

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHARLES W. WARREN and U.S. POSTAL SERVICE,
POST OFFICE, Little Rock, Ark.

*Docket No. 96-938; Submitted on the Record;
Issued July 21, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
BRADLEY T. KNOTT

The issue is whether appellant has established that he sustained low back injury on October 30, 1993 in the performance of duty, causally related to factors of his federal employment.

On January 31, 1994 appellant, then a 49-year-old window clerk, filed a claim alleging that on October 30, 1993 he lifted a large heavy box from a hamper and his "back gave way in lower area of spine." Appellant described the nature of his injury as "lower back injury caused arthritis flare up in back, legs, hip joints, thought I had broken my back." Appellant first sought medical treatment on November 1, 1993.

The employing establishment noted that appellant resigned effective November 26, 1993, because "work irritates arthritic condition (lifting, etc.)."

By letter dated October 20, 1995 the employing establishment controverted appellant's claim for continuation of pay stating that he did not report the alleged injury on a Form CA-1 within 30 days, and indicating that, based upon appellant's description of events, his claim was for an occupational disease.

By letter to appellant dated November 1, 1995 the Office of Workers' Compensation Programs requested further information including his history of medical treatment, medical testing results, and a physician's opinion supported by medical rationale as to how the reported work incident caused the claimed injury.

In response appellant submitted an October 30, 1995 report of an October 27, 1995 lumbar myelogram which contained the clinical history "LBP [low back pain], BLE [bilateral lower extremity] pain R/O [rule out] lumbar stenosis," and which indicated the diagnosis after testing as "degenerative facet disease at L5-S1, predominantly on the right side. Mild bilateral sacroiliac degenerative change."

Also submitted was a November 13, 1995 report from Dr. Robert C. Ahrens, a general practitioner, who indicated that appellant was seen on November 1, 1993 by his brother, Dr. Richard H. Ahrens, also a general practitioner, who noted little except a complaint of low back pain and a tender sacroiliac joint. He indicated that no specific treatment was given secondary to appellant's preexisting history of gastrointestinal disease. Dr. Ahrens indicated that appellant had been seen repeatedly since November 1, 1993 with complaints of low back pain, sometimes with a left reticular component, and had considerable problems with osteoarthritic pain in multiple joints of both upper and lower extremities. He noted that appellant's most consistent physical finding had been confirmed in the left knee, occasionally also in the right knee, and that he had pain prominent in both shoulders, elbows, various back joints, both knees and the lower back. Dr. Ahrens diagnosed diffuse osteoarthritis, hypertension, and osteodegenerative disc disease of the cervical and lumbar spine. No history of occupational injury was discussed.

By letter to appellant dated November 3, 1995 the Office requested further factual information. In a November 8, 1995 response appellant claimed that his October 30, 1993 injury had been reported that date to his supervisor, but that the claim form was lost. Appellant claimed that as he was lifting a large box from a hamper his back made a popping sound and felt numb with some pain. He stated that this was Saturday morning, and that by Monday morning he could not get out of bed without help, so his wife took him to Dr. Ahrens. Appellant named to alleged witnesses, a coworker and the postmaster. He stated that he thought he had broken his back but had to finish his shift and so worked about two hours more. Appellant stated that he started having pain in the lower back and hips on the day of injury, and thereafter used a heating pad and anti-inflammatory medications. Appellant stated that the Veterans Administration physician told him he had degenerative arthritis of the spine and that it "moved over to [the] right hip area," which was "where the injury on October 30, 1993 was reported."

By decision dated December 7, 1995 the Office rejected appellant's claim finding that the fact of injury was not established. The Office found that the medical evidence of record did not support that the employment-related lifting incident resulted in any demonstrable injury or medical condition.

The Board finds that appellant has failed to establish his claim.

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must be determined whether "fact of injury" has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place, and in the manner alleged. Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.¹

¹ *Gene A. McCracken*, 46 ECAB 593 (1995); *Gary L Fowler*, 45 ECAB 365 (1994); *Robert J. Krstyen*, 44 ECAB 227 (1992); *Willie J. Clements, Jr.*, 43 ECAB 244 (1991).

In the instant case the Office accepted that appellant lifted a heavy box at work. However, the Office found, and the Board concurs, that appellant failed to submit the medical evidence necessary to establish that this box-lifting incident caused a personal injury.

In response to the Office's specific request for detailed medical evidence supporting the fact that appellant sustained an injury as alleged, appellant submitted an October 27, 1995 lumbar myelogram report which did not mention the alleged October 30, 1993 lifting incident two years earlier, and which revealed only degenerative facet disease at L5-S1 with mild bilateral sacroiliac degenerative changes. The Board notes that these conditions are degenerative in origin and nature, and are not the result of a discreet traumatic incident. Further, the Board notes that this report lacks any opinion as to the causation of the conditions found. Consequently, this report does not establish that appellant sustained an injury on October 30, 1993 as alleged.

Appellant also submitted a November 13, 1995 report from Dr. Ahrens which merely noted that appellant was seen November 1, 1993 with complaints of low back pain and a tender sacroiliac joint. No history of injury was reported, no opinion on causation of the low back pain and tender sacroiliac joint was given, and no traumatic injury was diagnosed. Dr. Ahrens diagnosed the chronic degenerative conditions of diffuse osteoarthritis and osteodegenerative disc disease of the cervical and lumbar spines, but provided no opinion whatsoever on the origins of these conditions, nor did he discuss any employment relationship with or impact upon these conditions. Dr. Ahrens only added that following the November 1, 1993 visit, no specific treatment was given, and he reported that since that time appellant has been seen for osteoarthritic problems of multiple upper and lower extremity joints. As this report does not mention an October 30, 1993 traumatic injury, and does not diagnose any injury of traumatic origin, it does not support that appellant sustained a traumatic lifting injury on October 30, 1993 as alleged.

As no further probative medical evidence documenting the occurrence of or the existence of a traumatic injury has been submitted, appellant has failed to provide medical evidence sufficient to establish that he sustained a traumatic lifting injury on October 30, 1993 as alleged.

Accordingly, the decision of the Office of Workers' Compensation Programs dated December 7, 1995 is hereby affirmed.

Dated, Washington, D.C.
July 21, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

Bradley T. Knott
Alternate Member