

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SIDNEY HOLTZCLAW and DEPARTMENT OF DEFENSE,
OFFICE OF THE INSPECTOR GENERAL, Arlington, Va.

*Docket No.96- 766; Submitted on the Record;
Issued January 13, 1998*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has established entitlement to continuation of pay for his accepted herniated disc.

The Board has given careful consideration to the issue involved and the entire case record. The Board finds that the September 26, 1995 decision of the hearing representative of the Office of Workers' Compensation Programs is in accordance with the facts and law in this case, and hereby adopts the decision.¹

¹ The Federal Employees' Compensation Act provides for payment of continuation of pay, not to exceed 45 days, to an employee "who has filed a claim for a period of wage loss due to traumatic injury with his immediate supervisor on a form approved by the Secretary of Labor" within the specified time period. 5 U.S.C. § 8118. The implementing regulations provide that an employee is not entitled to continuation of pay unless the employee has sustained a traumatic injury. 20 C.F.R. § 10.201 (a). The term traumatic injury is defined by regulation as follows: "*Traumatic injury* means a wound or other condition of the body caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. The injury must be caused by a specific work event or incident or series of incidents within a single workday or work shift." 20 C.F.R. § 10.5(15). The term "occupational disease" is defined as follows: "*Occupational disease or illness* means a condition produced in the work environment over a period longer than a single workday or shift by such factors as systemic infection; continued or repeated stress or strain; or exposure to hazardous elements such as, but not limited to, toxins, poisons, fumes, noise, particulates, or radiation, or other continued or repeated conditions or factors of the work environment." 20 C.F.R. § 10.5(20). While appellant claimed initially that he injured his back lifting over two days on August 26 and 27, 1993 and the Office accepted his claim for a herniated disc, appellant later identified a one-half hour on August 27, 1993 the time of his injury. The initial medical reports, upon which the claim for a herniated disc was accepted, identified the two days of lifting as the time period appellant sustained his injury. A latter report from his physician cites the cumulative effect of lifting over two days as contributing to his condition, as well as the possibility that the rupture was caused during the period identified by appellant on August 27, 1993. The Board notes that this opinion is too speculative to establish the cause of the rupture as one single incident, and that without a more specific medical report to establish the cause of injury to one single incident, appellant is not entitled to continuation of pay. As stated by the Office hearing representative, his entitlement remains for wage-loss compensation in the form of a leave buy back and nontaxable payment at the two-thirds or three-fourths rate of pay.

The decision of the Office of Workers' Compensation Programs dated September 26, 1995 is hereby affirmed.

Dated, Washington, D.C.
January 13, 1998

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member