosed degenerative joint disease of the left knee. He further noted that due to the advanced stage of appellant's condition he was not likely to receive any lasting benefit from arthroscopic debridement. He suggested that when appellant is "having enough symptoms" he should proceed with total knee arthroplasty.⁵ In a subsequent report dated December 12, 2000, Dr. Sim reiterated his prior recommendation of total knee arthroplasty when appellant is having enough symptoms. He further stated that appellant's symptoms were related to arthritis of the knee, which is a progressive condition and while appellant's arthritis was not caused by his nursing activities, the duties associated with nursing aggravate his symptomatology and are too strenuous for him to continue working with his present arthritic condition. However, Dr. Sim did not address whether appellant was precluded from performing his modified duties as a registered nurse.

⁵ Appellant must submit rationalized medical evidence demonstrating that the procedure is for a condition causally related to the employment injury and that the surgery is medically warranted. *Cathy B. Millin*, 51 ECAB 331, 333 (2000).

In the instant case, appellant failed to demonstrate a change in the nature and extent of the employment-related condition or a change in the nature and extent of the light-duty job requirements. The reports of Drs. Batti, Saigh and Sim are insufficient to satisfy appellant's burden and the rationalized reports of Drs. Fielden and Pollak establish that appellant was capable of performing the duties of a modified registered nurse on or about December 27, 1999. Accordingly, the Office properly denied appellant's claim for recurrence of disability.

The February 26, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
June 2, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member