

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of RICHARD E. FLOYD and DEPARTMENT OF THE NAVY,  
CONSTRUCTION BATTALION CENTER, Gulfport, Miss.

*Docket No. 97-36; Submitted on the Record;  
Issued December 10, 1998*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether appellant has established a recurrence of disability commencing August 9, 1990 causally related to his federal employment.

In the present case, appellant filed a notice of recurrence of disability on November 18, 1994 commencing August 9, 1990. He reported that the date of the original injury was January 7, 1975. By decision dated March 7, 1995, the Office of Workers' Compensation Programs denied the claim.

In a decision dated August 3, 1995, an Office hearing representative vacated the prior decision. The hearing representative stated that the Office had made no efforts to obtain records for File No. A7-77890, with a date of injury of May 18, 1970. She further noted that a November 14, 1994 report from Dr. Joe A. Jackson, a neurologist, "attributes the claimant's conditions to earlier injuries in 1970. Therefore, if it can be determined that the claimant was a federal employee and filed timely notice of injury, there is sufficient medical opinion evidence to warrant further development of the claim."

In a decision dated June 4, 1996, the Office found that appellant had not met his burden of proof in establishing a recurrence of disability commencing August 9, 1990.

The Board finds that the evidence requires further development.

As noted above, the hearing representative found that if it could be established that appellant was a federal employee and had filed a timely claim for a back injury in 1970, then the medical evidence would be sufficient to require further development of the claim. The Board finds that the record is sufficient to establish that appellant was a federal employee in 1970, and not only filed a claim for injury on May 18, 1970, but the claim had been accepted the Bureau of Employees' Compensation.<sup>1</sup>

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<sup>1</sup> This was the agency administering the Federal Employees' Compensation Act in 1970.

The record contains a letter dated January 21, 1971 from the Bureau to the Veterans Administration, which contains appellant's name, a File No. A7-77890, and a date of injury reported as May 18, 1970. The Bureau noted that it had authorized treatment by an orthopedic surgeon, and the employing establishment was requested to submit a report if appellant had been seen for treatment. The letter also contains a note to appellant that he may have his pharmacist submit a bill directly to the Bureau for authorized prescriptions. The record contains a Form CA-8 (claim for continuance of compensation on account of disability) which records a File No. of A7-77890, a date of injury of May 18, 1970 and was signed by a physician on November 30, 1970.

The Board finds that even though the Office has been unable to find additional personnel records, the existing evidence of record is probative, uncontradicted evidence that appellant was a federal employee on May 18, 1970, and did file a timely claim for injury. The January 21, 1971 letter also indicates that the claim was at least accepted for medical benefits, since the Bureau had authorized treatment with an orthopedic surgeon and was paying for prescription medicine.

Accordingly, the Board finds that appellant has met the conditions precedent to further development of the medical evidence, as outlined by the hearing representative in the August 3, 1995 decision. Therefore the case will be remanded to the Office for further development of the medical evidence on the issue of whether appellant had an employment-related disability commencing on August 9, 1990. After such further development as the Office deems necessary, it should issue an appropriate decision.

The decision of the Office of Workers' Compensation Programs dated June 4, 1996 is set aside and the case remanded for further action consistent with this decision of the Board.

Dated, Washington, D.C.  
December 10, 1998

Michael J. Walsh  
Chairman

David S. Gerson  
Member

Willie T.C. Thomas  
Alternate Member