

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FREIDA J. HATCH and DEPARTMENT OF THE NAVY,
NORFOLK NAVAL SHIPYARD, Portsmouth, VA

*Docket No. 98-2125; Oral Argument Held May 9, 2000;
Issued September 6, 2000*

Appearances: *Robert J. Macbeth, Jr., Esq.* for appellant; *Catherine P. Carter, Esq.*,
for the Director, Office of Workers' Compensation Programs.

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant sustained an injury in the performance of duty on October 25, 1995.

The Board has duly reviewed the case record in the present appeal and finds that this case is not in posture for a decision.

An employee who claims benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his or her claim.² The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of the employment. As part of this burden, the claimant must present rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, establishing causal relationship.³ However, it is well established that proceedings under the Act are not adversarial in nature and while the claimant has the burden to establish entitlement to compensation, the Office of Workers' Compensation Programs shares responsibility in the development of the evidence.⁴

¹ 5 U.S.C. §§ 8101-8193.

² *Ruthie M. Evans*, 41 ECAB 416, 423-24 (1990); *Donald R. Vanlehn*, 40 ECAB 1237, 1238 (1989).

³ *Brian E. Flescher*, 40 ECAB 532, 536 (1989); *Ronald K. White*, 37 ECAB 176, 178 (1985).

⁴ *Dorothy L. Sidwell*, 36 ECAB 699, 707 (1985); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

On January 12, 1996 appellant, then a 47-year-old sheet metal mechanic, filed a claim for compensation benefits alleging that on October 25, 1995 she injured her back while moving sheets of aluminum onto a rack. By decision dated May 30, 1996, the Office denied appellant's claim. By decisions dated January 9 and July 1, 1997, the Office denied modification of its denial of appellant's claim. By decision dated June 9, 1998, the Office denied modification of its July 1, 1997 decision.⁵

In employing establishment medical clinic notes dated January 12, 1996, a nurse related appellant's complaint that she developed back pain following an incident at work on October 25, 1995 when she was moving sheets of metal. The nurse related that appellant took medication and limited her activities but the pain returned in December 1995.

In a form report dated February 7, 1996, Dr. William N. Hovland, appellant's attending internist, related that she injured her back in October 1995 at work while lifting plates of metal. He indicated that he had referred appellant to an orthopedic specialist, Dr. J. Abbott Byrd, III, an orthopedic surgeon.

In a report dated February 8, 1996, Dr. Byrd related that appellant injured her back at work on October 25, 1995 but continued to work and reinjured her back in December 1995 at work. He provided findings on examination and diagnosed "low back and lower extremity pain secondary to work injury in the face of L5-S1 spondylolisthesis."

In a report dated April 26, 1996, Dr. Byrd stated that appellant was being treated for low back and lower extremity pain due to spondylolisthesis at L5-S1. He stated:

"Historically, [appellant's] symptoms began when she suffered a work injury in her capacity of sheet metal mechanic at [the employing establishment] on October 25, 1995. [Appellant] denied any type of back pain prior to that incident. Certainly, however, her spondylolisthesis predated this injury. It is my opinion, however, based on [appellant's] history, that she suffered an exacerbation of a preexisting condition; and[,] had the work injury of October 25, 1995 not occurred, then she would not have had the pain for which I am treating her and for which I have recommended surgery."

In a report dated April 30, 1996, Dr. Hovland related that appellant had been his patient since 1991 and that she had not been treated for any back injury until her injury at work in 1995. He stated that he had also reviewed appellant's medical records dating back to 1985 and there did not appear to have been any back problems.

In a report dated July 30, 1996, Dr. Byrd related that he first saw appellant on February 2, 1996 for low back and extremity pain which appellant attributed to an injury at work on October 25, 1995. He noted that appellant continued to work but reinjured herself in December 1995 moving sheet metal. Dr. Byrd noted that x-rays had revealed spondylolisthesis at L5-S1

⁵ The Board notes that this case record contains additional evidence which was not before the Office at the time it issued its June 9, 1998 and July 1, 1997 decisions. The Board has no jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).

and a computerized tomography (CT) scan indicated stenosis. He noted that he last saw appellant on April 23, 1996 at which time she continued to have symptoms of back pain radiating to the lower extremity with numbness and tingling and he opined that appellant needed surgery. Dr. Byrd stated “my impression is low back pain with lumbar radiculopathy caused by [appellant’s] work injury superimposed upon preexisting lumbar spondylolisthesis.”

In a report dated May 23, 1997, Dr. Byrd related that on October 25, 1995 appellant was lifting heavy metal objects from a cart to a storage shelf which required twisting of the lumbar spine to lift the heavy metal and pushing of the heavy metal onto a shelf. Dr. Byrd stated:

“Though [appellant] had a preexisting spondylolisthesis at L5-S1, historically it had not caused symptomatology. It was this twisting of the spine that caused the already compromised situation at L5-S1 to become symptomatic because [appellant] did not have continuity of the posterior elements to face bilateral pars defects that would allow the spine to resist the twisting movement placed upon it....

“In my opinion it was this unresisted twisting which produced the injury to the spine resulting in symptomatology which, unfortunately has not been responsive to nonoperative treatment and for which operative treatment has now been recommended. [Appellant’s] symptoms continue although these were again aggravated by another incident in December 1995 which was superimposed upon the already compromised situation caused by the work injury of October 1995.”

In a report dated March 16, 1998, Dr. Hovland related that appellant was still suffering from disabling back pain. He related that appellant had never complained of back discomfort or problems with her back until January 1996 and she attributed her back pain to an incident at work in October 1995. Dr. Hovland stated:

“[Appellant] related the [October 25, 1995] injury to having to slide some heavy metal plates off a cart, which involved lifting and twisting and that subsequent to that she developed back pain with radiation of the pain down both legs.”

* * *

“A CT scan was obtained, which demonstrated lumbar spondylolisthesis that was probably a preexisting condition and predisposed her to injury due to the mechanism as described above. Because of the instability of her back and further aggravation caused by the twisting motion, she now has what appears to be an acquired spinal stenosis.”

* * *

“I think that there can be very little doubt that [appellant’s] injury is fully and totally related to the work-related event of October 25[, 1995] that [appellant] had some slight preexisting back problems but was asymptomatic from these

congenital defects, and that the work-related injury aggravated the situation, causing severe pain and marked limitations in [appellant's] functional capacity.”

The Board notes that the reports of Drs. Byrd and Hovland, appellant's attending physicians, are consistent in indicating that appellant sustained an employment-related injury on October 25, 1995 and are not contradicted by any substantial medical or factual evidence of record. Therefore, while the reports are not sufficient to meet appellant's burden of proof to establish her claim, they raise an uncontroverted inference between her claimed condition and the employment incident of October 25, 1995 and are sufficient to require the Office to further develop the medical evidence and the case record.⁶

Accordingly, the case will be remanded to the Office for further evidentiary development regarding the issue of whether appellant sustained an employment-related injury on October 25, 1995. After such development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

The decisions of the Office of Workers' Compensation Programs dated June 9, 1998 and July 1, 1997 are set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Dated, Washington, D.C.
September 6, 2000

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁶ *John J. Carlone*, 41 ECAB 354, 358 (1989).