

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of CHERYL L. MARTINEZ and DEPARTMENT OF THE AIR FORCE,  
KELLY AIR FORCE BASE, TX

*Docket No. 03-1419; Submitted on the Record;  
Issued September 16, 2003*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issues are: (1) whether appellant has established that she sustained a recurrence of disability on March 27, 1996 causally related to her August 28, 1989 employment injury; and (2) whether appellant has established that she sustained a consequential injury as a result of her August 28, 1989 employment injury.

On August 29, 1989 appellant, then a 33-year-old secretary, filed a traumatic injury claim alleging that, on August 28, 1989, she twisted her left knee when she stepped onto uneven ground while walking to get punch at a retirement party.

The Office of Workers' Compensation Programs accepted appellant's claim for a left knee strain and torn medial meniscus and authorized knee surgeries which were performed on September 11, 1989, May 7, 1990 and November 17, 1992. She did not return to work after the latter surgery.

The Office referred appellant to a vocational rehabilitation counselor based on the medical evidence of record indicating that she was capable of performing a sedentary job that did not require the repetitive movement of her left knee. On February 19, 1996 appellant returned to work as a secretary at the law firm Jay Trucks and Associates.

On April 8, 1996 appellant filed a claim alleging that she sustained a recurrence of disability. She stopped work on March 27, 1996.

By letter dated April 18, 1996, the Office advised appellant that the information submitted was insufficient to establish her claim. The Office further advised her of the type of evidence she needed to submit to establish her recurrence claim. In response, appellant submitted factual and medical evidence.

In a July 8, 1996 decision, the Office found the evidence of record insufficient to establish that appellant sustained a recurrence of disability causally related to her August 29,

1989 employment injury. By letter dated July 17, 1996, appellant, through her attorney, requested an oral hearing before an Office hearing representative.

By decision dated March 3, 1997, the hearing representative set aside the Office's decision and remanded the case for further development of the medical evidence inasmuch as the record indicated that appellant was totally disabled for work due to her accepted employment-related knee condition and that she suffered from a back condition that may have been causally related to her employment injury.

On remand, the Office referred appellant to Dr. Balkrishna T. Jagdale, a Board-certified orthopedic surgeon, for a second opinion medical examination by letter dated April 24, 1997. In a May 2, 1997 report, he opined that appellant had reached maximum medical improvement and that she could return to work as a secretary. Dr. Jagdale also opined that there was no causal relationship between appellant's low back pain and her August 1989 employment-related left knee injury.

In a May 16, 1997 letter, the Office requested that Dr. Jagdale submit a supplemental report addressing whether appellant was capable of performing the physical duties of a legal secretary beginning February 1996 and whether appellant's knee condition worsened as to prevent her from performing her job beginning March 27, 1996. In a June 6, 1997 response letter, Dr. Jagdale stated that it was impossible for him to address the Office's questions because he had not examined appellant at that time and thus, he was not aware of appellant's condition at that time. He noted that no records from 1996 were made available to him.

The Office then referred appellant to Dr. Earl Rhind, a Board-certified orthopedic surgeon, for another second opinion medical examination by letter dated August 20, 1997. In his August 20, 1997 report, Dr. Rhind noted that appellant suffered from chronic pain syndrome of the left knee, reflex sympathetic dystrophy and depression. He opined that appellant could perform the duties of a legal secretary after being treated for her knee condition. Dr. Rhind further opined it was likely that appellant's back condition was caused by stress, tension and depression and that it did not require any medical treatment.

The Office issued a September 10, 1997 decision finding the evidence of record insufficient to establish that appellant sustained a recurrence of disability beginning March 27, 1996 and a consequential back injury due to her accepted employment-related knee condition based on Dr. Rhind's report. In a September 23, 1997 letter, appellant, through her attorney, requested an oral hearing before an Office hearing representative.

In an April 1, 1998 decision that was finalized on April 2, 1998, the hearing representative set aside the Office's decision and remanded the case for further development of the medical evidence. The hearing representative found that Dr. Rhind's opinion required clarification, regarding appellant's ability to perform the duties of a legal secretary on March 27, 1996, and whether appellant suffered from conditions other than those already accepted that were due to her employment injury.

On remand, the Office advised Dr. Rhind about the medical conditions that had been accepted and surgeries that were authorized in appellant's claim. The Office requested that he

state whether appellant's left-knee condition precluded her from working as a legal secretary as outlined in an enclosed statement of accepted facts. In an April 30, 1998 supplemental report, Dr. Rhind stated that appellant's knee condition prevented her from performing the duties of a legal secretary.

On May 12, 1998 the Office found that Dr. Rhind's response was inadequate as it lacked objective findings and was not rationalized. The Office referred appellant to Dr. Vickers C. Hansen, a Board-certified orthopedic surgeon, for a second opinion medical examination. In a July 2, 1998 report, he stated that there was no evidence that appellant's knee condition materially worsened and prevented her from working as a secretary and there were no objective findings that she developed a consequential back condition.

By decision dated July 21, 1998, the Office found the evidence of record insufficient to establish that appellant sustained either a recurrence of disability causally related to her August 29, 1989 employment injury or a consequential back injury due to her accepted employment injury based on Dr. Hansen's report. Appellant's attorney requested an oral hearing before an Office hearing representative by letters dated July 30, 1998 and July 26, 1999.

In a September 21, 1999 decision, the Office denied appellant's July 26, 1999 request for a hearing as untimely filed. By letter dated October 7, 1999, appellant's attorney requested reconsideration.

A hearing was held on March 29, 2000 and by decision dated July 31, 2000, the hearing representative affirmed the Office's July 21, 1998 decision. Appellant, through her attorney, requested reconsideration by letter dated September 5, 2000.

In a September 21, 2000 decision, the Office denied appellant's request for a merit review of her claim on the grounds that it did not contain new and relevant evidence or a new relevant legal argument and thus, it was insufficient to warrant modification of its prior decision. Appellant's attorney requested reconsideration in a July 20, 2001 letter.

By decision dated August 10, 2001, the Office denied appellant's request for modification based on a merit review of her claim. She appealed to the Board.

Upon the Office's failure to transmit appellant's case record as requested, the Board, in an order dated May 30, 2002, remanded the case to the Office for reconstruction and proper assemblage of the case record. The Board also ordered the Office to issue an appropriate decision to fully protect appellant's rights.

By letter dated October 3, 2002, the Office advised appellant that the reconstruction process had been completed and that its August 10, 2001 decision was being reissued with appeal rights. In an October 18, 2002 letter, appellant, through her attorney, requested reconsideration of this decision.

In a March 26, 2003 decision, the Office denied appellant's request for modification based on a merit review of her claim.

The Board finds that appellant has failed to establish that she sustained a recurrence of disability on March 27, 1996 causally related to her August 28, 1989 employment injury.

When an employee who is disabled from the job she held is injured on the account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that light duty can be performed, the employee has the burden to establish by the weight of reliable, probative and substantial evidence a recurrence of total disability. As part of this burden of proof, the employee must show either 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>1</sup>

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence a causal relationship between her recurrence of disability on March 27, 1996 and her August 28, 1989 employment injury.<sup>2</sup> This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.<sup>3</sup>

In this case, appellant has neither shown a change in the nature and extent of her injury-related condition or a change in the nature and extent of the limited-duty requirements. The record shows that following the August 28, 1989 employment-related left knee strain, torn medial meniscus and subsequent arthroscopic surgeries appellant returned to work, in a light-duty capacity as a legal secretary for a private employer. She has not alleged that there was a change in the nature of her light-duty requirements such that she was unable to perform her position. Rather, she has alleged a recurrence of disability commencing March 27, 1996.

Appellant submitted a June 26, 2001 report from Dr. Mark F. Rottenberg, a Board-certified physiatrist. In this report, Dr. Rottenberg provided a history of appellant's August 28, 1989 employment injury, employment and medical treatment. He noted his findings on physical examination and a review of medical records. Dr. Rottenberg found that appellant had left knee pain with internal derangement of the left knee, advanced multicompartamental degenerative changes with prior multiple arthroscopic surgeries for torn menisci with significant residual left knee effusion, bursitis, flexion contracture, patellofemoral tracking problems and quadriceps insufficiency with antalgic gait. Dr. Rottenberg stated that appellant had residuals of her employment-related knee condition and opined that she was disabled for work even if it was sedentary secretarial or clerical work as such work did not afford appellant the opportunity to adjust her position to accommodate the left knee pain and swelling problems. He stated that appellant required continued medical treatment and noted that she may eventually require a left total knee arthroplasty or knee replacement due to advanced changes in her left knee. Dr. Rottenberg's report is insufficient to establish appellant's burden because there is no evidence of record establishing that appellant's light-duty secretarial position did not allow her to

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<sup>1</sup> *Terry R. Hedman*, 38 ECAB 222 (1986).

<sup>2</sup> *Carmen Gould*, 50 ECAB 504 (1999); *Lourdes Davila*, 45 ECAB 139, 142 (1993); *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

<sup>3</sup> *Alfredo Rodriguez*, 47 ECAB 437, 441 (1996); *Louise G. Malloy*, 45 ECAB 613 (1994).

adjust her position to accommodate her knee condition, rather appellant's hearing testimony on March 29, 2000 reveals that her employer, Jay Trucks and Associates, took great measures to accommodate her knee condition.<sup>4</sup> Further, Dr. Rottenberg did not provide any medical rationale to support his opinion that appellant had residuals of her August 28, 1989 employment injury, which caused her to be disabled for work beginning March 27, 1996.

Appellant submitted numerous medical treatment notes and reports concerning the treatment of her left knee. This evidence is insufficient to establish appellant's burden inasmuch as it predates her alleged recurrence of disability on March 27, 1996 and thus, it does not address a causal relationship between appellant's recurrence on that date and her accepted employment-related left knee condition.

Treatment notes dated April 30, 1996 from Dr. J.R. Szczepanski, appellant's treating physician and an osteopath, indicated that appellant experienced left knee pain; however, it does not address whether this pain and any resultant disability were caused by appellant's accepted employment injury.

Dr. Hansen, an Office referral physician, submitted a July 2, 1998 report providing a factual and medical background, his findings on physical examination and a review of the medical records. He stated that appellant had a post-traumatic painful left knee, bilateral partial meniscectomies of the left knee, possible reflex sympathetic dystrophy, nontraumatic chronic low back pain since 1992 and depression. Dr. Hansen noted that there appeared to be some degree of symptom magnification and that appellant was hyperreactive relative to the left knee. He also noted that appellant could participate in activities as tolerated. Dr. Hansen stated that, although appellant could not tolerate secretarial work, he had no objection to trying this type of work again. He noted possible medical treatment for appellant's physical and emotional conditions. Dr. Hansen opined that the duties of appellant's secretarial position appeared to be appropriate even though she experienced a temporary aggravation of her symptoms. He nonetheless opined that he saw no evidence that appellant's condition materially worsened as a result of those duties and there was a possibility that appellant's back condition developed secondary to an abnormal gait pattern, but it could not be confirmed. Dr. Hansen stated that additional medical testing was necessary to determine whether appellant had reflex sympathetic dystrophy due to her knee injury. He concluded that sedentary activity with an option to sit and

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<sup>4</sup> At the hearing, appellant testified that her employer made accommodations for her knee injury. She stated that the employer provided her with a special chair and something to put her feet up to help the blood circulation and something else to put her leg on. Appellant further stated that a female coworker brought her an ice pack and she was allowed to use it while she was sitting and doing her work. She testified that she was allowed to stand and move during meetings if necessary. Appellant further testified:

"They done everything they could. They wouldn't allow me to do any filing where I had to stoop or bend. Anything above my shoulders was not -- they would not let me file. I was supposed to be in there copying files for attorneys to go to a hearing and stuff, massive files like that, it takes hours sometimes. They wouldn't let me do it, even with a chair there, they wouldn't let me do it. They had someone else do the copying and bring them to me for me to put in the order that they needed to be in or whatever. They done everything short of putting a bed down there for me to lay in. But they done everything."

stand would not be contraindicated. Dr. Hansen's accompanying work capacity evaluation revealed that appellant could work full time with certain physical restrictions. His opinion is one of reasonable medical certainty explained by medical rationale and based on a complete and accurate factual and medical background. Dr. Hansen's opinion constitutes the weight of the medical evidence and establishes that appellant did not sustain a recurrence of disability on March 27, 1996 causally related to her August 28, 1989 employment injury.

The Office advised appellant of the type of medical evidence required to establish her recurrence claim; however, she failed to submit such evidence. She did not provide a rationalized medical opinion to describe or explain how her current knee problems were caused by her August 28, 1989 employment-related left knee strain and torn medial meniscus. As appellant has failed to submit any probative medical evidence establishing that she sustained a recurrence of disability on March 27, 1996, due to her accepted employment injury, the Office properly denied her claim for compensation.

The Board further finds that appellant has failed to establish that she sustained a consequential back injury as a result of her August 28, 1989 employment injury.

Appellant has the burden of establishing by the weight of reliable, probative and substantial evidence that any consequential injury claimed was caused or aggravated by her federal employment injury. As part of this burden, she must submit a rationalized medical opinion, based upon a complete and accurate factual and medical background, showing a causal relationship between the injury claimed and her consequential condition.<sup>5</sup> Causal relationship is a medical issue that can be established only by medical evidence.<sup>6</sup> The fact that a condition manifests itself or worsens during a period of the employment injury does not raise an inference of a consequential relationship.<sup>7</sup>

In this case, appellant has not submitted any rationalized medical evidence supporting that her back condition was a consequence of her left knee strain and torn medial meniscus. She submitted several treatment notes and reports regarding the treatment of her back; however, they failed to address whether her back condition was caused by her August 28, 1989 employment injury.

Appellant also submitted Dr. Szczepanski's treatment notes dated January 8, February 2, March 4, April 2 and 27, May 3, June 21 and November 18, 1993 and June 28, 1995 revealing that she sustained a back condition due to her employment-related knee injury. She also submitted his letters dated June 2, 1993, May 12, 1995 and January 10, March 27 and May 7, 1996 finding that her back condition was caused by her employment-related knee injury. Dr. Szczepanski failed to provide any medical rationale explaining how or why appellant's back condition was caused by her accepted August 28, 1989 employment injury in his treatment notes and letters.

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<sup>5</sup> See, e.g., *Steven R. Piper*, 39 ECAB 312 (1987).

<sup>6</sup> *Mary J. Briggs*, 37 ECAB 578 (1986); *Ausberto Guzman*, 25 ECAB 362 (1974).

<sup>7</sup> See *Paul D. Weiss*, 36 ECAB 720 (1985); *Hugh C. Dalton*, 36 ECAB 462 (1985).

The medical evidence of record fails to demonstrate that appellant's back condition was a consequence of her August 28, 1989 employment injury. As such, appellant has failed to establish a causal relationship between her accepted injury of August 28, 1989 and her back condition. Accordingly, the Office properly denied benefits.

The March 26, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC  
September 16, 2003

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member