

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of RAVI PATEL and U.S. POSTAL SERVICE,  
POST OFFICE, Princeton, NJ

*Docket No. 97-2768; Submitted on the Record;  
Issued January 27, 2000*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof in establishing that he sustained an injury while in the performance of duty on February 16, 1996, as alleged.

On March 5, 1996 appellant filed a claim for a traumatic injury alleging that on February 16, 1996 he sustained an injury to his low back with pain down his left leg while performing his duties as a mailhandler, *i.e.*, appellant did heavy lifting, flat mail pulling. On the reverse side of the form, the employing establishment stated that appellant stopped work on February 17, 1996. The employing establishment controverted the claim and continuation of pay stating that, the "Employee worked all day and did n[o]t complain of injury, not notifi[ed] until received paperwork [on] March 9, 1996."

Accompanying the claim, the employing establishment submitted a February 20, 1996 sick leave request by appellant; a February 21, 1996 medical certificate by Dr. Daksh B. Patel who stated, "Patient seen in office, advised rest for one week"; an employing establishment internal letter dated March 18, 1996 in which it is stated that "There appears to be inconsistencies in the employees behavior and the report of the alleged on-the-job injury." The employing establishment also stated that appellant's wife submitted Dr. Patel's medical certificate with no mention of any injury suffered at work. The employing establishment further stated that, by letter dated March 8, 1996, appellant's attorney submitted appellant's March 5, 1996 claim form and indicated that appellant had suffered an accident on the job on February 16, 1996; an employing establishment statement controverting appellant's claim because he did not mention the injury until May 5, 1996, date of injury was February 16, 1996 but was not filed until March 5, 1996 by appellant's attorney, appellant called in sick on February 17, 1996 and did not mention an injury, appellant's wife brought the doctor's medical certificate to the personnel office and stated that appellant suffered from a cold/flu, the doctor's note stated that appellant needed rest but did not indicate an injury and finally that appellant's wife came in to pick up his check from appellant's supervisor, but again did not mention that appellant had sustained an injury; an employing establishment March 18, 1996 internal letter relating the

reason for controverting the claim which included the statement that “It is felt that, since this employee had been advised by his supervisor that his performance was not satisfactory, he is filing an on-the-job injury to receive continuation of pay and further compensation from the [employing establishment]”; and a March 20, 1998 letter from the employing establishment to appellant informing him that he would not receive continuation of pay.

By letter dated March 29, 1996, the Office requested factual and medical information from appellant, specifically, a detailed description of how the injury occurred and a comprehensive medical report from his treating physician which described appellant’s symptoms, results of examinations and tests, a diagnosis, treatment provided and the doctor’s rationalized medical opinion on the cause of appellant’s condition.

On April 25, 1996 the record was supplemented with a March 12, 1996 medical certificate by Dr. Thomas Capotosta who authorized a magnetic resonance imaging (MRI) of the lumbosacral spine.

On April 29, 1996 the record was supplemented with appellant’s April 16, 1996 response to the Office’s request for additional information.

By decision dated May 23, 1996,<sup>1</sup> the Office denied appellant’s claim for failure to establish fact of injury. The Office found that appellant, a federal employee, filed a timely claim for compensation. However, the Office also found that there was conflicting evidence of record regarding whether or not the claimed incident occurred as alleged and whether appellant sustained an injury as a result of an incident. Therefore, fact of injury was not established.

By letter dated May 28, 1996, appellant’s representative requested an oral hearing before a hearing representative. A hearing was scheduled and held on January 14, 1997. At the hearing several documents were submitted into evidence, including appellant’s April 16, 1996 response to the Office March 29, 1996 request for additional information; descriptions of medication for muscle spasms and pain prescribed for appellant by Dr. Patel; Dr. Patel’s February 28, 1996 office notes indicating appellant has a herniated disc; February 21, 1996 office notes indicating that appellant has had back pain for several years and has undergone extensive evaluation in the past; and a March 5, 1996 return to work certificate by Dr. Patel indicating appellant could return to work on March 5, 1996. The record was held open for 30 days to allow appellant to submit a report from Dr. Capotosta. On February 3, 1997 the record was supplemented with Dr. Capotosta’s January 20, 1997 report.

By decision dated February 25, 1997, the Office hearing representative affirmed the Office’s May 23, 1996 decision. He found that the evidence of record failed to establish that appellant sustained an injury on February 16, 1996, as alleged, nor did such an incident result in an injury.

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<sup>1</sup> The Office indicated that no response to its March 29, 1996 request for information had been received from appellant. However, appellant’s response was received on April 29, 1996.

By letter dated March 19, 1997, appellant's representative requested reconsideration of the February 25, 1997 decision. In support, appellant submitted March 12, 1996 office notes by Dr. Capotosta; a February 24, 1997 report of an MRI of the lumbosacral spine by Dr. Fred H. Schlesinger, a Board-certified radiologist; a March 27, 1996 report by Dr. Patel; a February 19, 1997 report by Dr. Capotosta; Dr. Capotosta's February 19, 1997 office notes; Dr. Capotosta's office note of February 26, 1997; Dr. Capotosta's April 4, 1997 office notes; and April 13, 1997 reports by Dr. Bartley A. Larsen of MRIs of appellant's pelvis and sacrum.

By decision dated June 17, 1997, after a merit review, the Office found that the evidence submitted was insufficient to warrant modification of the prior decision.

The Board finds that appellant has submitted evidence sufficient to establish a *prima facie* case and to require further development of the evidence.

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 individual is an "employee of the United States" within the meaning of the Act, and that the claim was filed within the applicable time limitation of the Act.<sup>3</sup> An individual seeking disability compensation must also establish that an injury was sustained at the time, place and in the manner alleged,<sup>4</sup> that the injury was sustained while in the performance of duty,<sup>5</sup> and that the disabling condition for which compensation is claimed was caused or aggravated by the individual's employment.<sup>6</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>7</sup>

In the instant case, appellant explained during the January 14, 1997 hearing that he delayed reporting his injury because he thought his condition would improve in three to four days and he would be able to return to work and he was also concerned he would lose his temporary job. Appellant was seen by Dr. Patel on February 21, 1996. In February 28, 1996 office notes, Dr. Patel stated that appellant had "herniated disc L4-L5-S1." In a March 27, 1997 report, Dr. Patel stated:

"[Appellant] was seen in my office February 21, 1996 complaining of acute low back pain and after examination revealed acute herniated disc L4-5. During the history being taken [appellant] mentioned a history of low back pain for several years and also investigation of same never revealing any herniated disc in the

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

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

<sup>4</sup> *Robert A. Gregory*, 40 ECAB 478 (1989).

<sup>5</sup> *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>6</sup> *Steven R. Piper*, 39 ECAB 312 (1987).

<sup>7</sup> *David J. Overfield*, 42 ECAB 718 (1991); *Victor J. Woodhams*, 41 ECAB 345 (1989).

past. As such [appellant] did not have a herniated disc prior to February 16, 1996 the date given to me by the patient stating the pain was so bad he could not work.”

Dr. Patel further stated:

“An MRI of the lumbosacral spine confirmed the diagnosis of a herniated disc and a lumbar disc surgery risks and benefits were explained to the patient and a referral was made to an orthopedic surgeon.”

Appellant also submitted March 12, 1996 office notes by Dr. Capotosta who noted:

“[A] 38-year-old male comes today because of pain in the low back radiating down the left lower extremity of approximately 3½ weeks duration. The patient tells me that he injured himself at work at the [employing establishment] in Princeton on February 16, 1996. According to the patient, he was lifting heavy buckets of mail which could have weighed anywhere between 20 and 50 [or] 60 pounds. He did it repeatedly for 6 days in a row and finally on February 16, 1996 he felt pain in his left leg and could no longer continue work. The pain is associated with numbness and paresthesias. The pain is worse when he coughs, sneezes or increases interabdominal pressure such as during a bowel movement. Patient has difficulty dressing himself and difficulty moving. There is no significant past medical history. The patient gives no past history regarding his low back. The patient given no history of previous trauma and gives no history of recent trauma.”

Dr. Capotosta further stated:

“Physical examination at this time reveals a 38-year-old well-developed, well-nourished 5’5” 150 pound male in marked distress because of pain in his lower back. The patient moves about the office with a great deal of difficulty guarding his lower back and holding on to furniture as he moves.”

Dr. Capotosta went on to say:

“Examination of the lumbosacral spine reveals severe tenderness with severe paravertebral muscle spasm up and down the lumbosacral spine. Straight leg raising is markedly positive at about 60 degrees. Knee and ankle jerks are full and equal bilaterally. Neurovascular examination both lower extremities is within normal limits.”

Dr. Capotosta also stated:

“I feel the patient sustained as direct result of his injury at work a herniated nucleus pulposus of the lumbosacral spine on the left side, most likely at L5-S1 but possibly also at L4-5. I say this based on my history and physical examination of the patient and based on my 21 years of experience of private

practice having seen multiple cases such as this. This is a typical injury related to heavy lifting and certainly is within a reasonable degree of medical certainty that it was caused by his work injury. I have advised the patient that he should have conservative management including physical therapy, pain medication, anti-spasmodic both of which are being prescribed to him by his family physician Dr. Patel.

Dr. Capotosta continued:

“Moreover, I think he should have an MRI of the lumbosacral spine as soon as possible. I think also that he should have a lumbosacral corset. Patient certainly is disabled from his work and I would expect him to be disabled for a minimum of 8 weeks and possibly more depending whether or not the MRI shows a herniated disc but also depending on whether or not he needs surgery. And depending on how rapidly he is given the proper medical treatment including physical therapy, lumbosacral corset etc.”

In a January 20, 1997 report, Dr. Capotosta stated that:

“[Appellant] first consulted me on March 12, 1996 for a back problem. I saw the patient in my office ... on March 12, 1996. At that time [appellant] presented as a 38-year-old male complaining of low back pain radiating down the left lower extremity. [Appellant] told me that he had been having the pain for about 3½ weeks. The patient told me that he injured himself at work at the [employing establishment] in Princeton, New Jersey on February 16, 1996. According to [appellant] he was lifting heavy buckets of mail which could have weighed anywhere between 20 and 50 or 60 lbs. He did it repeatedly for 6 days in a row and finally on February 16, 1996 he felt pain in his left leg and could no longer continue to work. The pain was also associated with numbness and paresthesias down the left leg. The pain was worsened with coughing, sneezing or increasing intra-abdominal pressure, such as during a bowel movement.”

Dr. Capotosta further stated:

“The patients past medical history was noncontributory. The patient gave no history regarding his low back. He gave no history of previous trauma or recent trauma to his low back.”

Dr. Capotosta also stated:

“Diagnosis at that time was herniated nucleus pulposus. Most likely L5-S1 on the left, but possibly L4-5 also.”

Dr. Capotosta went on to say:

“It is my opinion based on my history and physical examination of the patient on March 12, 1996 and based on my 21 years of experience of private practice, that within a reasonable degree of medical certainty that [appellant’s] back injury was caused by his work-related injury of heavy lifting.”

Also submitted was a February 19, 1997 report by Dr. Capotosta who stated:

“I have seen and examined the above captioned patient in my office today, February 19, 1997. When last I saw [appellant] March 12, 1996, I felt that he had a herniated nucleus pulposus of L5-S1 on the left, possibly also L4-5. I advised an MRI of the back. To date, that has not been done. Apparently there was some discussion as to whether or not this was a workers’ compensation case. It is my opinion when I saw [appellant] in March of 1996, that the injury was definitely workers’ compensation, but apparently there was some refusal on the part of the [employing establishment] to pay for the test.”

Dr. Capotosta further stated:

“He is in extreme pain. He has extreme paravertebral muscle spasm. He has numbness running down his leg, his toes are numb, he cannot sit or stand and he has great difficulty getting up out of a chair and out of bed and has to push himself up with his right hand. He is already getting symptoms on his right arm, secondary to pushing himself up from a chair. The patient’s symptoms are real and not imagined. I would urge you to use all due haste to allow [appellant] who cannot afford an MRI on his own to have an MRI so that we may get a handle on the exact location and severity of his ruptured disc and then get him to a spine surgeon to take care of the problem. I do n[o]t think this is going to go away with medical treatment which he has had for the last year.”

The Board finds that given the absence of any opposing medical evidence, that the total evidence of record, and in particular Dr. Patel’s and Dr. Capotosta’s reports, although lacking sufficient rationale, are sufficient to require further development of the record by the Office.<sup>8</sup>

On remand the Office should prepare a statement of accepted facts and refer it along with appellant and appellant’s medical records for a second opinion examination to obtain a rationalized opinion as to whether appellant sustained an injury as alleged on February 16, 1996; the nature of the injury sustained; whether any disability was sustained as a result of the alleged injury; and whether the alleged injury resulted in the need for surgery.

Accordingly, the decisions of the Office of Workers’ Compensation Programs dated June 18 and February 25, 1997 are set aside and the case is remanded for further development consistent with this decision.<sup>9</sup>

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<sup>8</sup> *Rebel L. Cantrell*, 44 ECAB 660 (1993); *John J. Carlone*, 41 ECAB 354 (1989).

Dated, Washington, D.C.  
January 27, 2000

David S. Gerson  
Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>9</sup> The Board notes that items 164-66 of the record belong to someone other than appellant in this case.