

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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

*Docket No. 00-2504; Submitted on the Record;
Issued July 10, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, BRADLEY T. KNOTT,
A. PETER KANJORSKI

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

The case has been on appeal previously.¹ In a May 12, 2000 decision, the Board noted that appellant slipped and fell at work on November 15, 1996. The Office of Workers' Compensation Programs accepted her claim for lumbosacral strain. Appellant received continuation of pay and temporary total disability compensation until she returned to work on May 5, 1997 for four hours a day. She increased to six hours a day on May 19, 1997 and was expected to increase to eight hours a day as of June 2, 1997. However, Dr. Debra Grayson, an osteopath, stated that appellant should return to working four hours a week as of June 5, 1997. Dr. Grayson and Dr. Geraldine N. Urse, an osteopath, attributed appellant's increased disability to her use of a chair at work that did not provide sufficient support for her back. The Board found that the reports of Drs. Grayson and Urse had little probative value because they did not describe in detail how the lack of an appropriate chair would increase appellant's back pain or how the increased back pain was causally related to the November 15, 1996 employment injury.

In a May 30, 2000 letter, appellant's attorney requested reconsideration. He argued that the Office did not determine whether it abused its discretion in not providing an appropriate ergonomic chair for appellant so as to provide relief and lessen the period of appellant's disability. Her attorney also contended that the Office did not consider whether appellant's recurrence of disability was a consequential injury arising from the November 15, 1996 employment injury. In a June 8, 2000 merit decision, the Office denied appellant's request for modification of its prior decisions.

The Board finds that appellant has not met her burden of proof in establishing that she had a recurrence of disability attributable to the employment injury.

¹ Docket No. 99-277 (issued May 12, 2000).

As stated in the prior decision, appellant has the burden of establishing by reliable, probative and substantial evidence that the recurrence of a disabling condition for which she seeks compensation was causally related to her employment injury. As part of such burden of proof, rationalized medical evidence showing causal relationship must be submitted.² The Board in the prior decision affirmed the Office's denial of appellant's claim on the grounds that such rationalized medical evidence showing causal relationship had not been submitted. In his request for reconsideration, appellant's attorney did not submit any medical evidence in support of appellant's claim but only presented legal arguments, neither of which would lead the Board to find that appellant had met her burden of proof.

Appellant's attorney contended that the Office abused its discretion in not providing an appropriate ergonomic chair for her. That issue, however, relates to the issue of medical benefits as allowed under section 8103 of the Federal Employees' Compensation Act.³ The Office has not considered or issued a decision on whether appellant was entitled to medical benefits so as to furnish her with an appropriate ergonomic chair. The attorney's argument, therefore, is premature. The Office cannot reconsider or modify a decision that has not been made. The Board can only review final decisions of the Office.⁴ The argument relating to appellant's chair, therefore, is irrelevant to the issue of whether appellant had submitted sufficient medical evidence to establish that she had a recurrence of partial disability.

Appellant's attorney also contended that the use of an ill-fitting chair at work should be considered a consequential injury. In the case of *John R. Knox*,⁵ regarding consequential injury, the Board stated:

"It is an accepted principal of workers' compensation law and the Board has so recognized, that when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause which is attributable to the employee's own intentional conduct. As is noted by Professor Larson in his treatise: '[O]nce the work-connected character of any injury, such as a back injury, has been established, the subsequent progression of that condition remains compensable so long as the worsening is not shown to have been produced by an independent nonindustrial cause.... [S]o long as it is clear that the real operative factor is the progression of the compensable injury, associated with an exertion that in itself would not be unreasonable [under] the circumstances. A different question is presented, of course, when the triggering activity is itself rash in the light of claimant's knowledge of his condition.'"⁶ (Citations omitted.)

² *Dominic M. DeScala*, 37 ECAB 369 (1986).

³ 5 U.S.C. § 8103.

⁴ 20 C.F.R. § 501.2

⁵ 42 ECAB 193 (1990).

⁶ *Id.* at 196.

While the attorney may argue that the use of an ill-fitting chair caused a consequential injury to appellant's back, such an argument must be supported by medical evidence. The attorney did not submit any new medical evidence in support of his contention that the use of the chair provided appellant caused a consequential injury that was related to the November 16, 1995 employment injury. His argument, therefore, is not sufficient to establish that appellant had a recurrence of disability that was causally related to the employment injury. Appellant still has not submitted the necessary rationalized medical evidence that would meet her burden of proof in establishing that her disability beginning June 5, 1997 was causally related to the employment injury.

The decision of the Office of Workers' Compensation Programs dated June 8, 2000 is hereby affirmed.

Dated, Washington, DC
July 10, 2001

Michael J. Walsh
Chairman

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member