

of disability but remanded the case to determine whether a new, work-related lumbar strain on September 13, 1984 caused any disability for work. By order issued December 7, 1989,² the Board remanded the case for reconstruction of the record and a *de novo* decision on the merits regarding the duration of any periods of disability related to the accepted injuries. By decision and order issued August 30, 1991,³ the Board remanded the case to the Office for further development to determine appellant's correct pay rate. The facts of the case as set forth in the Board's prior opinions are hereby incorporated by reference.

Following remand of the case to the Office and calculation of the appropriate pay rate, appellant received compensation for periods of partial and total disability through June 7, 1998. On June 8, 1998 she began working for four hours a day in a permanent, part-time limited-duty position at the employing establishment. This position was within restrictions prescribed by Dr. Gary Kronick, an attending internist, including no lifting over 20 pounds, no bending, climbing, kneeling, pushing, pulling, squatting or simple grasping. By decision dated August 11, 1998, the Office reduced appellant's wage-loss compensation based on her actual earnings. The employing establishment terminated appellant's employment on September 24, 1998 as she omitted her history of cardiac and psychiatric conditions in a June 1, 1998 reemployment form.

On December 4, 1998 appellant filed a claim for a recurrence of disability commencing in September 1998, related both to the September 13, 1984 injury and to the stress of her September 24, 1998 removal for cause. Dr. Kronick submitted October 21, 1998 and January 29, 1999 reports, finding appellant able to perform the part-time sedentary position, noting that while the stress of the removal "exacerbated her low back symptomatology," there were no "new objective physical findings to go along with this." The Office denied appellant's claim for recurrence of disability by decision dated February 8, 1999, due to an intervening cause and a lack of medical evidence. The Office continued to pay appellant wage-loss compensation.

Appellant submitted periodic affidavits of earnings and employment (Form CA-1032) from September 7, 1999 to November 1, 2002, noting her private sector employment at True Green Chem Lawn from March 8 to July 12, 1999, at Key Bank from September 7, 1999 to October 31, 2001 and at ACS State beginning on May 24, 2002. The record indicates that appellant worked at PRWT Services, Incorporation, a subcontractor of ACS State, processing child support payment checks, from May 2002 to June 20, 2003. She also noted volunteering as a church treasurer and Sunday school teacher.

Dr. Kronick submitted periodic reports from October 18, 1999 to November 5, 2002, finding appellant able to perform sedentary duty for four hours a day. The November 5, 2002 report indicates that appellant underwent bilateral carpal tunnel surgeries.⁴

² Docket No. 89-1632.

³ 42 ECAB 871 (1991).

⁴ Appellant also submitted December 2001 and January 2002 physical therapy reports. As these reports do not appear to have been reviewed or signed by a physician, they do not constitute medical evidence in this case. *Vickey C. Randall*, 51 ECAB 357 (2000); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

On June 10, 2003 appellant filed a claim for a recurrence of disability commencing June 17, 2003, causally related to the accepted September 13, 1984 lumbar sprain.⁵ Appellant noted that she did not stop work until June 20, 2003.⁶ In a September 17, 2003 letter, the Office advised appellant of the type of evidence needed to establish her claim, including medical evidence showing a change in the nature and extent of her work-related condition or factual evidence demonstrating a change in her light-duty job requirements.

In a September 22, 2003 statement, appellant asserted that her job at PRWT Services was eliminated as she had been off work for two weeks in early June 2003, due to back and hip pain caused by prolonged standing at work. An official of PRWT Services contended in June 27 and September 24, 2003 letters that appellant was involuntarily terminated for cause on June 20, 2003. A July 17, 2003 newspaper article states that appellant was charged with bank fraud while working at PRWT Services, accused of diverting over \$100,000.00 in child support checks into her account at Key Bank.

Appellant submitted medical evidence in support of her claim. In a June 17, 2003 slip, Dr. Kronick held appellant off work from June 16 to 19, 2003. In a June 26, 2003 report, Dr. Kronick stated that based on appellant's complaints of back and hip pain, he was "inclined to agree ... that she [was] unable to perform even these limited sedentary part-time duties as a result of her ongoing symptomatology." In a September 29, November 10 and 11, 2003 reports, Dr. Kronick held appellant off work indefinitely due to her subjective complaints. Dr. Kronick submitted an October 2, 2003 form report diagnosing degenerative joint disease and a chronic back and hip pain syndrome which "per [appellant's] history—exacerbated by employment." He found appellant totally disabled for work from June 17, 2003 onward.

By decision dated November 21, 2003, the Office denied appellant's claim for a recurrence of disability beginning June 17, 2003 on the grounds that she submitted insufficient evidence to establish a causal relationship between the September 13, 1984 injury and the claimed recurrence of disability. The Office also found that appellant's dismissal for cause did not constitute a compensable change in the nature and extent of her light-duty position or in her accepted condition.

In a November 28, 2003 letter, appellant requested a review of the written record. She asserted that she was laid off from PRWT Services and that prolonged sitting at work aggravated her back condition.

In a February 18, 2004 letter, the employing establishment asserted that appellant stopped work on June 17, 2003 as she knew she would be arrested. The employing establishment alleged that appellant was arrested on July 16, 2003 for allegedly committing fraud at PRWT Services and that a criminal case was pending. Appellant responded in February 27 and March 1, 2004 statements that the employing establishment ignored her physician's reports.

⁵ She noted that since the accepted September 13, 1984 injury, she sustained hip and ankle problems, hypertension and diabetes.

⁶ The record indicates that appellant did not perform work at PRWT Services between June 17 and 20, 2003, as Dr. Kronick held appellant off work from June 16 to 19, 2003.

By decision dated and finalized March 15, 2004, an Office hearing representative affirmed the Office's November 21, 2003 decision, denying the claimed recurrence of disability commencing June 17, 2003. The hearing representative found that appellant's "termination for cause unrelated to a work injury d[id] not constitute a change in the nature and extent of light work and [was] not a basis for payment of compensation." The hearing representative further found that appellant did not submit sufficient medical evidence showing a change in the nature and extent of the accepted lumbar sprain.

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.⁷

The Office's procedure manual provides that a recurrence of disability includes a work stoppage caused by an objective, spontaneous, material change in the accepted condition, a recurrence or worsening of disability due to an accepted consequential injury or withdrawal of a light-duty assignment made to accommodate the work-related condition, for reasons other than misconduct or nonperformance.⁸ A termination for cause, unrelated to a work injury, does not constitute a change in the nature and extent of light work and is not a basis for payment of compensation.⁹

ANALYSIS

In this case, the Office accepted that appellant sustained February 27, 1975 and February 27, 1987 lumbar strains. Appellant filed a June 10, 2003 claim alleging a recurrence of disability commencing June 17, 2003.¹⁰ To meet her burden of proof, appellant must demonstrate either a change in the requirements of her light-duty position or a worsening of the accepted lumbar strains.

⁷ *Carl C. Graci*, 50 ECAB 557 (1999); *Mary G. Allen*, 50 ECAB 103 (1998); *see also Terry R. Hedman*, 38 ECAB 222 (1986).

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(b) (May 1997). *See also Steven A. Andersen*, 53 ECAB ___ (Docket No. 01-1376, issued February 19, 2002).

⁹ *John W. Normand*, 39 ECAB 1378 (1988). The implementing regulation of the Federal Employees' Compensation Act define disability as "the incapacity, because of employment injury, to earn the wages the employee was receiving at the time of injury." 20 C.F.R. § 10.5(f) (1999). *See also Lester Covington*, 47 ECAB 539 (1996).

¹⁰ Although she stated in a September 22, 2003 letter that she had been unable to work for two weeks prior to June 17, 2003, due to back and hip pain, appellant did not claim a recurrence of disability for this period. Also, the Board notes that it is not clear from the record as to why appellant filed her claim for recurrence of disability on June 10, 2003 when the claimed period of disability did not begin until a week later on June 17, 2003.

Appellant alleged that her recurrence of disability began on June 17, 2003 and that she was laid off on June 20, 2003 due, in part, to a worsening of the accepted lumbar injuries. However, the evidence submitted demonstrates that appellant's employment was terminated because of her improper conduct, not because of any disability causally related to her accepted employment injuries. An official of PRWT Services submitted June 27 and September 24, 2003 letters, stating that appellant was involuntarily terminated for cause on June 20, 2003. A July 17, 2003 newspaper article states that appellant was charged with bank fraud while working at PRWT Services. The employing establishment noted in a February 18, 2004 letter that appellant was arrested on July 16, 2003 and charged with committing fraud at PRWT Services. A criminal case was pending. Thus, the Board finds that the evidence establishes that appellant was terminated from her employment at PRWT Services for misconduct. Also, there is no evidence of record that appellant's position would not have remained available to her on and after June 20, 2003 had she not been terminated for misconduct.¹¹ As set forth above, a termination for cause, unrelated to a work injury, does not constitute a change in the nature and extent of light work and is not a basis for payment of compensation.¹²

Also, the medical evidence submitted is insufficient to establish a change in the nature of the accepted lumbar sprains on and after June 17, 2003, including the three-day period prior to her termination on June 20, 2003. Dr. Kronick, an attending internist, submitted reports from June 27 to October 2, 2003, finding appellant totally disabled for work from June 16 to 19, 2003 and from June 26, 2003 onward due to subjective complaints of pain. He opined that based on appellant's complaints of back and hip pain, he was "inclined to agree ... that she [was] unable to perform even these limited sedentary part-time duties as a result of her ongoing symptomatology." However, Dr. Kronick did not specify which objective findings demonstrated an organic worsening of the accepted lumbar injuries. Statements about an appellant's pain, not corroborated by objective findings of disability, do not constitute a basis for payment of compensation.¹³ Additionally, the fact that work activities produce symptoms revelatory of an underlying condition does not raise an inference of an employment relationship.¹⁴ Thus, Dr. Kronick's opinion that appellant was unable to work due to back and hip pain, is insufficient to meet her burden of proof in establishing that she sustained a recurrence of disability as alleged.¹⁵

Also, in an October 2, 2003 form report, Dr. Kronick noted that appellant's back and hip pain were "per [appellant's] history -- exacerbated by employment." Insofar as Dr. Kronick agreed with appellant's attribution of the claimed recurrence of disability to recent work factors,

¹¹ *Major W. Jefferson, III*, 47 ECAB 295 (1996).

¹² *John W. Normand*, *supra* note 9. The Act's implementing regulations define disability as "the incapacity, because of employment injury, to earn the wages the employee was receiving at the time of injury." 20 C.F.R. § 10.5(f). *See also Lester Covington*, 47 ECAB 539 (1996).

¹³ *Paul D. Weiss*, 36 ECAB 720 (1985); *John L. Clark*, 32 ECAB 1618 (1981).

¹⁴ *Judith A. Peot*, 46 ECAB 1036 (1995).

¹⁵ *Terry R. Hedman*, *supra* note 7.

the Board has held that exposure to new work factors is an intervening cause.¹⁶ This breaks the legal chain of causation between the accepted 1975 and 1984 lumbar sprains and appellant's medical condition on and after the intervening events.¹⁷ Therefore, the claimed recurrence of disability cannot be deemed to have arisen out of appellant's federal employment.¹⁸

Thus, the record in this case fails to establish that it was the residuals of appellant's employment injury that prevented her from continuing in her employment beyond June 17, 2003. Appellant is not entitled to wage-loss compensation for total disability following her termination for cause from her private sector employment.¹⁹

CONCLUSION

The Board finds that the Office properly denied appellant's claim for a recurrence of disability commencing June 17, 2003.

¹⁶ See *Carlos A. Marrero*, 50 ECAB 117, 119-20 (1998) (the Board found that the claimant's use of an exercise machine constituted an intervening cause of appellant's disability and thus the Office properly denied appellant's claim for recurrence of disability); *Clement Jay After Buffalo*, 45 ECAB 707, 715 (1994) (the Board found that the claimant's knee injury sustained while playing basketball broke the legal chain of causation from an accepted knee injury sustained in the performance of his duties as a firefighter).

¹⁷ See *Carlos A. Marrero*, *supra* note 16.

¹⁸ *Id.*

¹⁹ *John W. Normand*, *supra* note 9. Cf. *Jackie B. Wilson*, 39 ECAB 915 (1988) (finding that an employee working limited duty established total disability when he was terminated from his federal employment on the grounds that his employing establishment no longer had any work within his physical limitations). In cases such as *Wilson*, the employee's injury-related physical disability contributes to the work stoppage. No such contribution appears in the present case.

ORDER

IT IS HEREBY ORDERED THAT the March 15, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 23, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member