

disc displacement and anxiety.¹ On February 3, 1998 the Office accepted appellant's claim for a recurrence of disability on June 5, 1997 and expanded the claim to include aggravation of a herniated lumbosacral disc.² The record reflects that appellant returned to work full time in a modified capacity on November 1, 1998.³

By letter dated April 25, 2001, appellant indicated that he was separated by a reduction-in-force (RIF) and applied for disability retirement. Appellant enclosed the notification of personnel action.

On June 29, 2001 appellant filed a Form CA-7 claiming compensation for wage loss for total disability from February 17, 2001, which he attributed to his June 1, 1992 employment injury. He noted that he was terminated from his light-duty position at the employing establishment due to a RIF.

By letter dated August 16, 2001, the Office advised appellant that additional factual and medical evidence was needed. The Office advised appellant that wage loss due to a RIF was not considered a basis for payment of compensation.⁴

In a February 1, 2001 report, Dr. Abraham H. Kryger, Board-certified in general preventive medicine, noted appellant's history of injury and treatment.⁵ He diagnosed facet syndrome with disc herniation, clinical depression, hypogonadism, carpal tunnel syndrome, impotence, chronic pain syndrome, vascular deficiency, neuropathy and hyperlipidemia. Dr. Kryger indicated that appellant's condition had deteriorated with increasing neuropathic pain and some weakness of the left leg and major flexors, and opined that appellant was not expected to recover.

¹ On May 6, 1996 the Office determined that the position of a modified computer operator fairly and reasonably represented appellant's wage-earning capacity.

² The record reflects that appellant filed an occupational disease claim, a traumatic injury claim and a notice of recurrence. The Office doubled the claims and accepted the recurrence under Claim No. 13-1003989 for date of injury June 1, 1992, Claim No. 13-1112172 for date of injury, July 19, 1996 and Claim No. 13-1133067 for the recurrence date of injury of June 5, 1997. Additionally, appellant filed a traumatic injury claim on June 9, 1997 which was denied because no diagnosis was provided. However, appellant received compensation for temporary total disability through May 29, 2000. On May 30, 2000 the Office issued a notice of proposed termination of compensation based on appellant's ability to work as a computer operator for eight hours a day. An overpayment decision was issued on August 17, 2000.

³ The employing establishment indicated that appellant initially returned to work in accordance with his medical restrictions to his position as a computer operator for four hours a day on February 2, 1998. He subsequently increased his hours to six hours a day on August 30, 1998 and full time on November 1, 1998.

⁴ In a memorandum of telephone call dated August 13, 2001, the Office received a confirmation from the employing establishment that the RIF was agency wide and all of the programmer positions were abolished. In a subsequent memorandum of telephone call dated August 21, 2001, the Office informed appellant that the term computer operator should have been used instead of computer programmer.

⁵ The certification directory appears to have reversed Dr. Kryger's first and middle name.

In an October 26, 2001 report, Dr. Howard Rosen, a Board-certified anesthesiologist, noted appellant's history of injury and diagnosed severe back pain with spasm at L5-S1 with radiculopathy and indicated that prolotherapy was his best chance for permanent relief. He also recommended treatment with a psychologist. In a January 7, 2002 addendum, Dr. Rosen indicated that a psychological evaluation would be beneficial to clarify treatment issues with respect to his chronic pain and psychological distress. In a February 1, 2002 report, Dr. Rosen diagnosed iliolumbar strain/sprain, back pain with spasm, and L5-S1 radiculopathy.

By decision dated February 21, 2002, the Office denied appellant's claim for a recurrence of total disability on February 17, 2001 to the present. The Office advised appellant that no medical evidence had been received which demonstrated that his condition worsened such that he was unable to perform his modified condition. The Office also advised appellant that his RIF was agency wide.

In a February 21, 2002 report, Dr. John Paul Beaudoin, a clinical psychologist, diagnosed pain disorder with psychological and physical conditions and major depression, mild. He indicated that appellant suffered from anxiety and mood disturbances which affected multiple areas of his life and that his sense of self was severely altered and contributed to possible noncompliance or confusion in his medical care.

By letters dated April 10 and May 13, 2002, appellant requested reconsideration and enclosed additional medical evidence. The additional medical evidence included a November 15, 2001 report, received by the Office on April 15, 2002, in which Dr. Dale A. Helman, a Board-certified neurologist, advised that he had been treating appellant for chronic intractable lower back pain with nerve damage and that he was unable to be gainfully employed and a March 12, 2002 report, in which Dr. Helman opined that appellant's condition was worsening, specifically with regard to low back pain and sciatic symptoms in the lower extremities and advised that appellant was completely disabled from gainful employment due to the severe nature of his lower back pain. He also provided a March 11, 2002 report in which Dr. Kryger indicated that appellant's pain had worsened over the past year and he had such weakness and pain down the leg that appellant had to use a cane to walk. Dr. Helman also opined that there was no feasibility of partial recovery, the prognosis was poor and that appellant was totally disabled and unable to work. Appellant provided a duplicate of the February 1, 2001 report from Dr. Kryger, which contained a handwritten addendum dated August 21, 2001 advising that appellant's condition had deteriorated further and neurological evaluation was required.

By decision dated May 31, 2002, the Office denied modification of the February 21, 2002 decision. The Office found that appellant did not provide medical evidence establishing that his work-related low back condition had worsened to the point that he could no longer perform the duties of a computer programmer.

By letter dated May 28, 2003, appellant, through his representative, requested reconsideration and enclosed additional evidence including arguments from his representative, with respect to his claim, including duplicate reports dated February 1, 2001 and March 11, 2002 from Dr. Kryger. Appellant also submitted additional reports dated May 22, 2001, October 14 and November 5, 2002, January 20, April 11 and 17, 2003 from Dr. Kryger. In these reports,

Dr. Kryger indicated that he was never given a position description that appellant's condition was permanent and stationary and that appellant was totally disabled and unable to work. In a postoperative report dated May 2, 2002, Dr. Rosen diagnosed lumbar strain/sprain of the iliolumbar ligaments and sacroiliitis with complaints of bilateral hip and sacroiliac pain. Additionally appellant provided several diagnostic reports which included electromyogram reports dated August 31, 2001 and January 25, 2002 from Dr. Helman, a magnetic resonance imaging scan dated September 12, 2001, nerve conduction studies dated August 3, 2001 and January 25, 2002 and a position description.

By decision dated September 2, 2003, the Office denied modification of its May 31, 2002 decision. The Office found that the medical evidence was insufficient to establish a worsening of appellant's condition such that he was unable to perform the duties of the computer operator's position.

LEGAL PRECEDENT

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 establishes that the employee 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 and to show that he or she 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 job requirements.⁶

A recurrence of disability also includes an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn, except when such withdrawal occurs for reasons of misconduct, nonperformance of work duties or a RIF.⁷

ANALYSIS

In the instant case, appellant alleged that he sustained a recurrence of his employment-related injury when his position was eliminated due to a RIF. Appellant confirmed that he was working in a modified computer operator position up to the time of the RIF. He did not submit any factual evidence or allege that the position had changed. Rather he alleged that he was entitled to compensation benefits for a recurrence of total disability because he was terminated from the employing establishment on February 17, 2001, due to a RIF. However, pursuant to federal regulations and Office procedures, a claim for a recurrence of total disability due to a RIF by an employing establishment, which affects both full-duty and light-duty employees is specifically precluded.⁸

⁶ *Richard E. Kommen*, 47 ECAB 388 (1996); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

⁷ 20 C.F.R. § 10.5(x).

⁸ *Id.* See also 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).

Appellant also submitted numerous reports from his treating physician, Dr. Kryger, who indicated that he was never given a copy of the position description. In the February 1, 2001 report, Dr. Kryger diagnosed several conditions that were not accepted by the Office and indicated that appellant's condition had deteriorated such that he was not expected to recover. In his August 21, 2001 addendum, Dr. Kryger opined that appellant's condition had deteriorated and in his March 11, 2002 report, Dr. Kryger indicated that appellant's pain had worsened over the past year and that appellant was totally disabled and unable to work. In reports dated May 22, 2001, October 14 and November 5, 2002 and January 20, April 11 and 17, 2003, Dr. Kryger repeated that appellant was totally disabled and unable to work. However, there were no further details as to how these conditions were related to appellant's work injury or that the light-duty requirements had changed. Appellant also submitted reports from Dr. Rosen dated October 26, 2001, January 7, February 1 and May 2, 2002 and a February 21, 2002 report from Dr. Beaudoin. Dr. Rosen and Dr. Beaudoin both indicated that appellant had pain.⁹ However, their reports do not contain any discussion of appellant's light-duty position or any explanation regarding how his accepted condition had changed. In reports dated November 15, 2001 and March 12, 2002, Dr. Helman opined that appellant's condition was worsening and that he was totally disabled. However, none of the doctors offered an explanation to show that appellant was totally disabled due to a change in the nature or extent of his accepted employment injury or due to a change in the nature or extent of his light-duty requirements.

Appellant did not submit rationalized medical evidence which showed either a change in the nature and extent of appellant's injury-related condition or a change in the nature and extent of appellant's light-duty requirements. In the instant case, none of the reports submitted by appellant contained a rationalized opinion to explain why appellant could no longer perform the duties of his light-duty position.¹⁰ As appellant has not submitted any medical evidence showing that he sustained a recurrence of disability beginning February 17, 2001, due to his accepted employment injury, he has not met his burden of proof.

CONCLUSION

As appellant failed to provide medical evidence establishing a change in the nature and extent of his injury-related condition or a change in the nature and extent of his light-duty job requirements such that he was unable to perform his light-duty position, he failed to meet his burden of proof to establish that his recurrence of disability after February 17, 2001 was causally related to his accepted employment injury on June 1, 1992.

⁹ The Board has held that a diagnosis of "pain" does not constitute the basis for the payment of compensation. *Robert Broome*, 55 ECAB ____ (Docket No. 04-93, issued February 23, 2004).

¹⁰ The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant; *see Charles E. Burke*, 47 ECAB 185 (1995).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 2, 2003 is hereby affirmed.

Issued: August 30, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member