

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GERTRUDE W. STUNTEBECK and DEPARTMENT OF VETERANS
AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Cincinnati, OH

*Docket No. 99-2156; Submitted on the Record;
Issued January 4, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
PRISCILLA ANNE SCHWAB

The issue is whether appellant has met her burden of proof to establish a recurrence of disability on September 29, 1996, causally related to her accepted employment injury.

This is the second appeal in this case. In a January 11, 1999 decision, the Board found that appellant had not established a change in the nature of her light-duty job and that the medical evidence failed to establish a recurrence of total disability on or after September 29, 1996, causally related to her April 25, 1994 employment injury.¹ The facts and history are set forth in the Board's January 11, 1999 decision and are hereby incorporated by reference.²

Subsequent to the Board's decision, appellant's counsel requested reconsideration in a letter dated March 18, 1999 and submitted a February 17, 1999 report by Dr. Timothy E. Kremchek, an attending Board-certified orthopedic surgeon and a synopsis of her injury history, light-duty job requirements and current disability.³

In his February 17, 1999 report, Dr. Kremchek reviewed appellant's medical and employment injury history. He noted that appellant was injured on April 25, 1994, returned to light-duty work in February 1995 with restrictions. Appellant related that she had an increased workload and was required "to do excess walking on her job and she began to alter her gait pattern because of weakness in her adductor." Based upon a physical examination, Dr. Kremchek stated that appellant had "full range of motion, severe lateral tenderness, pain in the patellofemoral joint, lateralization of her patellofemoral joint, swelling and joint line

¹ The record contains evidence that appellant sustained a knee injury on February 1, 1996 which the Office of Workers' Compensation Programs accepted and assigned claim number 09-0422535. On August 12, 1997 the Office terminated her compensation on this claim.

² Docket No. 97-1082 (issued January 11, 1999).

³ Appellant was approved for disability retirement effective April 28, 1998.

tenderness.” He diagnosed bicompartamental arthritis of the patellofemoral joint and the lateral line. Regarding causal relationship, Dr. Kremchek stated:

“I talked to [appellant] in great detail as to the causal relationship of her left hip condition and her right knee problems. It is my opinion, the excessive wear and tear from the time she spent on her feet working as a respiratory therapist as well as her altered gait and need for an external ambulation aid due to her left hip adductor weakness, caus[ed] aggravation to her right knee osteoarthritis. This caused [appellant] severe lateral tenderness, pain in the patellofemoral joint, lateralization of the patellofemoral joint and increased swelling to the point where she needed a total knee arthroplasty. Her right knee problems, are in my opinion, the result of the wear and tear and aggravation to the knee due to weakness and limitations of her left hip causing her to compensate with her right leg.”

By decision dated May 5, 1999, the Office denied appellant’s request for modification. The Office found that Dr. Kremchek’s opinion was insufficient to establish that appellant was totally disabled from her light-duty job as of September 29, 1996.

The Board finds that appellant has failed to meet her burden of proof to establish a recurrence of disability on September 29, 1996 causally related to her accepted employment injury.

When an employee, who is disabled from the job she held when injured, 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 that she cannot perform such light duty.⁴ 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.⁵

None of the evidence of record supports a conclusion that the nature and extent of the light-duty job requirements changed so that appellant was unable to perform those duties. The employing establishment provided a light-duty position which comported with the medical restrictions outlined by appellant’s physician. Appellant alleged that she was not given light duty after February 1996 and was forced to walk beyond her restrictions. However, she provided no corroborating evidence to support her allegations.

Dr. Kremchek opined that appellant’s condition in 1998 was due to her accepted employment injury. Dr. Kremchek’s opinion that appellant’s right leg condition is due to the employment injury is not relevant to the issue currently before the Board, *i.e.*, whether appellant was able to perform her light-duty job in September 1996. Dr. Kremchek does not address this issue. Therefore, his report is insufficient to establish a recurrence of disability in September 1996.

⁴ *Richard E. Konnen*, 47 ECAB 388, 389 (1996).

⁵ *Id.*

Appellant has provided no rationalized medical evidence, based upon a complete and accurate factual and medical background establishing that she sustained a recurrence of disability on September 29, 1996 as a result of her April 25, 1994 employment injury. She therefore has failed to meet her burden of proof and the Office properly denied her claim.

The decision of the Office of Workers' Compensation Programs dated May 5, 1999 is affirmed.

Dated, Washington, DC
January 4, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Priscilla Anne Schwab
Alternate Member