

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MICHELLE L. NEAL and DEPARTMENT OF LABOR,  
JOB CORPS CENTER, Morganfield, KY

*Docket No. 98-102; Submitted on the Record;  
Issued October 22, 1999*

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DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective May 2, 1997 on the grounds that she had no disability due to her May 12, 1996 employment injury after that date.

On May 13, 1996 appellant, then an 18-year-old job corps enrollee, filed a claim for compensation alleging that on May 12, 1996 she injured her left ankle while on an employing establishment-sponsored outing.

In a report dated May 20, 1996, the employing establishment stated that appellant had been terminated on May 16, 1996 for medical reasons.

On May 23, 1996 the Office authorized Dr. Joseph Irvine Hoffman, Board-certified in orthopedic surgery and appellant's treating physician, to provide medical treatment for appellant's "reinjured left ankle."

In a report dated June 11, 1996, the employing establishment stated that appellant sustained a "reinjury to her left ankle while roller skating during a center sponsored trip," and recommended that appellant "return to the physician that treated her original injury." The employing establishment also noted that appellant's termination date was May 16, 1996. Attached to the employing establishment's report were medical reports from its physician, Dr. Jaime Tiu, a general practitioner, who stated on May 12, 1996 that appellant had twisted her left ankle while skating, which caused swelling, that on May 13, 1996 x-rays showed a healed brake and that on May 14, 1996 x-rays showed dislocation. Appellant's nurse noted her subjective complaints of "difficulty getting around."

On July 9, 1996 appellant filed a claim for recurrence of disability alleging that she reinjured her left ankle on May 12, 1996.

On July 30, 1996 the Office advised appellant that it had received her claim of injury of May 12, 1996, but that it needed additional information including medical information concerning her prior ankle injury.

In a medical report dated May 23, 1996 and received by the Office on July 18, 1996, Dr. Hoffman stated that appellant had sustained an inversion injury to the left ankle on May 10, 1996<sup>1</sup> and that recent x-rays revealed “marked widening of the ankle mortis, which is in fact the situation obtained one year ago when she was treated for a fracture of the left fibula with marked diastasis of the distal ribio-fibular syndesmosis.” Although he noted that appellant related no symptoms during the last year, Dr. Hoffman stated that given the diagnosis of the side diastasis, “it is difficult to imagine this.” He advised appellant to continue to use anti-inflammatory medication and return in two weeks.

In a March 27, 1995 medical report, received by the Office on July 30, 1996, Dr. Hoffman stated that appellant had sustained a fracture of the left tibia and diastasis of her left distal tibiofibular syndesmosis and that he had performed a surgical reduction on March 22, 1995. In a medical report dated April 24, 1995, also received on July 30, 1996, Dr. Hoffman stated that he had examined appellant post surgery noting that she had removed the cast herself sometime prior to the examination and determined that x-rays revealed “widening of the distal tibiofibular syndesmosis with incomplete healing of the fracture of the distal fibula.” Dr. Hoffman noted that appellant was unable to walk on “her tip toes due to pain in the mid portion of the ankle joint” and that she would require additional surgery.

On August 27, 1996 the Office accepted appellant’s claim for left ankle sprain.

On October 3, 1996 the Office placed appellant on the periodic rolls and approved surgery on her left ankle. The Office also notified the nurse consultant that the employing establishment “will only allow [appellant] to return through November 12, 1996.”

On November 4, 1996 in a telephone memorandum, the nurse consultant stated that appellant “will probably release after 2 months if no problems. [Appellant] had prior injury to same part of body-it did not heal properly.”

On November 5, 1996 the Office’s nurse consultant stated that she had interviewed appellant and that appellant related a prior left leg fracture as a result of falling off a ladder in 1995, resulting in a cast being placed on by Dr. Hoffman, that after the initial operation a cousin removed the cast due to swelling and that she did not see the doctor after the cast was removed. The nurse also noted that upon examination by the doctor that appellant wobbled at the ankle which made her unstable. Appellant related that she fell a lot. The nurse noted that Dr. Hoffman agreed to a second surgery and would insert a pin in her left ankle for proper alignment. He noted that it would take two months to heal. The nurse consultant also noted that appellant had agreed to a local anesthetic. She further noted that the employing establishment stated that appellant’s position was open for six months, which was ending on November 12, 1996 and that she would need to be fully healed in order to fill the position by that date.

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<sup>1</sup> The date of the injury was May 12, 1996.

In a November 19, 1996 telephone memorandum, the nurse consultant stated that appellant “walked out on surgery last week. She had (an) epidural in and was on the table already. She then began pulling everything out and walked away.”

In a report dated November 29, 1996 and received by the Office on December 2, 1996 Dr. Hoffman stated that, since appellant declined surgery, she was considered to have recovered and be at the same level and condition as at the time of the sprain/strain injury of May 12, 1996 and that appellant could now be released to return to full participation in her previous position without restrictions.

In a December 9, 1996 report, the nurse consultant stated that on November 12, 1996 appellant canceled surgery after she was on the surgical table “when she started pulling and yanking on the lines.” Appellant related that she stopped surgery because “her heart was racing and the medicine was making her stomach hurt.” The nurse consultant also noted that Dr. Hoffman advised that neither a corrective shoe, brace or physical therapy would be useful for appellant.

On February 24, 1997 the Office proposed to terminate appellant’s compensation and provided appellant 30 days to submit argument or evidence showing just cause as to why the Office should not take the action.

On May 2, 1997 the Office terminated appellant’s compensation on the grounds that the evidence of file demonstrated that appellant had recovered from her left ankle sprain and returned to the same level and condition she was prior to the work-related injury.

The Board has duly reviewed the case record in the present appeal and finds that the Office improperly terminated appellant’s compensation effective May 2, 1997 on the grounds that she had no disability due to her May 12, 1996 employment injury after that date.

Under the Federal Employees’ Compensation Act,<sup>2</sup> once the Office has accepted a claim it has the burden of justifying termination or modification of compensation benefits.<sup>3</sup> The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.<sup>4</sup> The Office’s burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>5</sup>

In the present case, the Office accepted that appellant sustained an employment-related left ankle sprain on May 12, 1996. By decision dated May 2, 1997, the Office terminated appellant’s compensation effective that date based on the medical opinion of Dr. Hoffman, appellant’s treating physician and Board-certified in orthopedic surgery. In its

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

<sup>4</sup> *Id.*

<sup>5</sup> *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

decision, the Office determined that appellant had recovered from her May 12, 1996 left ankle sprain and had returned to the same level and condition she was prior to the May 12, 1996 work-related injury based on Dr. Hoffman's November 29, 1996 medical report.

The Board has reviewed Dr. Hoffman's responses and notes that they are not sufficient to carry the weight of the medical evidence on the relevant issue of the present case in that they do not contain sufficient medical rationale in support of their conclusions on whether appellant no longer has residuals of her accepted injury causal relationship.<sup>6</sup> For example, after appellant refused to complete the Office authorized left ankle operation on November 12, 1996, he stated that neither a corrective shoe, brace or physical therapy would benefit appellant, that Dr. Hoffman no longer wished to remain as her doctor, but that, in spite of the doctor not being able to complete the approved surgery, stated yes to the question as to whether appellant could be considered to have recovered from and be at the same level and condition as at the time of her sprain/strain of May 12, 1996. The Board notes that the doctor's conclusion, that appellant no longer had residuals of her work-related injury in spite of the doctor not finishing his operation and declining to offer additional assistance to appellant, cannot be considered rationalized medical opinion. Indeed, in the nurse consultant's November 9, 1996 report, Dr. Hoffman related that appellant's initial 1995 injury had not healed properly, that appellant related that she was wobbly and fell often after the initial operation and that the doctor was going to insert a pin to properly align appellant's ankle. Given these conditions, Dr. Hoffman's conclusion that appellant, absent surgery, has returned to her preinjury state is unrationalized and thus failed to support the Office's burden of proof that appellant no longer had residuals of her work-related injury. Dr. Hoffman did not adequately explain why appellant would no longer have residuals of her May 12, 1996 employment injury in spite of his inability to complete corrective surgery. Although he indicated that appellant had returned to the same condition as prior to her accepted injury of May 12, 1996, he failed to explain the medical process through which appellant's employment-related left ankle sprain/strain would have resolved.

For these reasons, Dr. Hoffman did not provide an adequately rationalized medical opinion that appellant ceased to have residuals of her May 12, 1996 employment injury. Because the Office did not provide an adequate basis for its determination that appellant ceased to have residuals of her May 12, 1996 employment injury after May 2, 1997, the Office did not meet its burden of proof to terminate appellant's compensation effective May 2, 1997.

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<sup>6</sup> See generally *Arlonia B. Taylor*, 44 ECAB 591(1993).

The May 2, 1997 decision of the Office of Workers' Compensation Programs is reversed.<sup>7</sup>

Dated, Washington, D.C.  
October 22, 1999

George E. Rivers  
Member

David S. Gerson  
Member

Willie T.C. Thomas  
Alternate Member

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<sup>7</sup> The Board notes that subsequent to the Office's May 2, 1997 decision, appellant submitted additional evidence. The Board has no jurisdiction to review this evidence for the first time on appeal. 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).