

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of FREDERICK F. STEVENS and DEPARTMENT OF TRANSPORTATION,  
FEDERAL AVIATION ADMINISTRATION, Anchorage, Alas.

*Docket No. 96-1573; Submitted on the Record;  
Issued May 21, 1998*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issue is whether appellant has met his burden of proof to establish that he sustained a lower back injury, neck injury or hiatal hernia in the performance of duty, as alleged.

The Board has duly reviewed the case record in the present appeal and finds that appellant has not sustained his burden of proof to establish that he injured his lower back, or other members of his body, in the performance of duty.

On August 30, 1995 appellant, then a 55-year-old electronics technician, filed a claim for traumatic injury, Form CA-1, alleging that on June 23, 1995, he experienced severe upper back, neck and shoulder pain as a result of a progressive extension of an earlier employment-related injury;<sup>1</sup> low back, hip and leg pain as a result of constant and excessive trauma to the lower back; and had sustained a hiatal hernia.

An employee seeking benefits under the Federal Employees' Compensation Act<sup>2</sup> has the burden of establishing the essential elements of his or her claim, including the fact that the

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<sup>1</sup> On February 12, 1990 appellant slipped on the ice in the performance of duty. Appellant's claim was accepted for cervical strain and subluxation. Appellant subsequently filed notices of recurrence of disability on March 8, 1990 and February 25, 1991. The Office of Workers' Compensation Programs scheduled appellant for medical evaluation by a panel of Office referral physicians, however, the day before the scheduled appointment appellant contacted the Office and advised them that he refused to keep the appointment, stating, despite assurances from the Office, that he did not believe he would be reimbursed for time lost and that he felt he was getting the "run around." The Office asked appellant to advise them in writing of his reasons for canceling the appointment on such short notice. Appellant did not respond to the Office's request and the Office took no further action on his claims. The record also contains evidence, in the form of two affidavits, that appellant twisted his back at work either during the last week of October or on the first day of November, 1993. A December 28, 1993 treatment note completed by Dr. Jay VanHouten, one of appellant's treating physicians, places the incident approximately 4 to 5 five weeks prior, closer to the middle of November. No claim was filed with respect to this incident.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

individual is an “employee of the United States” within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>3</sup> These are the essential elements of each and every claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>4</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.<sup>5</sup>

In the instant case, while appellant submitted medical evidence from his attending physicians, Dr. Davis C. Peterson, a Board-certified orthopedic surgeon, and Dr. VanHouten, an osteopath, to support his claim that his condition was due to his employment, the medical reports do not contain any medical opinion sufficient to establish a causal relationship between specific factors of employment and appellant’s condition. In a report dated January 26, 1995, Dr. Peterson noted that appellant had a history of bone fusion at L5-S1, performed in approximately 1970, and a history of having twisted his back doing a lifting maneuver about a year prior, which resulted in back pain which transiently improved but subsequently became chronic low back and buttock pain into the posterior left thigh. The physician diagnosed bone overgrowth, facet arthrosis secondary to degenerative listhesis at L4-5 and probable early spinal stenosis. In a report dated July 21, 1995, Dr. Peterson reiterated his earlier diagnoses and stated that appellant’s employment duties were extremely painful to him and that he strongly recommended appellant be reassigned to jobs that were at least partially sedentary with limited light intermittent activity. The physician concluded that with accommodation, medication and bracing, appellant should be able to continue productive employment. In a letter dated November 13, 1995, Dr. Peterson stated that appellant was totally disabled due to a combination of his preexisting L5-S1 degenerative disease post fusion and progressive post fusion stenosis and degeneration at the L4-5 level. He added that he believed appellant’s condition had been “progressively work-exacerbated” and concluded that continued work at his current level would adversely affect appellant’s long-term condition and might hasten the need for surgical intervention. In his final summary report dated January 31, 1996, Dr. Peterson recapped that he first saw appellant in 1991 for chronic neck and upper extremity symptoms, and that later, in

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<sup>3</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>4</sup> The Office’s regulations clarify that a traumatic injury refers to injury caused by a specific event or incident or series of events or incidents occurring within a single workday or work shift, whereas occupational disease refers to injury produced by employment factors which occur or are present over a period longer than a single workday or shift; *see* 20 C.F.R. §§ 10.5(a)(15), (16).

<sup>5</sup> *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

1995, appellant presented with low back pain, and the above diagnoses were established. Dr. Peterson again noted that appellant would benefit from a change to light-duty employment, and that repetitive bending, lifting and twisting would likely exacerbate his back pain.

In a letter dated July 17, 1995, Dr. VanHouten stated that he had been appellant's physician for approximately three years, and that during this time he had seen a gradual decline in appellant's ability to perform his work duties due to his degenerative listhesis of the lumbar spine, and problems with his upper back and neck. Dr. VanHouten recommended that appellant be switched to light-duty work. In a report dated November 29, 1995, Dr. VanHouten stated that he agreed with Dr. Peterson that appellant had become permanently disabled due to his back condition, that his back condition had been progressively work exacerbated, and that continued full duty would adversely affect his long-term condition and hasten the necessity for surgery. In a final summary report dated February 23, 1996, Dr. VanHouten documented each of his visits with appellant, beginning on December 28, 1993 through February 7, 1996. The physician summarized appellant's history of injury as beginning with fusion in the 1970's, and including work-related injuries in 1990, and around November 1993. Dr. VanHouten concluded that appellant was totally disabled from his present job and required accommodation.

A condition that manifests itself or worsens during a period of employment does not raise an inference of causal relationship between the condition and employment, as the work activities may produce symptoms which are revelatory of an underlying condition.<sup>6</sup> The Office informed appellant that as he had a preexisting back condition, he needed to submit medical evidence which included a discussion of the nature of any underlying conditions; their natural or traditional course; how the underlying conditions were affected by his employment as determined by medical records covering the period of employment; whether such effects, if any, caused material changes in the underlying conditions; or, if no material changes occurred, whether the symptoms or changes indicative of a temporary aggravation had subsided or resolved upon his removal from the employment environment, and, if not, at what point would such symptoms or changes have resolved; and whether any aggravation of appellant's underlying conditions caused by factors of his employment caused disability during or subsequent to his employment. Accordingly, as appellant has not submitted any medical evidence establishing that his condition is due to anything other than the normal progression of his underlying nonemployment-related condition, or that his work activities do anything other than produce pain revelatory of the underlying conditions, appellant has not sustained his burden of proof to establish that he sustained any additional injuries in his federal employment.

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<sup>6</sup> See *Gary R. Fulbright*, 40 ECAB 737 (1989); *Dominic M. DeScala*, 37 ECAB 369 (1986). While a claimant may be entitled to an employment-related aggravation of an underlying condition, the claimant sustains the burden of proof to establish, with a medical report based on a complete and accurate background, that the condition was either permanently or temporarily aggravated; see *Newton Ky Chung*, 39 ECAB 919 (1988); *Ceferino L. Gonzales*, 21 ECAB 1591 (1981).

The decision of the Office of Workers' Compensation Programs dated March 16, 1994 is hereby affirmed.

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

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member