

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JEANNIE R. STURGILL and DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS ADMINISTRATION MEDICAL CENTER, Beckley, WV

*Docket No. 01-2207; Oral Argument Held December 17, 2002;  
Issued March 26, 2003*

Appearances: *Brook L. Beesley*, for appellant; *Paul J. Klingenberg, Esq.*,  
for the Director, Office of Workers' Compensation Programs.

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DECISION and ORDER

Before COLLEEN DUFFY KIKO, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether appellant sustained a recurrence of her disability beginning July 26, 2000 causally related to her May 4, 1996 employment injury.

On May 8, 1996 appellant, then a 49-year-old licensed practical nurse, filed a notice of traumatic injury claim, alleging that, on May 4, 1996, while assisting a combative patient in a wheelchair, she suffered sharp pain in her right buttock, radiating down to the lateral aspect of her right leg. On October 22, 1996 appellant underwent a lumbar laminectomy and discectomy. The Office of Workers' Compensation Programs accepted appellant's claim for lumbosacral sprain superimposed on degenerative disc disease at L5-S1 and a disc herniation at L5-S1.

On August 14, 2000 appellant filed a notice of recurrence of disability commencing on July 26, 2000. By letter dated August 30, 2000, the Office requested that appellant submit further evidence.

In support of her claim, appellant submitted several reports by Dr. Robert P. Kropac, an internist. In a report dated August 23, 2000, he noted that appellant continued to have marked right lower extremity radicular pain and numbness, tingling of the right lower extremity and increased lower back pain. His diagnosis was lumbar disc herniation L5-S1, S/P laminectomy and discectomy with residual right lower extremity radiculopathy -- with exacerbation. He found that appellant was totally disabled. In a report dated August 30, 2000, Dr. Kropac noted that appellant brought to the appointment a letter from the employing establishment indicating that it had light-duty positions available. Dr. Kropac indicated that appellant was able to return to work with restrictions precluding any lifting greater than 10 pounds on an occasional basis, no frequent repetitive bending or stooping, no prolonged sitting, standing or walking greater than 20 to 30 minutes, and working only 4 hours a day.

A magnetic resonance imaging of the lumbar spine was conducted on September 7, 2000 by Dr. Alan M. Lintala, and was interpreted as follows:

“Right-sided L5-S1 laminectomy defect with desiccation of the L5-S1 intervertebral disc. Enhancing postsurgical scar contiguous with the posterior and medial margin of the right S1 nerve root. Distal to this level, the right S1 nerve root appears edematous and demonstrates perineural enhancement. No evidence of recurrent disc herniation. Otherwise unremarkable MRI study of lumbar spine.”

In a September 10, 2000 report, Dr. Kropac noted that appellant was able to continue work in a modified duty capacity. In a medical report dated October 13, 2000, Dr. Kropac noted that appellant recently had an electromyogram and nerve conduction study that revealed chronic changes within the S1 nerve root distribution, most probably a result of the disc herniation and prior surgery.<sup>1</sup> Dr. Kropac indicated that appellant could continue working modified part-time duties and referred her to Dr. Merve for an evaluation of the tremor in her right hand with regard to Parkinsonism. In a report of October 17, 2000, Dr. Kropac indicated that appellant was totally disabled for the next four weeks, “mainly because of her difficulty with her right upper extremity which may be indeed due to Parkinsonism.”

By decision dated November 22, 2000, the Office denied appellant’s claim for recurrence of disability finding that the medical evidence did not establish that the claimed recurrence was causally related to the injury of May 4, 1996. On December 11, 2000 appellant requested a hearing, which was held on May 22, 2001.

On February 13, 2001 Dr. Kropac indicated that examination of appellant’s lower back revealed tenderness and limitation of motion with positive straight leg raising testing of the right lower extremity. He indicated that appellant was capable of returning to work in a modified-duty capacity and that she was off work based on her tremor which was being treated by another physician. He advised appellant to continue taking medication for her lower back but no further treatment was recommended with regard to her lower back. In a report of May 11, 2001, Dr. Kropac indicated that appellant still complained of low back pain and right lower extremity pain radiation. He noted that, despite not working, appellant’s pain remained about the same.

In an opinion dated August 27, 2001, the hearing representative affirmed the November 22, 2000 decision, finding that appellant had not submitted sufficient medical evidence to support that her recurrence of disability claims.

The Board finds that the evidence fails to establish that appellant sustained a recurrence of disability on or about July 26, 2000 causally related to her May 4, 1996 employment injury.

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<sup>1</sup> There are two versions of the October 13, 2000 report in the record. The later version of the October 13, 2000 report is discussed above. In the report, as first received by the Office, it was indicated that appellant had an “electromyogram and nerve conduction study that did reveal chronic changes within the S1 nerve root distribution, and doubt that this is a result of the disc herniation and operation she had previously.” As these two reports appear to contradict each other, the Board has only considered the recent version of the October 13, 2000 report. Both reports indicate that there was no evidence of any new disc herniation. The Board notes that only the more recent version was signed by Dr. Kropac.

When an employee, who is disabled from the job she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that she 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 showing that she cannot perform such light duty. As part of the 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 job requirements.<sup>2</sup>

In the instant case, appellant has not submitted sufficient rationalized medical opinion evidence establishing that there was a change in the nature of her injury-related condition or a change in the extent of the light-duty job requirements. Dr. Kropac indicated that appellant suffered an exacerbation of her lumbar condition and that she was temporarily totally disabled in his medical reports dated August 23 and 25, 2000. However, Dr. Kropac did not indicate that he had an understanding of the duties of her modified job, and did not provide a rationalized explanation as to how appellant's condition worsened to the extent that she could not perform her modified-duty assignment as of July 26, 2000. In an August 30, 2000 report, Dr. Kropac provided restrictions for appellant and returned her to work. The subsequent medical reports indicate that appellant was again disabled, but that it was due to problems with her right upper extremity, not due to the accepted back condition. There is no indication that the actual duties in appellant's modified position changed. Appellant did not meet her burden of proof in establishing a recurrence of disability as there is insufficient medical evidence to establish that her disability for work starting July 26, 2000 was caused or contributed to by her accepted low back condition.

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<sup>2</sup> *Ralph C. Spivey*, 53 ECAB \_\_\_\_ (Docket No. 01-263, issued December 4, 2001); *Terry R. Hedman*, 38 ECAB 222 (1986).

The decisions of the Office of Workers' Compensation Programs dated August 27, 2001 and November 22, 2000 are hereby affirmed.

Dated, Washington, DC  
March 26, 2003

Colleen Duffy Kiko  
Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member