

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DEBORAH H. HARGROVE and TENNESSEE VALLEY AUTHORITY,  
BROWNS FERRY NUCLEAR PLANT, Decatur, Ala.

*Docket No. 96-735; Submitted on the Record;  
Issued May 12, 1998*

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DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether appellant has met her burden of proof in establishing that she sustained recurrences of disability commencing November 12, 1992 and April 23, 1993,<sup>1</sup> causally related to her accepted December 11, 1991 employment-related injury.

The Board has duly reviewed the case record in the present appeal and finds that the case is not in posture for a decision as to whether appellant established that she sustained recurrences of disability commencing November 12, 1992 and April 23, 1993, causally related to her accepted December 11, 1991 employment-related injury.

On December 11, 1991 appellant filed a traumatic injury claim for a lumbar strain which the Office of Workers' Compensation Programs accepted on September 14, 1993. On August 11, 1993 appellant filed a notice of recurrence of disability.<sup>2</sup> In this notice, appellant alleges that she sustained recurrences of disability commencing November 12, 1992 and April 23, 1993 causally related to her accepted December 11, 1991 employment-related injury. The Office denied appellant's recurrence claims on October 28, 1993, finding that the evidence of record failed to establish that the claimed recurrences were causally related to the December 11, 1991 accepted employment-related injury.

By letter dated November 3, 1993, appellant requested an oral hearing before an Office hearing representative. A hearing was held on May 18, 1994. By decision dated July 26, 1994 and finalized on July 28, 1994, the hearing representative affirmed the Office's October 28, 1993 decision, finding that the evidence of record failed to establish that the recurrences of disability

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<sup>1</sup> On the Form CA-2(a) appellant indicated the date of recurrence as April 27, 1993; however, she also indicated that she stopped work following recurrence on April 23, 1993.

<sup>2</sup> Only one Form CA-2(a) is in the record, but the evidence of record supports appellant's claimed recurrences on November 12, 1992 and April 23, 1993.

beginning November 12, 1992 and April 27, 1993, were causally related to the December 11, 1991 accepted employment-related injury. By letter dated October 24, 1994, appellant, through her representative, requested reconsideration of the July 26, 1994 decision. By decision dated December 29, 1994, the Office denied appellant's request for reconsideration, finding the evidence insufficient to warrant review of the prior decision. Appellant again requested reconsideration on May 1, 1995. By decision dated May 30, 1995, after a merit review, the Office denied modification of its October 28, 1993 decision. Appellant filed a third request for reconsideration on July 24, 1995. By decision dated October 4, 1995 and finalized October 6, 1995, after a merit review, the Office denied appellant's third request for reconsideration finding the evidence insufficient to warrant modification of the prior decision.

An employee seeking benefits under the Federal Employees' Compensation Act<sup>3</sup> 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.<sup>4</sup> An individual seeking disability compensation must also establish that an injury was sustained at the time, place and in the manner alleged,<sup>5</sup> that the injury was sustained while in the performance of duty<sup>6</sup> and that the disabling condition for which compensation is claimed was caused or aggravated by the individual's employment.<sup>7</sup> 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.<sup>8</sup>

An individual who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which compensation is claimed is causally related to the accepted injury. This burden includes the necessity of furnishing medical evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the accepted employment injury and supports that conclusion with sound medical reasoning.<sup>9</sup>

The medical evidence submitted in support of appellant's claim for recurrences of disability commencing November 12, 1992 and April 23, 1993 consists of employing establishment health unit records covering the period December 11, 1991 through September 23, 1992; an August 21, 1993 radiological report of a magnetic resonance imaging (MRI) scan of the

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<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>5</sup> *Robert A. Gregory*, 40 ECAB 478 (1989).

<sup>6</sup> *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>7</sup> *Steven R. Piper*, 39 ECAB 312 (1987).

<sup>8</sup> *David J. Overfield*, 42 ECAB 718 (1991); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>9</sup> *Lourdes Davila*, 45 ECAB 139 (1993); *Louis G. Malloy*, 45 ECAB 613 (1994).

lumbar spine by Dr. W. Thomas Norman, a Board-certified radiologist; progress notes by Dr. John W. Bacon, a Board-certified orthopedic surgeon, covering the period December 13, 1991 through September 17, 1993; a September 10, 1993 report by Dr. Bacon; an October 28, 1993 report by Dr. Bacon, a November 4, 1993 report by Dr. Lloyd Johnson, Jr.; a March 29, 1994 report by Dr. Ira C. Denton, a Board-certified neurosurgeon; a May 4, 1994 report by Dr. Denton; an October 6, 1994 report by Dr. Johnson; a January 31, 1995 report by Dr. Denton; and a July 7, 1995 sworn statement by Dr. Denton.

The employing establishment's health unit records included an entry on December 11, 1991 by Dr. Bobby King, who noted a "history of pushing heavy box across the floor when she felt something pull in low back." He noted that x-ray of the lumbosacral spine was normal and he diagnosed acute lumbosacral sprain which he treated with medication, moist heat and bed rest. Appellant had a follow-up visit on December 16, 1991 during which Dr. King advised her to return to work but avoid lifting more than 10 pounds and avoid bending and stooping for a week. He saw appellant again on April 22, 1992, for complaints of low back pain and stiffness. Dr. King reported his findings on examination and diagnosed acute lumbosacral sprain. On September 23, 1992 Dr. King saw appellant for complaints of constant ache in low back radiating to left leg. Dr. King noted that x-ray of the lumbosacral spine was normal, advised appellant to avoid bending and stooping and to see her private physician to rule out herniated nucleus pulposus (HNP).

In an August 21, 1993 report, Dr. Norman reported his findings of an MRI scan of the lumbar spine. He noted appellant's history of low back pain with radiation of pain to right leg. Dr. Norman interpreted the MRI scan as demonstrating "mild disc dehydration and loss of vertical height at L5-S1. Midline bulging annulus L5-S1 with mild compromise of the anterior subarachnoid space. No evidence of compromise of the neural elements." He went on to say, "No definite evidence of HNPs identified at the disc level scanned."

In his progress notes, Dr. Bacon noted that he saw appellant on December 13, 1991 for an injury "[p]ushing box at work two to three days ago. Went to push. Felt tearing sensation at left side of lower [back]." He diagnosed low back pain and treated it with bed rest, heat and medication. Dr. Bacon saw appellant again on November 12, 1992. He noted: "[two] nights ago had pain in lower back." Dr. Bacon diagnosed sciatica and recommended two days off work and bed rest. On November 16, 1992 he noted low back pain to left leg and diagnosed sciatica. Dr. Bacon recommended one week off, medication and an MRI scan if no improvement. On April 27, 1993 Dr. Bacon noted that on April 25, 1993 appellant awoke with low back pain radiating down left leg and stated that she had had no injury. He diagnosed sciatica, recommended bed rest, off work from April 27 through April 30 and return in one week if no better. Dr. Bacon saw appellant again on August 16, 1993 for an onset of low back pain and pain in both legs. He diagnosed low back pain and HNP spine and recommended a MRI scan if no better. On August 19, 1993 Dr. Bacon recommended a MRI scan. On August 23, 1993 he noted that an MRI scan revealed a bulge at L5-S1, no herniation. On August 27, 1993 he noted appellant's pain was better and she could return to work on August 30, 1993. On September 7, 1993 Dr. Bacon noted that appellant underwent an epidural steroid injection (ESI) and on September 17, 1993 he noted that appellant was better but still had some low back pain. Dr. Bacon diagnosed sciatica and recommended activity as able, proper bending and lifting.

In a hospital summary dated September 10, 1993, following an epidural steroid injection on September 8, 1993, Dr. Bacon stated that “[Appellant] is a 36-year-old female, with a long-standing history of pain in her lower back, radiating down her right leg. She has had a lumbar MRI scan performed, which shows no evidence for herniated disc. Her symptoms have persisted in spite of a week of bed rest at home. She is now being admitted for an ESI.” On discharge Dr. Bacon diagnosed lumbar disc syndrome.

In an October 28, 1993 report, Dr. Bacon stated, “I evaluated [appellant] on December 13, 1991 for complaints of low back pain after pushing a box at work. She was treated with bed rest and medication with resolution of these symptoms. I did not see her for this problem again until November 12, 1992. At that point in time she had onset of pain in the lower back radiating down the left leg. She reported no new injury. She had no problems with her lower back from December 1991 until November 1992 as far as I know. In August 1993, she had a flare-up of her back. She again had no new injury.” Dr. Bacon went on to say, “Whether this is all related to her initial injury of December 1991 or whether this represents a new injury is problematic. I can offer no medical proof that relates [the] two subsequent injuries or two flare-ups to her initial injury. I am neither aware of any medical evidence to the contrary.” Dr. Bacon further stated, “I [a]m sorry I cannot be more help in answering your questions; however, an exact answer does not exist.”

In a November 4, 1993 report, Dr. Johnson stated that he saw appellant that day and was told she injured her back at work in 1991 while pushing a box across the floor. He went on to say that appellant noted back pain with radicular pain into the left leg and that she had no previous history of back problems or back injury. Dr. Johnson noted that appellant had a MRI scan previously done which revealed mid-line bulging at L5-S1 with no definite herniated disc as well as an epidural block performed five to six weeks ago. On examination he reported range of movement of the lumbar spine was diminished to 75 percent of normal. Dr. Johnson reported that x-ray of the lumbar spine showed narrowing of the L5-S1 interspace. He stated, “In summary [appellant] had an injury to her back in December 1991. She was pushing a box across the floor when this occurred. I think the residuals that she is now having are directly related to her injury of December 1991.” In an October 6, 1994 report, Dr. Johnson stated, “As noted in my original report, it is my opinion that [appellant’s] problem that I examined her for on November 4, 1994, is directly related to her injury that occurred at work in 1991.” He went on to say “Her original injury was to her back with radicular pain into the left leg. She had no previous history of back problems or back injury. She has continued to have problems with it since the original injury.” Dr. Johnson further stated that “It is my understanding she was pushing a box across the floor when the injury occurred. I feel the residuals she is now having are directly related to the injury of December 1991.”

In a March 29, 1994 unsigned medical report, Dr. Denton, a Board-certified neurosurgeon, stated that he saw appellant on March 28, 1994 for complaints of lumbar and distal lower extremity pain on the left side. He reported that “[appellant’s] symptoms came on in 1991 while pushing a box across the floor at work. She heard a tear in her back.” Dr. Denton further reported that “[s]he has had [two] flareups since then. She characterizes her symptoms as aching constantly and considers them to vary between moderately severe and nagging and annoying and a strange hurt with burning component.” He reported his findings on examination

stating “Spinal range of motion is markedly restricted. There is no tenderness of the ischial or trochanteric bursas.” Dr. Denton further stated “This is a nonactivity-related spinal disorder of undetermined cause. Diagnostic procedures indicated include repeat examination, inflammation screen and myelogram to show to T10. Treatment will depend partially on the results of the indicated exam[ination]s.”

In a May 4, 1994 report, Dr. Denton reported his finding of a May 3, 1994 follow-up visit. He stated that “[Appellant] explains that she is unable to sleep and must limit her life in every mechanical form and fashion because of the lumbar pain. The pain distributes itself into the lower extremity into the left side still. She reminds me that this sort of pain, identical in all characteristics has been going on for the past several years since she moved a box at work. It has recently seemed to come to a disabling head. I note this and have corrected the chart with respect to the office visit of March 28, 1994.” Dr. Denton reviewed the myelogram and post-myelogram computerized tomography (CT) which demonstrated “a central disc at L5-S1 of considerable proportions.” He diagnosed lumbar HNP and recommended physical therapy, specifically McKenzie’s exercise. Dr. Denton concluded that “In my opinion [appellant] is likely to require surgery at the L5-S1 level for relief of the symptoms which she has experienced over the past three years and which have become increasingly incapacitating. The indications for surgery will be the persistence of symptoms despite conservative measures and the demonstration radiographically and by image an HNP.”

In a January 31, 1995 report, Dr. Denton stated that he saw appellant for reevaluation on that day. He stated “[appellant’s] physical measures have taken care of her latest complaints and she is asymptomatic.” Dr. Denton further stated, “[appellant] states that the compensation people responsible for her company feel that the injury she sustained is insufficient to cause a disc rupture. In my opinion there is every medical reason to feel that they have drawn the wrong conclusion. The pop in the back that she experienced as she was pushing a box across the floor was indeed the primary cause of her ruptured disc. That remains my medical opinion. The subsequent flare ups are related to the low back condition which resulted in the disc rupture.”

In a July 7, 1995 sworn statement, Dr. Denton stated that based on the clinical information that he obtained from appellant and his subsequent knowledge of her case, he believed that it all began with pushing a box across the floor. He went on to say that at the time of the original injury she experienced a tear of the annulus which is an absolute picture of the initiation of a disc rupture. Dr. Denton further stated that her claimed recurrences of a disabling condition were causally related to the December 11, 1991 accepted employment-related lumbar strain.

The Board finds that the medical reports of Dr. Denton, including his rationale in his July 7, 1995 affidavit of how appellant’s back condition and subsequent surgery are causally related to the accepted December 11, 1991 employment injury, coupled with the medical reports of Dr. Johnson supporting a causal relationship, appellant has submitted sufficient medical evidence to require the Office to further develop this claim in the absence of no evidence to the contrary.<sup>10</sup>

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<sup>10</sup> *John J. Carlone*, 41 ECAB 354 (1989).

Accordingly, the Board will remand this case for further development to include the preparation of a statement of accepted facts, and referral of the case record to an Office medical adviser for an opinion as to whether the record establishes appellant's contentions that her current back condition, including surgery, and alleged recurrences of disability are causally related to the accepted December 11, 1991 accepted employment injury.

In the alternative, the Office may obtain similar required development by referring the case record, statement of accepted facts and specific questions noted above, along with appellant for an examination and rationalized opinion on the issues in dispute.

The decisions of the Office of Workers' Compensation Programs dated October 4 and May 30, 1995 are hereby set aside and the case remanded for further development not inconsistent with this decision of the Board.

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

George E. Rivers  
Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member