

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of HAROLD D. PARROTT and DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS ADNUBUSTRATION MEDICAL CENTER, Asheville, N.C.

*Docket No. 97-2756; Submitted on the Record;  
Issued June 25, 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 met his burden of proof in establishing that he sustained an injury in the performance of duty on March 14, 1997, as alleged.

The Board has duly reviewed the case record in the present appeal and finds that appellant met his burden of proof in establishing that he sustained an injury in the performance of duty on March 14, 1997.

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</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>2</sup> An individual seeking disability compensation must also establish that an injury was sustained at the time, place and in the manner alleged,<sup>3</sup> that the injury was sustained while in the performance of duty<sup>4</sup> and that the disabling condition for which compensation is claimed was caused or aggravated by the individual's employment.<sup>5</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>6</sup>

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>3</sup> *Robert A. Gregory*, 40 ECAB 478 (1989).

<sup>4</sup> *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>5</sup> *Steven R. Piper*, 39 ECAB 312 (1987).

<sup>6</sup> *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. Appellant, a nurse claimed that on March 14, 1997 “while pulling on a patient that could not move himself, who is overweight, felt a pain in the left lower part of my back.” Appellant went on to say that the nature of the injury was “pain in back going down left leg and foot.” However, by decision dated July 18, 1997, the Office found that the evidence was insufficient to establish that an injury resulted from the incident.

In support of his claim, appellant submitted the employing establishment health unit records covering the period March 14 through May 21, 1997. On Friday, March 14, 1997 appellant was seen by a Dr. Parham. Appellant related a history of injury of “pulling on [patient], felt pain across back with [radiation] into the left leg, with tingling.” After a physical examination, Dr. Parham diagnosed acute low back strain manifested by positive straight leg raising at 75 degrees on the left side and sciatic tenderness. Dr. Parham recommended treatment of “release[d] from duty until March 17, 1997,” bed rest and ibuprofen.” Appellant was to see Dr. N. Aiken on Monday. On Monday, March 17, 1997 appellant was seen in the health unit by Dr. Aiken. Dr. Aiken stated that appellant indicated that his “back lots better” and “pull-type sensation only if he lifts something heavy or reaches in a stretched position” Dr. Aiken’s assessment was “back strain nearly resolved -- [Patient] may return to duty.”

The employing establishment health unit records also revealed that on May 15, 1997 appellant was seen for low back pain, “Home today, unable to work” and on May 21, 1997 appellant was seen for “request physical therapy and treatment for low back pain radiating into both legs” which started on May 15, 1997 while doing routine patient care.

Also submitted in support of appellant’s claim were June 16, 1997 treatment notes by Dr. Stewart J. Harley, a Board-certified orthopedic surgeon, with the Blue Ridge Bone and Joint Clinic. Dr. Harley stated that appellant was referred to him by Dr. Atkins with the Veterans Administration hospital for back pain. Dr. Harley stated that appellant related a history of the March 14, 1997 injury.<sup>7</sup> Dr. Harley reported his findings on examination and diagnosed “lower back pain secondary to disk degeneration at L5-S1 with prior surgery at L5-S1 on the right with good result and some associated radicular symptoms -- improved.” Dr. Harley also stated that “[Appellant’s] symptoms are secondary to the injury of March 14, 1997.”

The Board notes that appellant reported the incident on the day it happened, and that he received medical treatment the same day from Dr. Parham who reported his findings on examination and diagnosed an injury, acute low back strain. In light of the above, the Board finds that Dr. Parham’s report is sufficient to establish that appellant sustained an employment-related injury on March 14, 1997, in the form of low back strain. The record indicates that appellant was released from duty on Friday, March 14, 1997 four hours early and was released to return to regular, unrestricted duty on Monday, March 17, 1997.

In the June 16, 1997 treatment notes, Dr. Harley, a Board-certified orthopedic surgeon, reported his findings on examination and diagnosed “lower back pain secondary to disk

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<sup>7</sup> Dr. Harley stated the date of the incident as March 17, 1997 rather than March 14, 1997.

degeneration at L5-S1 with prior surgery at L5-S1 on the right with good result and some associated radicular symptoms -- improved.” Dr. Harley noted that appellant’s symptoms are secondary to the March 14, 1997 injury. Dr. Harley also stated that “[Appellant] missed one [or two] weeks of work.” Dr. Harley did not see appellant until June 16, 1997.

In view of the Board’s findings that the employing establishment’s medical records are sufficient to establish that appellant established the employment injury as alleged, the case is remanded for a determination of the period or periods of disability causally related to the March 14, 1997 employment injury.

The decision of the Office of Workers’ Compensation Programs dated July 18, 1997 is hereby reversed and the case is remanded for further development consistent with this decision of the Board.

Dated, Washington, D.C.  
June 25, 1999

George E. Rivers  
Member

Willie T.C. Thomas  
Alternate Member

Bradley T. Knott  
Alternate Member