

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of CYNTHIA A. TOMS and DEPARTMENT OF THE AIR FORCE,  
62<sup>nd</sup> COMMUNICATIONS SQUADRON, McCHORD AIR FORCE BASE, WA

*Docket No. 00-25; Submitted on the Record;  
Issued December 11, 2000*

---

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
PRISCILLA ANNE SCHWAB

The issues are: (1) whether appellant established that she was temporarily totally disabled during the period July 18 through 29, 1996 as a result of her accepted employment injury of April 5, 1996; (2) whether the Office of Workers' Compensation Programs properly terminated appellant's authorization for medical treatment effective February 12, 1999; and (3) whether the Office properly denied appellant's request for an oral hearing.

On April 9, 1996 appellant, then a 47-year-old telephone operator, filed a traumatic injury claim, explaining that, while seated at her office desk on April 5, she struck her left knee on the keyboard table frame. Appellant ceased working on April 10 and returned to work on April 23, 1996.<sup>1</sup>

On June 14, 1996 the Office accepted appellant's claim for left knee contusion. Appellant ceased work again on July 18, 1996 and resumed her prior duties on July 30, 1996.<sup>2</sup> She subsequently filed a claim for wage-loss compensation for July 18 through 29, 1996.

In support of her claim, appellant submitted a July 18, 1996 report from Dr. Dale L. Hirz, a Board-certified orthopedic surgeon. Dr. Hirz expressed concern that appellant may have a chondral defect as a result of her April 1996 employment injury. He recommended a magnetic resonance imaging (MRI) scan to determine the need for arthroscopic surgery. Additionally, Dr. Hirz excused appellant from work from July 18 through 29, 1996.

---

<sup>1</sup> Appellant was able to return to her regular duties because the position of telephone operator was sedentary in nature and required only "some walking, bending and carrying of light items."

<sup>2</sup> Appellant subsequently resigned from her position effective April 23, 1997. Her apparent reason for resigning was a desire to pursue a cure for her continuing knee condition.

In a follow-up report dated August 22, 1996, Dr. Hirz noted that appellant continued to have pain and swelling in her left knee and that she reported an episode of her knee giving way. He discussed the recent findings on an MRI scan,<sup>3</sup> and explained that while there was no evidence of any intra-articular problems, there still remained the possibility of a contusion that was causing appellant's symptoms. However, in light of the "paucity of physical findings," Dr. Hirz recommended a neurological consultation.

By decision dated October 24, 1996, the Office denied appellant's claim for wage-loss compensation on the basis that the medical evidence failed to establish that appellant was disabled during the claimed period. Additionally, the Office terminated appellant's medical benefits.

Appellant requested an oral hearing, and by decision dated February 5, 1998 and finalized February 11, 1998, the Office hearing representative reversed the decision to terminate appellant's medical benefits. She also remanded the case for further evidentiary development to determine whether appellant's knee condition had resolved.

On remand, the Office sought clarification from Dr. Hirz regarding appellant's claimed disability from July 18 through 29, 1996. In a report dated June 17, 1998, Dr. Hirz diagnosed early degenerative arthritis of the left knee. However, he did not specifically attribute appellant's current condition to her accepted employment injury. Nor did he provide any further information regarding the basis for his prior opinion that appellant was disabled from July 18 through 29, 1996.

The Office referred appellant for a second opinion evaluation to Dr. James B. Smith, a Board-certified orthopedic surgeon. In reports dated July 13 and 30 and October 28, 1998, Dr. Smith noted his findings on physical examination and stated that appellant's October 26, 1998 MRI revealed changes consistent with early osteoarthritis, but no evidence of a traumatic episode. He found no evidence of a disability resulting from the April 5, 1996 incident. Dr. Smith explained that it was inconceivable that the trivial trauma described by appellant could have produced the changes in the articular cartilage. He added that it was much more likely that appellant's osteoarthritis was in its beginning stages at the time of her April 5, 1996 injury and that she reasonably, but erroneously, ascribed her symptoms to her injury.

Dr. Smith stated that, at worst, appellant sustained a bruised knee on April 5, 1996 and the natural history of bruises was for spontaneous resolution within 6 to 12 weeks.

Dr. Smith concluded that there was no evidence that the claimed period of disability from July 18 through 28, 1996 was caused by appellant's April 5, 1996 injury. He further indicated that there was no evidence that appellant was unable to perform her duties as a telephone operator. Lastly, Dr. Smith explained that because there were no objective findings of a condition resulting from an injury, there was no need for present or future treatment.

---

<sup>3</sup> A July 24, 1996 MRI of the left knee revealed moderate-sized joint effusion, intact cruciate and collateral ligaments and no evidence of meniscal tear.

In a decision dated February 12, 1999, the Office denied appellant's claim for wage-loss compensation from July 18 through 29, 1996. The Office also found that appellant had no continuing employment-related disability or condition and, therefore, terminated appellant's medical benefits.

By letter dated March 15, 1999 and postmarked March 17, 1999, appellant requested an oral hearing. In a decision dated June 8, 1999, the Office found that appellant did not submit her request for an oral hearing within 30 days of the Office's February 12, 1999 decision and, therefore, was not entitled to a hearing as a matter of right. Additionally, the Office considered the matter in relation to the issues involved and denied appellant's request on the basis that the issues could equally well be addressed through the reconsideration process.

The Board finds that appellant has not met her burden of proof in establishing that she was temporarily totally disabled from July 18 through 29, 1996.

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 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 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 employment-related condition or a change in the nature and extent of the light-duty job requirements.<sup>4</sup>

The Board finds that there is no indication from the record of a change in the nature and extent of appellant's job requirements as a telephone operator. The record indicates that appellant's regular duties were sedentary in nature and required only "some walking, bending and carrying of light items." Appellant has not specifically alleged that her job duties changed following her initial return to work on April 23, 1996.

Appellant has also failed to demonstrate a change in the nature and extent of her employment-related condition. Although Dr. Hirz excused appellant from work during July 18 through 29, 1996, he did not explain why appellant was unable to perform her duties as a telephone operator. His July 18, 1996 note simply reads "off work [July 24, 1996] due to knee injury."

In a similarly dated report, Dr. Hirz noted a "mild to moderate effusion of the knee." Although he expressed concern that appellant may have sustained a chondral defect as a result of her April 1996 injury, Dr. Hirz did not explain why appellant was unable to work. Despite subsequent efforts by the Office to obtain clarification from Dr. Hirz, no further justification was offered for his decision to excuse appellant from work. Consequently, Dr. Hirz's opinion does not rise to the level of rationalized medical opinion evidence.<sup>5</sup>

---

<sup>4</sup> *Mary A. Howard*, 45 ECAB 646 (1994); *Terry R. Hedman*, 38 ECAB 222 (1986).

<sup>5</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

In contrast, Dr. Smith clearly explained that there was no evidence of a disability resulting from the April 5, 1996 incident. He stated that, at worst, appellant bruised her knee, an injury which would have resolved within 12 weeks.<sup>6</sup> He concluded that there was no evidence that the claimed period of disability beginning on July 18, 1996 was caused by appellant's April 5, 1996 employment injury or that appellant was unable to perform her duties as a telephone operator.

Accordingly, the evidence of record fails to establish that appellant was temporarily totally disabled from July 18 through 29, 1996.

The Board also finds that the Office properly terminated appellant's authorization for medical treatment effective February 12, 1999.

The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.<sup>7</sup> To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.<sup>8</sup>

Based on his June 1998 examination, Dr. Hirz diagnosed early degenerative arthritis. However, he did not specifically attribute appellant's current left knee condition to her accepted employment injury of April 5, 1996. While Dr. Smith similarly diagnosed osteoarthritis, he clearly indicated in his October 28, 1998 supplemental report that this condition most likely predated appellant's April 5, 1996 employment injury. Dr. Smith further explained that because there were no objective findings of a condition resulting from an injury, there was no indication for present or future treatment.

Accordingly, the medical evidence establishes that by February 12, 1999, appellant no longer had residuals of an employment-related condition that required further medical treatment. Therefore, the Office properly terminated appellant's authorization for medical treatment.

The Board further finds that the Office properly denied appellant's request for an oral hearing.

Any claimant dissatisfied with a decision of the Office shall be afforded an opportunity for an oral hearing or, in lieu thereof, a review of the written record. A request for either an oral hearing or a review of the written record must be submitted, in writing, within 30 days of the date of the decision for which a hearing is sought. A claimant is not entitled to a hearing or a review of the written record if the request is not made within 30 days of the date of the decision for which a hearing is sought.<sup>9</sup> The Office has discretion, however, to grant or deny a request

---

<sup>6</sup> Appellant's claimed recurrence of disability occurred approximately 15 weeks following her April 5, 1996 employment injury.

<sup>7</sup> *Furman G. Peake*, 41 ECAB 361, 364 (1990); *Thomas Olivarez, Jr.*, 32 ECAB 1019 (1981).

<sup>8</sup> *Furman G. Peake*, *supra* note 7; *Calvin S. Mays*, 39 ECAB 993 (1988).

<sup>9</sup> 20 C.F.R. § 10.616(a) (1999).

that is made after this 30-day period.<sup>10</sup> In such a case, the Office will determine whether a discretionary hearing should be granted and, if not, will so advise the claimant with reasons.<sup>11</sup>

Appellant's request for an oral hearing was dated March 15, 1999 and postmarked March 17, 1999, which is more than 30 days after the Office's February 12, 1999 decision. As such, appellant is not entitled to an oral hearing as a matter of right. Appellant argues on appeal that the 30-day requirement is "unfair." However, appellant acknowledged receiving the February 12, 1999 decision on February 19, 1999 thus affording her ample time within which to file a request for an oral hearing, as she had done previously in this case.

The Office considered whether to grant a discretionary review and correctly advised appellant that the issues of whether she was entitled to wage-loss compensation for July 18 through 29, 1996 and whether she had any continuing employment-related disability or condition could equally well be addressed by requesting reconsideration.<sup>12</sup> Accordingly, the Board finds that the Office properly exercised its discretion in denying appellant's untimely request for a hearing.

The decisions of the Office of Workers' Compensation Programs dated June 8 and February 12, 1999 are hereby affirmed.

Dated, Washington, DC  
December 11, 2000

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Member

Priscilla Anne Schwab  
Alternate Member

---

<sup>10</sup> *Herbert C. Holley*, 33 ECAB 140 (1981).

<sup>11</sup> *Rudolph Bermann*, 26 ECAB 354 (1975).

<sup>12</sup> The Board has held that a denial of review on this basis is a proper exercise of the Office's discretion. *E.g.*, *Jeff Micono*, 39 ECAB 617 (1988).