

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN CULLINAN and U.S. POSTAL SERVICE,
POST OFFICE, Capitol Heights, Md.

*Docket No. 96-1749; Submitted on the Record;
Issued March 26, 1999*

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant sustained an injury on September 29, 1993 in the performance of duty, and if so, the nature of the injury sustained and any period or periods of disability.

Appellant herein filed a traumatic claim on September 29, 1993 contending "coming back from lunch in Break Room, 2nd Floor Largo I.V.M.F. when I got to foot of stairs with (chip) holding the door when I fell on floor mat at door slipped out from under me. Mat was wet underneath [me]." Appellant alleged that he sustained a strain to lower right back, right side neck and headache.

Appellant submitted a medical report from the Washington Industrial Medical Center dated September 30, 1993 revealing that he had been treated that day for cervical lower back strain and right knee contusion. The clinic reported that appellant was able to work with no lifting and discharged him to treat with his personal physician as requested.

Appellant was seen on October 1, 1993 by his treating physician, Dr. David Boetcher, a Board-certified family practitioner. He diagnosed 3+ to 4+ spasm lumbar musculature and tender right sacroiliac joint. Dr. Boetcher reported that appellant would be able to resume work on October 4, 1993.

The record contains two medical reports from the Washington Industrial Medical Center dated October 5, 1993. Dr. Benedicto S. Garin administered an x-ray of the lumbar spine and the cervical spine. He diagnosed sprain of the neck, sprain of the sacroiliac NOS and contusion of the knee. He noted that "further treatment is required for approximately one week. Patient has been asked to return for further treatment on September 30, 1993."

In a Form CA-17 dated October 6, 1993, Dr. Boetcher reported that appellant has a diagnosis of lumbosacral strain/disc. He noted that the employee was not able to perform regular

work and indicated “home” in block 13 of the form. On a prescription form of the same date Dr. Boetcher reported that appellant was totally incapacitated from October 6 to 11, 1993 due to lumbosacral disc symptoms and required bed rest. On a prescription form dated October 12, 1993, Dr. Boetcher reported appellant was totally incapacitated from September 20 to October 18, 1993 due to lumbosacral disc syndrome and back pain. On a prescription form dated November 1, 1993, Dr. Boetcher reported that appellant was disabled from October 25 to November 1, 1993 due to the same condition. Dr. Boetcher also submitted a report of a magnetic resonance imaging (MRI) scan of the lumbosacral spine performed on October 20, 1993. The MRI impression stated:

“Degenerative disc changes especially at L5-S1 with associated very mild diffuse disc bulge. Disc herniations or spinal stenosis are absent.”

The record also contains an orthopedic consultation by Dr. Alvaro A. Sanchez, a Board-certified orthopedic surgeon, dated November 8, 1993. Dr. Sanchez reported no paravertebral muscle spasm, that range of motion of the trunk was to 90 degrees, 20 degrees of extension and side bending and 80 degrees of rotation. On review of the MRI scan, Dr. Sanchez noted slight bulging at the L5-S1 level but absolutely no evidence of herniation. He commented that appellant had received adequate treatment and that there was no need for further testing nor consideration for an operative procedure.

On a Form CA-20 dated November 16, 1993, Dr. Sanchez reported that he initially evaluated appellant on November 8, 1993 and diagnosed spine lumbar strain; that the period of disability was from November 8, 1993 through a date unknown; and that he provided physical therapy treatment.

In a decision dated December 30, 1993, incorporating a memorandum to the Director dated December 23, 1993, the Office of Workers’ Compensation Programs rejected appellant’s claim citing as a reason that the evidence of record fails to demonstrate a causal relationship between the injury and the claimed condition or disability. Within the incorporated memorandum, the claims examiner specifically noted:

“The injury of September 23, 1993 occurred at the time, place and in the manner alleged, and resulted in lumbar strain.... It is claimed that the injury caused total disability subsequent to October 5, 1993.”

In subsequent requests for reconsideration, the Office in decisions dated November 8, 1995 and April 11, 1996 denied modification of the decision dated December 23, 1993.

The Board has duly reviewed the case record in the instant appeal and finds that the contemporaneous evidence of record establishes that appellant sustained a lumbosacral strain in the performance of duty on September 29, 1993.

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

¹ 5 U.S.C. §§ 8101-8193.

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 is causally related to the employment injury.²

The Board notes that the record contains conflicting information as to the period or periods of disability and whether appellant sustained a herniated disc on September 29, 1993. In this connection, Dr. Christian Chinwuba, a Board-certified radiologist of the MRI Institute, on reading an MRI on October 20, 1993 reported “Disc herniation or spinal stenosis are absent.” Similarly, Dr. Sanchez noted in his report dated November 8, 1993, the following:

“Review of a magnetic resonance imaging (MRI) scan brought by the patient reveals slight decreasing signal in the lower three lumbar discs with slight bulging at the L5-S1 level but absolutely no evidence of herniation.”

On the other hand, a medical report dated July 10, 1995 by Dr. Joel L. Falik, a Board-certified neurological surgeon, reported that an MRI scan done on October 20, 1993 at the MRI Institute was “indicative of what appeared to be a central and left-sided disc herniation at the L5-S1 level.” It was his impression that appellant sustained a disc herniation as a result of the September 29, 1993 injury.

Because the medical evidence is unclear as to what medical condition or conditions appellant sustained aside from the lumbosacral strain, the period or periods of disability, the case must be remanded for further development and a determination of these issues, including referral for second opinion examinations if deemed appropriate.

² *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

The decisions of the Office of Workers' Compensation Programs dated April 11, 1996 and November 8, 1995 are reversed to the extent that those decisions found appellant did not sustain an injury on September 29, 1993 as alleged. The remainder of the decisions are set aside for further development and a *de novo* decision.

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

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member