

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of NATHALENNA J. FIELDS and DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS ADMINISTRATION MEDICAL CENTER, Coatesville, PA

*Docket No. 03-2023; Submitted on the Record;  
Issued January 12, 2004*

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DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,  
MICHAEL E. GROOM

The issue is whether appellant has met her burden of proof in establishing that she sustained a recurrence of total disability on or after August 7, 2001.

Appellant, a 29-year-old nursing assistant, filed a notice of traumatic injury on March 4, 1996 alleging that she injured her left wrist while moving a patient. The Office of Workers' Compensation Programs accepted appellant's claim for a left wrist sprain on December 6, 1996. The Office accepted that appellant sustained a recurrence of disability beginning October 12, 1996 due to an employment-related brachial plexus injury. On April 30, 1997 the Office entered appellant on the periodic rolls. She underwent surgery on July 16 and December 5, 1997 and March 16, 2000.

Appellant returned to full-time work as a receptionist on June 18, 2001. In a report dated August 6, 2001, her attending physician Dr. Scott M. Fried, an osteopath, stated that she returned to work on June 18, 2001, found that her pain and swelling had increased and concluded that appellant was totally disabled. She stopped work on August 7, 2001 and filed a notice of recurrence of disability on August 10, 2001, alleging that the light-duty position did not comply with her medical restrictions and that her employment-related condition had worsened. The employing establishment contended that appellant was not required to work outside her restrictions. The Office requested additional factual and medical evidence in a letter dated August 16, 2001. By decision dated November 14, 2001, the Office denied appellant's claim for recurrence of disability.

Appellant requested reconsideration on September 18, 2002 alleging that her limited-duty position exceeded her work restrictions and that "[p]erforming these duties aggravated the existing condition, resulting in me no longer [being] able to perform the job." The employing establishment responded on November 12, 2002 and stated that appellant's duties were within her limitations. By decision dated December 11, 2002, the Office denied modification of its November 14, 2001 decision.

Appellant, through her attorney, requested reconsideration on February 26, 2003 and alleged that she had experienced a material worsening of her employment-related condition and that there was a change in her light-duty job requirements. By decision dated May 23, 2003, the Office denied modification of its prior decisions.<sup>1</sup>

The Board finds that appellant has failed to meet her burden of proof in establishing that she sustained a recurrence of total disability on or after August 7, 2001.

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 establish that 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 total disability and show that 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 requirements.<sup>2</sup>

Appellant's attending physician, Dr. Fried, completed a report on November 29, 2000 noting appellant's history of injury and her medical history. He noted her symptoms of left medial elbow pain, with discomfort to touch as well as pain about the medial elbow and into the arm with elbow extension. Appellant reported significant pain and discomfort about the first dorsal compartment of the left wrist increased by gripping and lifting and accompanied by swelling of the wrist. She experienced numbness in the thumb and fourth and fifth fingers and with increased activity all of her fingers went numb. Appellant reported mild symptoms on the right secondary to overuse. On physical examination Dr. Fried found limited range of motion of the left shoulder, with a positive supraclavicular and infraclavicular Tinel's sign on the left. Appellant also demonstrated a positive Tinel's sign at the ulnar nerve in the left upper arm with Roos, Hunter and Wright testing positive on the left side. Dr. Fried also found a positive Finklestein's test on the left wrist and tenderness at the radial sensory nerve as well as positive Watson and stress testing for moderate scapholunate ligament involvement on the left. He diagnosed:

- “(1) Status post significant brachial plexus traction injury with traction injury nerves left upper extremity secondary to work incident March 1996 lifting patient.
- (2) Status post left brachial plexus surgery March 2000 and left median nerve and ulnar nerve surgery wrist and elbow, Dr. Hunter 1997.
- (3) Recurrent ulnar neuropathy left with radial neuritis left wrist and de Quervain's involvement.
- (4) Residual low level scapholunate injury left wrist with long thoracic neuritis and scapular winging left.

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<sup>1</sup> On appeal to the Board, appellant submitted additional new evidence. As the Office did not consider this evidence in reaching a final decision, the Board may not review the evidence for the first time on appeal. 20 C.F.R. § 501.2(c).

<sup>2</sup> *Terry R. Hedman*, 38 ECAB 222 (1986).

(5) Status post probable scaphoid fracture left held well with posterior occipital neuralgia.”

Appellant underwent a functional capacity evaluation on June 2, 2001. Dr. Fried reviewed these findings on July 12, 2001 and concluded that appellant could work at a sedentary capacity. He stated: “Repetitive activities were not tolerated and significantly exacerbated the underlying symptomatology.”

The employing establishment offered appellant the position of guest services desk clerk. The physical requirements of this position were walking zero to two hours, standing zero to two hours, sitting for eight hours, no lifting and no pushing or pulling. The requirements could be performed with the right hand only and appellant was permitted to change positions, get up and walk around or stretch as needed. The principle duties involved greeting and welcoming veterans, including answering the telephone; directing veterans to various clinics and appointments; assisting with obtaining wheelchairs; no pushing required; handing out printed materials; providing general information or directions; directing veterans to the appropriate clothing area and providing other required guest services assignments within her physical limitations. Appellant returned to work in this position eight hours a day on June 18, 2001.

In a note dated August 6, 2001, Dr. Fried stated that appellant experienced increased pain and swelling after the return to work on June 18, 2001. He found that she was totally disabled. Dr. Fried completed a report on September 24, 2001 noting that appellant had returned to work and performed “a lot of aggressive hand and arm activity.”<sup>3</sup> He repeated his diagnoses from his November 29, 2000 report. Dr. Fried again noted that appellant was symptomatic, as she had been prior to her return to work. On September 24, 2001 he stated that appellant was capable of strict sedentary activity and requested a copy of her job description. In a report dated December 7, 2001, Dr. Fried stated that appellant was to be out of work and to continue concentrating on her well-being in therapy and recovery from this “exacerbation.”

These reports are insufficient to establish a change in the nature and extent of appellant’s injury-related condition. Although Dr. Fried stated that she had experienced an exacerbation of her symptoms in his December 7, 2001 report, he did not provide any additional diagnoses or findings supporting his conclusion that appellant had a change in the nature and extent of her injury-related condition. The findings on physical examination and the diagnoses made in Dr. Fried’s December 7, 2001 report are essentially identical to those made in his November 2000 examination of appellant which occurred prior to her return to work. As he has not provided detailed findings to support a change in appellant’s condition coinciding with her alleged recurrence of disability, these reports are insufficient to establish her claim.

In a report dated June 3, 2002, Dr. Fried stated that appellant had an exacerbation following a “poor weekend.” He noted that appellant could not fully oppose a fist on the left hand side. Dr. Fried repeated his prior diagnoses. On July 22, 2002 he reviewed a July 29, 2002

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<sup>3</sup> A recurrence of disability is defined as an inability to work after an employee has returned to work caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment. *See* 20 C.F.R. § 10.5(x). Dr. Fried’s report implicates new exposures at work as a possible cause of appellant’s condition.

functional capacity evaluation. He concluded that appellant was capable of performing sedentary work. Dr. Fried submitted additional reports dated September 16 and October 7, 2002 and January 6, 2003. These reports did not clearly address a change in the nature and extent of appellant's employment-related condition.

Based on the medical evidence in the record appellant has not experienced a change in the nature and extent of her injury-related condition. She underwent two functional capacity evaluations and following each her physician concluded that she could work at the sedentary level. Although the medical evidence does support that appellant experienced periodic exacerbations of pain related to her conditions, Dr. Fried did not provide any findings or diagnoses supporting that appellant's condition had been altered as a result of her exacerbations. Therefore, the Board finds that appellant has not submitted sufficient medical evidence to establish a change in the nature and extent of her employment-related condition.

Furthermore, the record does not support that appellant experienced a change in the nature and extent of her light-duty job requirements. In a report dated April 8, 2002, Dr. Fried again repeated his prior diagnoses. He attributed appellant's condition to her light-duty employment. Dr. Fried stated:

"The work she was asked to do was the folding of pamphlets, doing one on one patient care, folding clothes and repetitive hand, wrist and arm activities. This required reaching, pulling, pushing, lifting and grasping activities. This was well outside of [appellant's] limitations.... She was not capable of performing her previous job that was offered. [Appellant] was taken out of work on this basis and due to exacerbation from the same."

Appellant described her employment duties beginning in June 2001, including working in the guest service booth, in a day assembling 50 to 60 pamphlets of 8 to 10 papers each; the patient clothing room, where she completed forms listing the clothing receive by patients, folded the clothes and placed the clothing in bags; volunteer service, answering telephones and taking messages; as well as monitoring the game room. Appellant stated on July 19, 2001 that she was assigned to escort a patient to an outing. She alleged that she was assigned to patients who were nonstable walkers and that she had to "pull and tug on these patients the entire trip."

Appellant submitted a witness statement dated August 25, 2001 from Carol Myers, a nursing assistant. She stated that appellant accompanied two patients who were nonstable walkers on a field trip on July 19, 2001. Ms. Myers stated that appellant had to assist these patients with their ambulation, requiring her to pull and tug at both patients for over four hours. A second witness, Michele DiDavide, stated that appellant worked in the clothing room, writing and putting patients' clothing in bags. She also stated that appellant assembled pamphlets from patients and their families.

The employing establishment responded to appellant's allegations on November 12, 2002 and stated that her primary duty was to sit in the guest service area to greet visitors. In the clothing room, the employing establishment stated that appellant was to have veterans sign out clothing that they received. The employing establishment stated that in the game room appellant observed a small number of patients participating in table games and watching television. The

employing establishment stated: “[She] was scheduled for one off-station field trip for a period of approximately three hours. During this period [appellant] was instructed to observe only, not to perform any functions that were above her limitations prescribed by her treating physician.”

Although appellant has alleged that there was a change in the nature and extent of her light-duty job requirements, the Board finds that she has not substantiated this allegation. The duties as described by the employing establishment comply with the sedentary work restrictions repeatedly established by appellant’s functional capacity evaluations.

The July 19, 2001 field trip does not clearly establish a change in the nature and extent of appellant’s light-duty job requirements. The employing establishment alleged that this was a one time excursion and she has not alleged otherwise. Furthermore appellant has not established that she was required to stand, walk, push, pull or lift in violation of her sedentary job restrictions. Although she has submitted a witness statement that she aided nonstable patients in walking for the field trip, the employing establishment denied that this was an assigned duty. Without factual evidence corroborating that she was required to perform duties beyond her work restrictions, appellant has failed to substantiate her allegation that there was a change in the nature and extent of her light-duty job requirement rendering her total disabled.

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

The May 23, 2003 and December 11, 2002 decisions of the Office of Workers’ Compensation Programs are hereby affirmed.

Dated, Washington, DC  
January 12, 2004

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member