

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT V. BRANHAM and U.S. POSTAL SERVICE,
POST OFFICE, Portland, Oreg.

*Docket No. 96-716; Submitted on the Record;
Issued May 26, 1998*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant has met his burden of proof in establishing that he sustained an injury in the performance of duty on December 2, 1994, as alleged.

The Board has duly reviewed the case record in the present appeal and finds that the case is not in posture for decision on appeal and must be remanded for further development of the evidence.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of the Act and that the claim was filed within the applicable time limitations of the Act.² An individual seeking disability compensation must also establish that an injury was sustained at the time, place and in the manner alleged,³ that the injury was sustained while in the performance of duty⁴ and that the disabling condition, for which compensation is claimed was caused or aggravated by the individual's employment.⁵ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.⁶

¹ 5 U.S.C. §§ 8101-8193.

² *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Robert A. Gregory*, 40 ECAB 478 (1989).

⁴ *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁵ *Steven R. Piper*, 39 ECAB 312 (1987).

⁶ *David J. Overfield*, 42 ECAB 718 (1991); *Victor J. Woodhams*, 41 ECAB 345 (1989).

There is no dispute that appellant is a federal employee, that he timely filed his claim for compensation benefits and that the incident occurred as alleged.⁷ However, the Office of Workers' Compensation Programs found that the medical evidence was insufficient to establish that an injury resulted from the incident. Appellant, a Christmas casual worker, alleged that he injured his left hip and left leg while lifting trays of mail and sorting mail.

To support the claim appellant submitted December 8 and December 17, 1994 medical certificates from Dr. John T. Ebert, a Board-certified neurologist, recommending 10 days and 2 weeks bed rest, respectively: a December 8, 1994 neurological consultation report, by Dr. Ebert; a December 13, 1994 report by Dr. Ebert; a December 13, 1994 office note by Dr. Ebert; a December 3, 1994 report by Dr. Richard I. Caesar, Board-certified in emergency medicine; a December 9, 1994 radiology report by Dr. Donna S. Launey, a Board-certified radiologist; a December 27, 1994 office note by Dr. Ebert; and a January 10, 1995 office note by Dr. Ebert.

In the December 8, 1994 neurological consultation report, Dr. Ebert stated:

“[Appellant] reports that he went to work for the [employing establishment] for the first time ever last Thursday, December 1, [1994]. He reports he is required to move 3,000 pieces of mail every hour and he is very busy bending and twisting, turning and lifting objects that are somewhat heavy. After he got off work Thursday, he felt kind of sore all over and went home and took a bath. [Appellant] reports that Friday, he went to work at about 10:30 [pm] and did [not] get off until 6:00 am. At about 2:00 am he developed pain -- his left buttock with pain radiating down the left lower extremity, with intermittent numbness and tingling in the left foot and with mild weakness in the left lower extremity.”

Dr. Ebert diagnosed acute left L5 radicular irritation.

In a December 13, 1994 report, Dr. Ebert discussed the results of a December 9, 1994 magnetic resonance imaging (MRI) of appellant's lumbar spine. Dr. Ebert stated “at the 5-1 level on the left shows bulging disc more prominent on the left than the right with effacement of the nerve root exiting at that level but only mild in degree.”

In a December 13, 1994 office note,⁸ Dr. Ebert noted that appellant reported that his pain is improving. The doctor advised appellant to stay off work for two weeks, do exercises and lose weight.

In a December 3, 1994 emergency department report, Dr. Caesar stated that he saw appellant that day for complaints of back pain radiating down his left leg. He went on to say,

⁷ In its decision dated January 31, 1995, the Office found that fact of injury was not established, due to appellant's failure to sufficiently describe how the incident occurred. However, on February 24, 1995 appellant submitted a letter describing his employment activities on December 2, 1994, which he alleged caused an injury. The hearing representative, although not specifically stated, accepted that the incident occurred at the time, place and in the manner alleged, in his decision dated September 27, 1995 and finalized October 2, 1995.

⁸ The date on the office note is December 13, 1984; however, all evidence of record supports that Dr. Ebert saw appellant on December 13, 1994.

“[Appellant] has recently started a job at the [employing establishment] which has required some bending and lifting. His pain began on the first night and tonight the second night, has become quite uncomfortable.” Dr. Caesar diagnosed acute left sciatica and recommended bed rest, medication, and examination by a neurosurgeon or orthopedist.

In a December 9, 1994 x-ray report of the lumbosacral spine, Dr. Launey stated mild disc space narrowing at the L5-S1 level. Dr. Launey diagnosed “degenerative disc changes at L4-5 and L5-S1 with neural foraminal narrowing evident on the left at the L5-S1 level and mild effacement of the exiting nerve root on that side at this level.”

In a December 27, 1994 office notes, Dr. Ebert states that appellant complained of pain down left leg with numbness and tingling -- left foot. The doctor released him to light duty beginning January 3, 1995 and recommended weight loss of 15 to 20 pounds.

In a January 10, 1995 follow-up visit report, Dr. Ebert stated “[appellant] walking about 3 miles a day, usually intermittently.” “All he [is] noticing now is occasional numbness and tingling in the foot. He reports that the pain has not recurred. The seasonal work at the [employing establishment] is over....”

The Board finds that appellant has submitted evidence sufficient to establish a *prima facie* case and to require further development of the evidence. In the instant case, appellant submitted a December 3, 1994 Good Samaritan Hospital emergency department report by Dr. Caesar, Board-certified in emergency medicine. Dr. Caesar noted appellant’s chief complaint of back pain radiating down the left leg. The doctor noted a history of injury as given by appellant which is consistent with appellant’s statements throughout the record of recently starting a job with the employing establishment, which required bending and lifting. Dr. Caesar stated that appellant related that his pain began on the first night and by the second night the pain was quite uncomfortable. He noted no past history of similar complaints and negative for back surgery. Dr. Caesar diagnosed acute left sciatica and treated appellant with bed rest, ice, medication and recommended evaluation by a neurosurgeon or orthopedist.

Also, in the December 8, 1994 consultation report, Dr. Ebert, a Board-certified neurologist, noted a history of appellant starting a new job at the employing establishment and immediately developing soreness and experiencing pain radiating down the left lower extremity with intermittent numbness and tingling in the left foot. Dr. Ebert noted no prior history of back injuries or back surgery. He reported his findings on examination and diagnosed left acute, left L5 radicular irritation, which he treated with medicine, 10 days off work and x-ray and MRI of lumbosacral spine.

The Board finds that Dr. Caesar’s December 3, 1994 report and Dr. Ebert’s December 8, 1994 report, which contain a history of the injury, a diagnosis and note an absence of any other trauma, are sufficient to require further development of the record by the Office.⁹ The evidence submitted by appellant is not sufficient to meet his burden of proof, but does raise an

⁹ *Rebel L. Cantrell*, 44 ECAB 660 (1993); *John J. Carlone*, 41 ECAB 354 (1989).

uncontroverted inference of causal relationship between appellant's diagnosed condition and the December 2, 1994 employment-related incident.

On remand, the Office should further develop the medical evidence as appropriate. 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 September 27 and January 31, 1995 are set aside and the case is remanded for further proceedings consistent with this decision.¹⁰

Dated, Washington, D.C.
May 26, 1998

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

¹⁰ The Board notes that appellant submitted evidence subsequent to the issuance of the Office's decision and on appeal.