

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GLORIA J. AULD and DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, San Jose, CA

*Docket No. 99-592; Submitted on the Record;
Issued December 7, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant's disability and need for medical treatment causally related to her April 12, 1989 employment injury ended by July 23, 1995.

The Office of Workers' Compensation Programs accepted that appellant's April 12, 1989 injury, in which she fell, landing on her left knee and low back, resulted in an abrasion of the left knee, a back strain and chondromalacia of the left knee. She received continuation of pay from April 13 to May 30, 1989, with the exception of May 17 to 19, 1989, when she attended training sessions. Appellant used paid leave from May 31 to June 13, 1989, which the Office determined she was entitled to buy back. With the exception of September 6 and 8, 1989, on which she worked four hours each day, the Office paid compensation for temporary total disability from June 14, 1989 until July 22, 1995.

By decision dated July 14, 1995, the Office found that the weight of the medical evidence established that appellant no longer had a medical condition or disability causally related to her April 12, 1989 employment injury; the Office terminated appellant's compensation effective July 23, 1995. She requested a hearing, which was held on November 18, 1997, but the hearing transcript was lost and appellant elected to have a review of the written record. By decision dated September 17, 1998, an Office hearing representative found that the weight of the medical evidence established that appellant's employment-related conditions resolved by at least July 23, 1995.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.¹

¹ *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

The Board finds that the Office met its burden of proof to terminate appellant's compensation effective July 23, 1995.

Regarding appellant's left knee condition, the Office accepted chondromalacia based on the September 21, 1989 report of Dr. David Graubard, a Board-certified orthopedic surgeon to whom it referred appellant for a second opinion evaluation. In a report dated February 8, 1990, he stated that appellant's traumatic chondromalacia had resolved. Dr. Robert G. Aptekar, a Board-certified orthopedic surgeon to whom the Office referred appellant, stated in a July 16, 1991 report that appellant's left knee condition had completely resolved. Even appellant's attending physician, Dr. James H. Quakenbush, a Board-certified family practitioner, stated in a March 12, 1991 report that all appellant's conditions except that of her low back "resolved fairly promptly" and that she could return to the job of secretary that she held when injured.

In a report dated May 4, 1995, Dr. Samuel M. Wayne, a Board-certified orthopedic surgeon to whom the Office referred appellant for a second opinion evaluation, set forth appellant's history, complaints and findings on examination and reviewed the prior medical evidence. He concluded:

"1. Based on my examination and review of the record, I do not feel that, on an objective orthopedic basis, there is any medical evidence that there are any employment-related factors currently active or causing objective findings. [Appellant] had multiple nonorganic findings that were not consistent with orthopedic injury. As previously noted, the psychiatric examination by Dr. Greils indicates hysterical elements and possible secondary gain. There is no physiological basis, that I can determine, that would substantiate her current orthopedic complaints.

"2. The employment-related conditions as expressed in the statement of accepted facts, in my opinion, have resolved; as far as any work-related orthopedic condition is concerned. I do not find any orthopedic condition that would be considered work related either by direct cause, aggravation, precipitation or acceleration."

* * *

"4. Based on my understanding of the job duties of a secretary and in reviewing the job description for that position, it is my orthopedic opinion that [appellant] is not currently disabled from performing her duties as a secretary based upon the injury of April 12, 1989."

* * *

"6. On an orthopedic basis, I do not feel there is any need for medical treatment in relation to [appellant's] work-related injuries."

Subsequent to the Office's termination of her compensation, appellant submitted additional medical reports regarding her left knee. In a report dated September 27, 1995, Dr. Terence J. Delaney, a Board-certified orthopedic surgeon, stated that in his opinion appellant's treatment, including the arthroscopic surgery he performed on her left knee on

August 15, 1995, was “directly related to the industrial injury [appellant] sustained, when she slipped and fell in her employment with the [employing establishment] on April 12, 1989. [She] had an intraarticular injury of the left knee, was treated by a local orthopedic surgeon without surgery. [Appellant] had persistent pain in the left knee since this injury and underwent surgical intervention as described above.” This report does not establish that appellant’s left knee condition described by Dr. Delaney is causally related to her April 12, 1989 employment injury. Dr. Delaney’s postoperative diagnoses -- Grade IV full thickness full chondral defect distal lateral femoral condyle and moderate reactive synovitis of the left knee -- are not conditions accepted by the Office and differ from the condition diagnosed in Dr. Delaney’s June 7, 1995 report: retropatellar chondromalacia with articular injury involving the patellofemoral joint of the left knee. Dr. Delaney’s surgical report indicates appellant’s chondromalacia was consistent with her age. His opinion that appellant’s condition is causally related to her employment injury because she was asymptomatic before the injury is insufficient, without supporting rationale, to establish causal relation,² especially in light of her degenerative changes of the knee joint.

In a report dated November 21, 1997, Dr. John C. Zauner, a Board-certified orthopedic surgeon, stated that a magnetic resonance imaging (MRI) scan of appellant’s left knee in December 1996 showed a tear of posterior horn of the medial meniscus, a probable complete tear of the anterior cruciate ligament, a cartilaginous defect in the lateral femoral condyle and thinning and irregularity of the articular cartilage of the medial, lateral and patellofemoral compartments of the knee. Dr. Zauner attributed these defects, except for the generalized arthritic changes, to appellant’s April 12, 1989 employment injury. He, however, does not show an awareness of an MRI scan of appellant’s left knee done on July 5, 1989, which showed no definite meniscal tear, anterior cruciate ligaments within normal limits and normal appearing bony structures. Dr. Delaney did not explain how the changes seen on an MRI scan seven and one-half years after the employment injury that were not seen on the MRI scan three months after the injury could be causally related to the injury; without such an explanation, Dr. Delaney’s report is not sufficient to establish that the conditions seen on the December 1996 MRI scan are causally related to appellant’s April 12, 1989 employment injury.

Regarding appellant’s back condition, as noted above, Dr. Wayne, in his May 4, 1995 report, concluded that appellant’s lumbar strain sustained on April 12, 1989 had resolved and based this opinion on appellant’s absence of objective findings on examination. There is no medical evidence relatively contemporaneous with the Office’s termination of appellant’s compensation that indicates that appellant continues to have a low back condition causally related to her April 12, 1989 employment injury. Dr. Wayne’s May 4, 1995 report is sufficient to establish that appellant’s low back condition causally related to her April 12, 1989 employment injury ended by July 23, 1995.

Regarding appellant’s psychiatric condition, the Office accepted an earlier claim, filed on July 12, 1988, for an adjustment disorder with depression and for psychological factors affecting a physical condition, but found that her disability related to these employment-related conditions ended by the end of September 1988. This claim was not a subject of the Office hearing representative’s September 17, 1998 decision, nor is it the subject of this decision by the Board.³

² *Thomas D. Petrylak*, 39 ECAB 276 (1987).

³ 20 C.F.R. § 501.3(d) provides that an appeal to the Board must be filed within one year of the date of the

On appeal appellant contends that she does not have a psychiatric condition due to her April 12, 1989 employment injury. To investigate the possibility that she did have such a condition, the Office referred appellant to Dr. Howard Greils, a psychiatrist. In a report dated April 25, 1995, Dr. Greils concluded that appellant's April 12, 1989 injury "was not significant enough to aggravate, accelerate or precipitate agoraphobia with panic attacks; nor was it significant enough to aggravate, precipitate or accelerate her preexisting depressive disorder not otherwise specified or her histrionic dependent traits." Dr. Quakenbush stated in a March 24, 1994 report that it was difficult for him to say whether her psychological status was directly related to her employment injury. No psychiatric condition was accepted by the Office as being related to appellant's April 12, 1989 employment injury and the evidence does not establish that appellant has any such condition related to this injury.

The decision of the Office of Workers' Compensation Programs dated September 17, 1998 is affirmed.

Dated, Washington, DC
December 7, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member

decision being appealed. The most recent decision regarding appellant's July 12, 1988 claim for an emotional condition was issued by the Office on May 18, 1995, over three years prior to the filing of the present appeal.