

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of SONYA HAYES and DEPARTMENT OF DEFENSE,  
DEFENSE SUPPLY CENTER, Columbus, OH

*Docket No. 99-277; Submitted on the Record;*  
*Issued May 12, 2000*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
A. PETER KANJORSKI

The issue is whether appellant has met her burden of proof in establishing that she had a recurrence of partial disability due to her November 15, 1996 employment injury.

On November 15, 1996 appellant, then a 37-year-old program and management analyst, slipped and fell on wet spots on the floor as she entered the employing establishment, landing on her buttocks with her right leg underneath her. She stopped working that day. Appellant initially complained of pain in the right knee but subsequently indicated that within hours of the incident she began to feel pain in her back. In a February 5, 1997 report, Dr. Geraldine N. Urse, an osteopath, diagnosed strains and sprains of the cervical, thoracic, lumbosacral and sacroiliac regions as well as somatic dysfunction. She stated that appellant's fall on the buttocks caused trauma and force through the sacral area into the lumbar, thoracic and cervical regions. The Office of Workers' Compensation Programs accepted appellant's claim for a lumbosacral strain. She received continuation of pay for the period November 15, 1996 through January 3, 1997 and used leave for the period January 6 through January 15, 1997. The Office began payment of temporary total disability effective January 15, 1997.

In an April 6, 1997 report, Dr. Urse indicated that appellant could stand 20 to 30 minutes, sit in a chair with support for 10 minutes and walk on a flat surface for 10 to 15 minutes. She noted appellant was unable to climb stairs. Dr. Urse indicated that appellant should be able to return to work on May 5, 1997. Appellant returned to work, four hours a day, on May 5, 1997. She increased to six hours a day on May 19, 1997. The Office paid compensation for the hours appellant did not work. She was scheduled to return to work eight hours a day on June 2, 1997. However, in a June 4, 1997 note, Dr. Debra Grayson, an osteopath, indicated that appellant should return to a schedule of four hours a week, effective June 5, 1997. In a June 9, 1997 report, Dr. Urse stated that appellant was seen on June 3, 1997, complaining of increasing back pain since resuming an eight-hour day. She stated that the chair provided her supported her back

adequately.<sup>1</sup> Dr. Urse indicated that appellant was instructed to reduce her hours to six hours a day until the employing establishment provided her with an appropriate chair that supported her back and was dedicated to her use. In a June 16, 1997 report, she indicated that appellant, in her June 3, 1997 examination, related that, after she returned to work and then increased her hours of work, she noticed increased back pain which she related to an ill-fitting chair at work. Appellant requested that her hours be reduced to four hours a day until she received a properly fitted chair. Dr. Urse indicated that Dr. Grayson agreed to appellant's request until a proper chair arrived.

On July 1, 1997 appellant filed a claim for recurrence of disability effective June 3 and June 10, 1997. She indicated that she had attempted to increase her hours of work but was unable to do so because the chair she had been provided did not properly support her back. In a July 8, 1997 report, Dr. Urse indicated that appellant's chair, when adjusted, would give support to either the thoracic or lumbar regions but not both regions simultaneously. She repeated the previous reports in noting that appellant had increasing back pain due to an ill-fitting chair and that her hours were reduced until an appropriate chair could be provided. Dr. Urse noted that appellant was still having problems with the lumbar area of the chair not supporting her back properly. She stated that appellant could resume regular hours if she were provided with a support chair. Dr. Urse repeated her comments in a July 16, 1997 report.

In an August 12, 1997 decision, the Office denied appellant's claim for recurrence of disability on the grounds that the evidence of record did not support that appellant's claimed disability time from work beginning June 3, 1997 was causally related to the accepted work-related condition.

In a September 3, 1997 letter, appellant, through her attorney, requested a hearing before an Office hearing representative. At the June 22, 1998 hearing appellant testified that the employing establishment had never provided her with an appropriate chair which had been requested by Dr. Urse. She noted that shortly before the hearing, a temporary deputy had rented an appropriate chair for appellant but, after three weeks, the chair had to be returned. In a September 8, 1998 decision, the Office hearing representative found that the medical evidence of record did not establish that appellant's inability to work eight hours a day after June 3, 1997 was causally related to her accepted employment injury. He therefore affirmed the Office's August 12, 1997 decision.

The Board finds that appellant had not established that her partial disability after June 3, 1997 was causally related to her November 15, 1996 employment injury.

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 to establish 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

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<sup>1</sup> Although the report stated that appellant reported the chair given her provided adequate support, the context of the statement, with the rest of the report, suggests that Dr. Urse was attempting to relate that the chair provided appellant by the employing establishment did not provide adequate support.

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.<sup>2</sup>

Appellant submitted medical reports from Drs. Grayson and Urse who stated that appellant could not work eight hours a day after June 2, 1997 because she was not supplied with an appropriate chair that provided sufficient back support. Drs. Grayson and Urse indicated that appellant complained of increased back pain when she returned to work and increased her hours and related that the increased back pain was due to the lack of an appropriate chair for appellant. The physicians, however, did not provide a physiological explanation on how the lack of a proper chair would increase appellant's back pain or how the increased back pain was causally related to the November 15, 1996 employment injury.<sup>3</sup> Appellant therefore has not established that her recurrence of disability after June 3, 1997 was causally related to the November 15, 1996 employment injury.

The decision of the Office of Workers' Compensation Programs, dated September 8, 1998, is hereby affirmed.

Dated, Washington, D.C.  
May 12, 2000

Michael J. Walsh  
Chairman

David S. Gerson  
Member

A. Peter Kanjorski  
Alternate Member

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<sup>2</sup> *George DePasquale*, 39 ECAB 295 (1987); *Terry R. Hedman*, 38 ECAB 222 (1986).

<sup>3</sup> Appellant has not argued that sitting in a poorly fitted chair was a new occupational injury or was a consequential injury arising from the November 15, 1996 employment injury. She also did not raise the issue of whether, under 5 U.S.C. § 8103, the Office abused its discretion in not providing an appropriate ergonomic chair so as to provide relief and lessen the period of appellant's disability.