

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of FOREST D. RIGGINS and TENNESSEE VALLEY AUTHORITY,  
NATIONAL RECREATION AREA, Golden Pond, Ky.

*Docket No. 97-2223; Submitted on the Record;  
Issued April 26, 1999*

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DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,  
BRADLEY T. KNOTT

The issue is whether appellant has established that he sustained an injury in the performance of duty on March 13, 1996.

On June 27, 1996 appellant, then a 54-year-old property maintenance worker, filed a claim for compensation alleging that on March 13, 1996 he injured his back causing pain while in the performance of duty. Several of appellant's coworkers signed the claim form indicating that appellant complained that he had injured his back on that day.<sup>1</sup>

In a June 3, 1996 medical report, Dr. Robert H. Lee, appellant's treating physician and Board-certified in family practice, reported a 2½-month history of pain in his low back and abdomen after lifting an 80-pound bag of shingles while working. Dr. Lee noted the pain reportedly radiated down the front of appellant's left leg. Dr. Lee also noted appellant reported symptoms of urinary frequency and nocturia times three. Dr. Lee ordered a magnetic resonance imaging (MRI) of the lumbar spine. Upon physical examination, Dr. Lee reported pain with 50 percent flexion, extension on right or left lateral bending. Dr. Lee diagnosed prostate hypertrophy, possible lumbar disc disease and lumbar pain.

A June 4, 1996 MRI scan of the lumbar spine performed at Clarksville Memorial Hospital noted a history as follows: "53-year-old male with low back pain and bilateral leg pain since 1984. Patient reports some numbness and tingling. No previous surgery."

The MRI revealed possible right lateral disc bulging with herniation at L3-4 and minimal right paracentral disc bulge or spurring at L1-2.

In a June 7, 1996 medical report, Dr. W. Cooper Beazley, appellant's treating physician and Board-certified in orthopedic surgery, reported appellant hurt his back in March 1996 when

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<sup>1</sup> The Board notes that the employing establishment stated it received appellant's form on June 24, 1996.

he was lifting a big shingle pack that weighed about 60 pounds. Dr. Beazley reported that appellant had progressive pain in the back and down the legs since appellant hurt his back. On examination, he noted positive straight leg raising on the left at 60 percent but negative on the right. His impression was "L4 disk bulging on the left, which is symptomatic." Dr. Beazley recommended conservative treatment and a return visit in three weeks. He went on to say that he would consider an epidural block if appellant was not better on the return visit.

By letter dated August 15, 1996, the Office of Workers' Compensation Programs advised appellant that he needed to submit additional information regarding his claim including an explanation as to why he waited three months from March to June 1996 to receive medical help regarding his alleged injury as well as a detailed narrative medical report containing a well-rationalized medical opinion as to the relationship between the March incident and his claimed condition.

In a narrative report received by the Office on September 10, 1996, appellant stated that he reported his injury to his supervisor the day it occurred, that he was sent to another location to work within a few days of his injury and that the pain became worse over time which led to his medical treatment on June 3, 1996.

On September 20, 1996 the Office, in a decision, denied appellant's claim for benefits on the grounds that the "medical evidence of file fails to establish that the claimed medical condition or disability is causally related to the injury."

On March 12, 1997 appellant requested reconsideration. In support of his request, appellant submitted multiple medical records from Dr. Beazley essentially covering from September 4 to December 31, 1996, which updated appellant's medical condition. Appellant also submitted an October 10, 1996 medical report from Dr. Lee, a November 14, 1996 MRI scan and a correction to the history portion of the June 4, 1996 MRI scan.

Dr. Robert C. Youngblood, a radiologist at Clarksville Memorial Hospital, read an MRI scan dated November 14, 1996. He compared the findings with the MRI scan of June 4, 1996. His impression was as follows:

"(1) Multilevel degenerative disc changes with particularly prominent right L3-4 disc bulge as described, possibly impinging on the L3 nerve rootlet. No significant change seen.

"(2) Incidental note of complete duplication inferior vena cava."

Dr. Stephen H. Percelay and Dr. Doug U. Hong, radiologists at Clarksville Memorial Hospital submitted a photocopy of the June 4, 1996 MRI report and labeled this report as supplemental. Therein, the report reads:

“ADDENDUM March 13, 1997: Patient’s history states that he has had back pain since 1984. This is in error. Patient’s back pain is reportedly from an injury which occurred on March, 1996.”

Dr. Lee’s report dated October 10, 1996 submitted on reconsideration reads as follows:

“[Appellant] has an L4 disc, which is symptomatic. He was seen by me on June 3, 1996. At that time he gave me a history of onset of symptoms was after lifting approximately an 80-pound bag of shingles, and had been progressive since that time. MRI revealed an L3-4 disc, see attached office notes dated June 3, 1996 for his physical findings. Since onset was after lifting the 80-pound bag of shingles, and had been symptomatic since that time, I feel there is a causeable [sic] relationship between the lifting and the symptoms. He was referred to Dr. Cooper Beazley, [an] orthopedic surgeon, in Clarksville, Tennessee.”

The record also contains Dr. Beazley’s postlumbar epidural injection notes and appellant’s treatment for low back pain, left leg pain and sciatica covering the period July 17 through November 19, 1996.

In an April 17, 1997 merit decision, the Office denied modification of the September 20, 1996 decision. The senior claims examiner stated that he would not consider the addendum to the June 4, 1996 MRI scan reporting that the history of back pain since 1984 was in error since the addendum was written by the radiologist after the initial denial decision and because the June 4, 1996 MRI scan report was “more contemporaneous to the claimed injury and therefore a more credible account.”

The Board finds from its perusal of the total evidence of record that there is ample evidence to find that appellant was lifting an 80-pound bag of shingles in the performance of duty on March 13, 1996 when he experienced “burning” and “lower back pain.” The Board notes that the only inconsistency in this history was a note in the June 4, 1996 MRI scan report which noted back pain since 1984. However, the radiologist, in an addendum dated March 13, 1997, reported that the history was in error and attributed the history to an injury in March 1996. The radiologist did not explain how he obtained the initial report of “back pain since 1984” or the source of the initial history. As there is no other inconsistency surrounding the date, time, and manner or injury and alleged lifting of shingles and concomitant back pain, the Board finds that the incident occurred as reported by appellant.

The Board further finds that appellant has submitted sufficient medical evidence to require further development of the record by the Office.<sup>2</sup> The medical reports of Drs. Lee and

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<sup>2</sup> *Horace Langhorne*, 29 ECAB 820 (1978).

Beazley show a consistent history of injury from lifting a bag of shingles while working, symptoms of back and leg pain and sciatica and treatment for the same which included prescription drugs, back exercises, and epidural injections. An MRI scan dated November 14, 1995 was read as showing a bulging disc with possible impingement of the L-3 nerve rootlet. Both Drs. Lee and Beazley consistently reported that appellant was symptomatic since reporting the injury at the initial examination. Neither Dr. Lee nor Dr. Beazley expressly stated the nature of the symptomatic conditions they were treating appellant for and whether such treatment directly emanated from lifting the shingles on March 13, 1996. Neither did either physician indicate whether the bulging disc occurred at that time or whether the bulging disc preexisted the lifting episode. However, the total evidence of record suggests a link between the conditions diagnosed on MRI scans, the back and leg pain. There is no contrary evidence in the record and the Office did not refer the case to an Office medical adviser to ascertain whether a definitive diagnosis had been rendered and whether such diagnosed conditions were linked to the lifting of shingles incident on March 13, 1996.

Considering all of the foregoing, the Board is persuaded that this case should be remanded to the Office for further development to include a statement of accepted facts, and a referral of appellant and the case record to a second opinion physician for a complete evaluation and a rationalized opinion as to whether appellant sustained an injury due to the lifting incident on March 13, 1996, and if so, the nature of the injury sustained, the period or periods of disability and whether such conditions continue or have ceased to be causally related to the lifting incident on March 13, 1996. After such further development as the Office deems necessary, the Office should issue a *de novo* decision.

The decisions of the Office of Workers' Compensation Programs dated April 17, 1997 and September 20, 1996 are hereby set aside and the case remanded for further development consistent with this decision of the Board.

Dated, Washington, D.C.  
April 26, 1999

George E. Rivers  
Member

Willie T.C. Thomas  
Alternate Member

Bradley T. Knott  
Alternate Member