

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LEON TEAGUE and U.S. POSTAL SERVICE,
KANKAKEE POST OFFICE, Kankakee, Ill.

*Docket No. 96-12; Submitted on the Record;
Issued February 12, 1998*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant has met his burden of proof in establishing that he sustained a back injury on March 2, 1993 as alleged.

On March 2, 1993 appellant, then a 40-year-old distribution clerk, filed a claim alleging that he sustained a low back injury, that day when he twisted and lifted a tray of mail. The record indicates that on August 20, 1992, appellant sustained a lumbar strain with radiculopathy and aggravation of preexisting degenerative disc disease at L4-5 and L5-S1.¹

Appellant sought medical treatment. In a March 2, 1993 emergency room report, a physician whose signature is illegible diagnosed an acute lumbar strain, with an August 20, 1992 date of injury. The physician, noted that appellant attributed his symptoms to heavy lifting at work. The physician prescribed Flexeril and other medications, prescribed back treatment and instructed appellant to undergo a follow-up examination in three days.

In a March 8, 1993 report, Dr. Jerome B. Kaufman, an attending Board-certified neurosurgeon, noted the August 20, 1992 injury, that appellant had returned to work and sustained a second injury on March 2, 1993.

In a March 12, 1993 report, Dr. William Luebbe, an attending family practitioner, noted a March 2, 1993 date of injury and the description "standing with a tray of mail and turned. Back popped." Dr. Luebbe held appellant off work and opined that surgical intervention was necessary.

¹ Claim No. A10-415721. Appellant received continuation of pay for work absences from August 21 to October 2, 1992, and returned to full duty on October 26, 1992. Appellant was released from treatment by Dr. Peter Grain, an attending Board-certified neurosurgeon, as of October 21, 1992.

Appellant underwent a lumbar discectomy on March 25, 1993, to treat L4-5 and L5-S1 disc herniations.

By decision dated May 5, 1993, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that fact of injury was not established. The Office found conflicting evidence regarding the time, place and manner of the alleged injury and that appellant had not submitted sufficient rationalized medical evidence to establish his claim.

Appellant disagreed with this decision and in a May 11, 1993 letter, requested an oral hearing before a representative of the Office's Branch of Hearings and Review, held on December 7, 1993. He submitted additional evidence.

An August 16, 1993 work capacity evaluation showed that appellant was capable of medium work, with lifting up to 50 pounds.

In an August 16, 1993 report, Dr. Walter J. Maguire, an attending Board-certified neurosurgeon, repeated appellant's account of twisting and lifting a tray of mail at work on March 2, 1993.

Dr. Maguire submitted November 1 and 19, 1993 reports, noting appellant's continuing complaints of low back pain radiating into the left lower extremity. In the November 1, 1993 report, Dr. Maguire related appellant's concern that the employing establishment, did not believe his back condition to be work related. In the November 19, 1993 report, Dr. Maguire noted appellant's "problem occurred last year and his case is in dispute with the [employing establishment]."

In a November 23, 1993 report, Dr. Luis Iravedra, an attending neurosurgeon, noted appellant's account that he had injured his back on March 2, 1993.

By decision dated and finalized February 2, 1994, the Office hearing representative affirmed the May 5, 1993 decision, finding that appellant had not submitted rationalized medical evidence explaining how and why the alleged March 2, 1993 twisting and lifting incident would cause the claimed back condition. The hearing representative further found that the medical evidence of record, did not contain a complete accurate factual history, of the March 2, 1993 incident or of appellant's August 20, 1992 low back strain, lumbar radiculopathy and aggravation of L4-S1 degenerative disc disease.

In a February 10, 1994 letter, appellant requested reconsideration and submitted additional medical evidence.

In a March 24, 1994 report, Dr. Iravedra noted that on March 4, 1993, appellant presented with left lumbar radiculopathy which appellant "stated happened at work March 2, 1993."

By decision dated July 6, 1994, the Office denied modification on the grounds that the evidence submitted was insufficient to warrant modification. The Office found that Dr. Iravedra's report was based upon an incomplete medical history and was insufficiently

rationalized. The Office concluded that Dr. Iravedra's report, was of limited probative value in establishing causal relationship and therefore insufficient to warrant modification of the prior decision.

In a January 25, 1995 letter, appellant requested reconsideration and enclosed a June 20, 1994 report, from Dr. Kaufman. In this report, Dr. Kaufman stated that as of March 8, 1993, appellant recalled developing severe low back pain beginning August 20, 1992 and was then injured "on the 2nd of March working in the [employing establishment] with exacerbation of his back pain and developing of numbness in his left lower extremity." Dr. Kaufman opined that it would therefore "be logical to assume that if [appellant] were asymptomatic prior to his alleged injury and his symptoms only present subsequent to that alleged injury, then a cause and effect relationship could be surmised."

By decision dated July 2, 1995, the Office denied modification on the grounds that the evidence submitted was insufficient to warrant modification. The Office found that Dr. Kaufman's report, was deficient in that it did not provide a history of injury, or a complete history of appellant's back condition and contained insufficient medical rationale addressing causal relationship. The Office therefore concluded that Dr. Kaufman's report, was of insufficient probative value to warrant modification of the prior decision.

The Board finds that the case is not in posture for decision.

To determine whether a federal employee has sustained a traumatic injury, in the performance of duty, it must first be determined whether a "fact of injury" has been established. First, the employee must submit sufficient evidence, to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.² Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.³

Appellant has the burden of establishing that his claimed back injury, was caused by the March 2, 1993 incident or other factors of his federal employment. The Board finds that appellant has submitted sufficient evidence to establish that the claimed low back injury, was causally related to the March 2, 1993 incident.

In the March 2, 1993 emergency room report, a physician provided a history of lifting a box that day causing a recrudescence of appellant's back pain, diagnosed an acute lumbar strain and prescribed medication and back treatment and instructed appellant to undergo a follow-up examination in three days. In an August 16, 1993 report, Dr. Walter J. Maguire, an attending Board-certified neurosurgeon, repeated appellant's account of twisting and lifting a tray of mail at work on March 2, 1993. Dr. Luis Iravedra, an attending neurosurgeon, submitted November 23, 1993 and March 24, 1994 reports, noting that appellant sustained an injury on March 2, 1993. Dr. Jerome Kaufman, an attending Board-certified neurosurgeon, submitted

² *John J. Carlone*, 41 ECAB 354 (1989).

³ *Id.* For a definition of the term "injury," see 20 C.F.R. § 110.5(a)(14).

March 8, 1993 and June 20, 1994 reports noting an August 20, 1992 injury and a March 2, 1993 injury.

The Board finds that the consistent history of injury, treatment and diagnoses contained within the medical reports submitted, constitutes sufficient evidence in support of appellant's claim, to require further development of the record by the Office.⁴

On return of the case, the Office should conduct appropriate development to determine, considering the Office's prior acceptance of the August 20, 1992 work injury, whether the March 2, 1993 injury, resulted in any period of disability for work. The Office should also determine whether the March 2, 1993 injury, or other employment factors, necessitated the March 25, 1993 lumbar surgery. Following this and other such development as the Office deems appropriate, the Office shall issue an appropriate decision in the case.

The decision of the Office of Workers' Compensation Programs dated July 25, 1995 is set aside, and the case remanded for further development consistent with this decision and order.

Dated, Washington, D.C.
February 12, 1998

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

⁴ See *John J. Carlone*, 41 ECAB 354 (1989). The Board notes that in this case the record contains no medical opinion contrary to appellant's claim, and further notes that the Office did not seek advice from an Office medical adviser or refer the case to an Office referral physician for a second opinion.