

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of NATHANIEL TAYLOR and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION, North Little Rock, Ark.

*Docket No. 97-39; Submitted on the Record;
Issued November 5, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant has met his burden of proof in establishing that he sustained a recurrent right inguinal hernia in the performance of duty on May 29, 1996, as alleged.

On June 3, 1996 appellant, then a 36-year-old food service worker, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that he sustained an employment-related hernia in the right groin on May 29, 1996. Appellant stated that he felt pain in his groin after pushing a pellet lowerator from the dish room. The record shows that appellant lost no time from work following the alleged incident, but noted that appellant had a previous surgical hernia repair in 1993.¹

The employing establishment controverted appellant's claim contending that the accident happened off duty and that appellant had surgery in November 1995 for an initial injury. The employing establishment also placed a note in the record dated June 3, 1996, which indicated that "[appellant] stated that he was pushing a pellet lowerator from the dish room when he felt a sharp pain in his groin. [Appellant] also stated that he did not report the incident immediately because it was personal." Appellant's supervisor indicated that they would instruct appellant in the correct procedure in pushing a lowerator.

Appellant submitted in support of his claim, a May 31, 1996, medical report from Dr. Gail Reede Jones, Board-certified in urology. Dr. Jones stated that appellant came to her office complaining of noted bulging in the area of his groin and stated that this occurred approximately less than two days ago while he was doing some lifting at work. On examination, Dr. Jones noted that there was evidence of a recurrent hernia on appellant's right; that appellant's old surgical site was identifiable; that the right hernia was quite obvious; but

¹ The record does not contain evidence indicating that appellant filed a separate claim for recurrence of disability (Form CA-2a). Therefore the issue of recurrence of disability will not be addressed.

questioned whether a left hernia existed as well. Dr. Jones also noted that appellant was a food service worker and diagnosed appellant as having sustained a right inguinal hernia with a possible left inguinal hernia as well. She referred appellant to Dr. Bobby Perry, an internal medicine physician practicing in general surgery.

In a medical report dated June 7, 1996, Dr. Perry examined appellant as requested by Dr. Jones for a hernia in the right groin. Dr. Perry reported that appellant advised him that he had previous hernia repair in 1993 and that “while he was at work lifting some heavy object he felt a pull in the right groin and subsequently began having pain and noticed that it was swollen.” Dr. Perry indicated that the right groin revealed a well-healed oblique incision and a bulging right inguinal hernia which was easily reduced and nonincarcerated at that time. He noted that the hernia did not extend into the scrotum, and no hernia was seen on the left. Dr. Perry went on to diagnose appellant as having sustained a recurrent right inguinal hernia, secondary to lifting a heavy load at work and scheduled appellant for repair of the hernia on June 20, 1996.

In addition, a duty status report from Dr. Perry dated June 7, 1996, described how appellant’s injury occurred “while lifting heavy load, right groin,” and stated that his clinical finding was “recurrent right inguinal hernia.” Dr. Perry checked a “yes” box indicating that the history of the injury as given by appellant corresponded with his description of how the injury occurred. In a second box, Dr. Perry checked “yes” indicating that appellant’s diagnosis was due to the injury as indicated in box number 5 of the duty status report. Appellant was placed on light duty with no lifting over five pounds.

By letter dated June 27, 1996, the Office of Workers’ Compensation Programs notified appellant that the information submitted with his claim was insufficient to establish that he sustained an injury in the performance of duty on May 29, 1996. The Office advised appellant of the type of factual and medical evidence needed to establish his claim and requested that he submit such. The Office specifically requested that appellant have his attending physician submit a detailed narrative report which included the history of the injury, examination findings, test results, diagnosis, the treatment provided, the effect of the treatment and the doctor’s opinion, with medical reasons on how the reported work incident caused or aggravated the claimed injury. Appellant was allotted until July 17, 1996 in which to submit the requested information.

On July 5, 1996 appellant responded to the Office’s June 16, 1996 letter. Appellant also submitted copies of the prior bills he accrued during his stay at the hospital for a right inguinal hernia repair on May 13, 1994; prior nursing discharge summary dated May 26, 1994; a prior physical therapy progress note with surgical outpatient discharge instructions dated May 15, 1994.

In a decision dated August 14, 1996, the Office rejected appellant’s claim on the grounds that the fact of injury was not established. The Office found that there was insufficient or conflicting evidence in the file regarding whether or not the claimed event, incident or exposure occurred at the time, place and in the manner alleged; and that medical condition resulting from the alleged work incident or exposure was not supported by the evidence of file.

The Board finds that appellant has met his burden of proof in establishing that he sustained a recurrent right inguinal hernia in the performance of duty on May 29, 1996, as alleged.

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing that the essential elements of his or her claim³ including the fact that the individual is an "employee of the United States" within the meaning of the Act,⁴ that the claim was timely filed within the applicable time limitation period of the Act,⁵ that an injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.⁶

In the instant case, the employing establishment controverted appellant's claim contending that the accident happened off duty; that appellant had surgery in November 1995 for an initial injury; and that appellant's supervisor would instruct appellant on the correct way to push a lowerator, however, it is not disputed that appellant's job required him to push, pull and/or lift a heavy pellet lowerator from the dish room in the performance of his duties. The Board, therefore, finds that the claimed event, incident or exposure occurred at the time, place and in the manner alleged by appellant.

The record contains a medical report dated May 31, 1996 by Dr. Gail Jones, which supports appellant sustained an injury. She reported the following:

"S: The patient returns today and states that he is doing much better on his Cardura. He primarily, though, complains today that he has noted bulging in the area of his groin and stated that this occurred approximately less than two days ago while he was doing some lifting at work. He is employed as a food service worker. He states that the area primarily is on the right. He has not had any chills or fever. No nausea or vomiting and has not noticed any discharge from his penis.

"O: On physical examination today, the patient does have evidence of a recurrent hernia on the right. Old surgical site is identified. There is question whether there is one on the left as well. The right hernia is quite obvious. It is easily reducible.

"A. Right inguinal hernia with possible left inguinal hernia as well.

² 5 U.S.C. §§ 8101-8193.

³ See *Daniel R. Hickman*, 34 ECAB 1220 (1983); see also 20 C.F.R. § 10.110.

⁴ See *James A. Lynch*, 32 ECAB 216 (1980); see also 5 U.S.C. § 8101(1).

⁵ 5 U.S.C. § 8122.

⁶ See *Melinda C. Epperly*, 45 ECAB 196 (1993); *Joe Cameron*, 42 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

“P: Will refer patient to Dr. Bobby Perry. Patient was informed that this most likely will require surgical repair as patient was inquiring whether medications could be given. It was explained to him that this would not correct this problem. He will return to this office on a prn [per as needed] basis.”

Dr. Perry submitted a report dated June 7, 1996. His report also supports appellant’s contention that he sustained an injury in the performance of duty. She reported the following:

“S: [Appellant] is a 36-year-old black male who was referred by Dr. Gail Jones for a hernia in the right groin. The patient states he previously had a hernia repair in 1993. While he was at work lifting some heavy objects, he felt a pull in the right groin and subsequently began having pain and noticed that it was swollen. He was then seen by Dr. Jones and was diagnosed with a recurrent right inguinal hernia and sent for further care.

“O: Blood pressure 120/90. Weight 143. Head, eyes, ears, nose and throat reveals some bilateral injection of the sclera. Neck supple. Lungs clear. Heart RRR. Abdominal exam[ination] is soft nondistended nontender. The right groin reveals a well-healed oblique incision. There is also noticed to be a bulging right inguinal hernia which easily reduced and nonincarcerated at this time. It does not extend into the scrotum. No Hernia is seen on the left side at this point.

“A: 1. Recurrent right inguinal hernia, secondary to lifting a heavy load at work.

“P: The patient is to be scheduled for a lap. Repair of the hernia. Procedure, risks and possible complications were discussed and the patient agreed and will give consent. We will schedule for hernia repair for June 20, 1996.”

A careful review of the above medical reports disclose that within two days of the work activity that appellant reported he engaged in, he sought medical attention and inquired about medication. Dr. Jones diagnosed right inguinal hernia with possible left inguinal hernia and referred appellant to Dr. Perry

Dr. Perry confirmed Dr. Jones diagnosis of right inguinal hernia, noted that this was a recurrent hernia based on the history appellant provided of having a previous hernia repaired in 1993 and scheduled appellant for surgery on June 20, 1996. He noted that the hernia was secondary to lifting a heavy load at work.

The Board finds that the medical reports of Drs. Jones and Perry are sufficient to establish that appellant sustained a right inguinal hernia on May 29, 1996 in the performance of duty. The case will therefore be remanded to the Office for a determination of the period of disability associated with the hernia, hernia repair surgery, and payment of appropriate medical expenses.

The decisions of the Office of Workers' Compensation Programs dated August 14, 1996 is reversed and the case remanded for further development consistent with this decision of the Board.

Dated, Washington, D.C.
November 5, 1998

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member