

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of WILLIAM D. JAYNE and DEPARTMENT OF THE AIR FORCE,  
AIR NATIONAL GUARD, Springfield, Ill.

*Docket No. 97-1372; Submitted on the Record;  
Issued March 29, 1999*

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DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,  
BRADLEY T. KNOTT

The issue is whether appellant sustained an injury in the performance of duty on May 31, 1996 as alleged.

On December 11, 1996 appellant, then a 34-year-old aircraft mechanic, filed a notice of traumatic injury and claim for compensation (Form CA-1) alleging that he sustained an injury to his lower back while riding as a passenger in a military pick-up truck on May 31, 1996.<sup>1</sup> Appellant indicated that his injury was caused by the reckless driving of a coworker who repeatedly accelerated the vehicle to a speed of approximately 30 miles per hour and then abruptly slammed on the brakes. Additionally, appellant alleged that the driver of the vehicle ignored his repeated requests to stop driving recklessly. On December 12, 1996 the employing establishment obtained a statement from another passenger in the vehicle who refuted appellant's account of the May 31, 1996 incident.<sup>2</sup> However, a statement from the driver of the vehicle was not submitted. The employing establishment controverted the claim on the basis that appellant had previously filed a claim for compensation, which was denied, and that appellant's decision to file a claim for a new traumatic injury was motivated by the fact that he had already exhausted his leave balance.

On January 9, 1997 the Office of Workers' Compensation Programs forwarded two letters to appellant regarding the status of his claim. In one letter, the Office advised appellant

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<sup>1</sup> In an attached statement, appellant explained that shortly after his injury on May 31, 1996, he attempted to submit a Form CA-1, but was advised by his supervisor to instead submit a Form CA-2a, recurrence of disability, inasmuch as his current injury was in the same general area as a previously sustained employment-related injury of April 24, 1995. Appellant further explained that his claim (No. 100443883) for a recurrence of disability was subsequently denied on August 28, 1996, and that he wished to withdraw the previously submitted Form CA-2a and submit a Form CA-1 as he initially intended.

<sup>2</sup> The witness also stated that on the day in question, both he and the driver heard appellant state that he "[wanted] to fill out a CA-1 on something or anything."

that the information submitted was insufficient to establish that he sustained an injury on May 31, 1996, and that if he received any medical treatment for his injury, he should arrange for the submission of his medical records. In a second letter, the Office requested additional factual information regarding the circumstances of appellant's May 31, 1996 injury. The Office specifically requested, *inter alia*, a detailed description of how the injury occurred, the names of any witnesses to the injury, the immediate effects of the injury, and whether appellant had any symptoms or a similar disability prior to the alleged injury. The Office further explained that the evidence requested must support the claim of a new trauma on May 31, 1996, and that appellant could not claim a new injury simply because a prior recurrence of disability claim was denied.

In response to the Office's request, appellant submitted medical reports dated December 19, 1996, January 8 and 15, 1997, from Dr. Daniel K. O'Brien, a family practitioner and a work restriction evaluation (Form OWCP 5), also prepared by Dr. O'Brien. Appellant also submitted an August 29, 1996 magnetic resonance imaging (MRI) scan and treatment notes from Dr. Leo K. Ludwig, an orthopedic specialist, covering the period of August 26, 1996 through September 9, 1996. The Office also received an October 7, 1996 report from Dr. Terrence L. Pencek, a neurologist and a medical report and treatment records from Dr. Tim Noreuil, an anesthesiologist, dated October 28, 1996. Finally, appellant submitted a seven page narrative in response to the Office's request for additional factual information regarding the incident of May 31, 1996.

By decision dated February 7, 1997, the Office denied appellant's claim on the basis that the evidence of file failed to establish that an injury was sustained as alleged. In an accompanying memorandum, the Office explained that the evidence of file was insufficient to establish that appellant actually experienced the May 31, 1996 incident as alleged. The Office specifically noted that another passenger in the vehicle denied that there was any speeding up or slamming of the brakes as alleged by appellant. The Office found that the evidence received in response to its request, namely Dr. O'Brien's work restriction evaluation and his medical reports dated January 8 and 15, 1997, was insufficient to support that the claimant sustained an injury. Appellant subsequently filed an appeal with the Board on February 25, 1997.

The Board finds that this case is not in posture for a determination of whether appellant sustained an injury in the performance of duty on May 31, 1996.

The Board's jurisdiction of a case is limited to reviewing that evidence which was before the Office at the time of its final decision.<sup>3</sup> Inasmuch as the Board's decisions are final as to the subject matter appealed,<sup>4</sup> it is crucial that all relevant evidence which was properly submitted to the Office prior to the time of issuance of its final decision be addressed by the Office.<sup>5</sup> In the instant case, the Office did not address certain medical and factual evidence stamped received prior to the issuance of its February 7, 1997 final decision.

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<sup>3</sup> 20 C.F.R. § 501.2(c).

<sup>4</sup> 20 C.F.R. § 501.6(c).

<sup>5</sup> *William A. Couch*, 41 ECAB 548, 553 (1990); *Linda Johnson*, 45 ECAB 439 (1994).

The Office's decision makes no reference to the medical opinions provided by Drs. Ludwig, Peck and Noreuil or Dr. O'Brien's December 19, 1996 report. The Office also neglected to consider appellant's August 29, 1996 MRI and appellant's January 24, 1997 narrative statement explaining how the alleged May 31, 1996 incident occurred. All of the above-noted evidence is date-stamped as being received by the Office by January 27, 1997; at least 11 days prior to the issuance of the Office's February 7, 1997 decision. The Board, therefore, will set aside the Office's February 7, 1997 decision and remand the case to the Office to fully consider the evidence which appellant submitted prior to the issuance of the Office's decision.<sup>6</sup>

The decision of the Office of Workers' Compensation Programs dated February 7, 1997 is hereby set aside and the case remanded for further action consistent with this opinion.

Dated, Washington, D.C.  
March 29, 1999

George E. Rivers  
Member

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member

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<sup>6</sup> The Board further notes that while the Office's February 7, 1997 decision makes reference to "evidence of record" pertaining to a previously accepted injury of April 24, 1995 for lumbar sprain, as well as appellant's subsequent claim for recurrence of disability, the Office neglected to associate any of the relevant evidence with the instant claim file; *see* FECA Bulletin 97-10 (issued February 15, 1997) (provides for doubling of case file where "[a] new injury case is reported for an employee who has filed a previous injury claim for a similar condition or the same part of the body").