

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VELMA R. THOMAS and U.S. POSTAL SERVICE,
POST OFFICE, Atlanta, GA

*Docket No. 99-125; Submitted on the Record;
Issued June 9, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant met her burden of proof to establish that her back condition is causally related to an August 17, 1997 employment injury.

On August 25, 1997 appellant, then a 58-year-old mailhandler, filed a traumatic injury claim, alleging that on August 17, 1997 she sustained a back injury when lifting heavy sacks of mail. She stopped work on August 18, 1997.¹ On the claim form, appellant's supervisor, Bonnie K. Cottone, stated that lifting was not involved in appellant's job, rather the mail sacks were slid from a belt and concluded that appellant's description of the injury was inconsistent with her job duties. Following development of the record, by decision dated October 24, 1997, the Office of Workers' Compensation Programs denied the claim, finding that, while the August 17, 1997 incident occurred as alleged, appellant failed to establish that she sustained an injury. On May 26, 1998 appellant, through counsel, requested reconsideration and submitted additional evidence. In a July 24, 1998 decision, the Office modified the prior decision to find that, while appellant established that she sustained a back injury on August 17, 1997, the medical evidence was insufficient to establish that her current condition was causally related to this injury. The instant appeal follows.²

The Board finds that this case is not in posture for decision.

¹ It is unclear from the record whether appellant returned to work and stopped again at a later date.

² The Board notes that on October 9, 1998 appellant requested reconsideration with the Office and submitted additional medical evidence. The Board and the Office may not have concurrent jurisdiction over the same issue in the same case. *Douglas E. Billings*, 41 ECAB 880 (1990). Furthermore, the Board cannot consider the medical evidence submitted with the reconsideration request to the Office as the Board's review of the case is limited to the evidence of record which was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c).

An employee seeking benefits under the Federal Employees' Compensation Act³ has the burden of establishing the essential elements of his or her claim⁴ including the fact that the individual is an "employee of the United States" within the meaning of the Act,⁵ that the claim was timely filed within the applicable time limitation period of the Act,⁶ 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 are causally related to the employment injury.⁷ These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁸ However, an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong and persuasive evidence.⁹

The term "disability" under the Act means incapacity because of injury in employment to earn the wage, which the employee was receiving at the time of such injury,¹⁰ and when a claimant stops working at the employing establishment for reasons unrelated to his or her employment-related physical condition, he or she has no compensable disability within the meaning of the Act.¹¹

The relevant medical evidence in this case includes reports dated August 18, 1997 from appellant's treating Board-certified internist, Dr. W.H. Reeves, who reported a history of low back pain caused by heavy lifting at work that had gradually worsened over the past month. He diagnosed lumbar strain and advised that appellant could return to work on August 19, 1997 with restrictions. In a September 29, 1997 report, Dr. Reeves advised that appellant's x-rays and examinations were consistent with degenerative disc disease of the lumbar spine with lumbago.

Dr. Edward E. Cordovado, a chiropractor, submitted a September 20, 1997 duty status report, in which he advised that appellant could work eight hours per day with restrictions. In a September 26, 1997 report, he diagnosed vertebral subluxation and noted that appellant described a history of feeling something give in her low back area while lifting at work. X-rays of the thoracic and lumbar spine that day, interpreted by Dr. R. Bruce Fox, a chiropractor, revealed scoliotic and postural changes. Subluxation was not diagnosed.

³ 5 U.S.C. §§ 8101-8193.

⁴ See *Daniel R. Hickman*, 34 ECAB 1220 (1983); see also 20 C.F.R. § 10.110.

⁵ See *James A. Lynch*, 32 ECAB 216 (1980); see also 5 U.S.C. § 8101(1).

⁶ 5 U.S.C. § 8122.

⁷ See *Melinda C. Epperly*, 45 ECAB 196 (1993).

⁸ See *Delores C. Ellyett*, 41 ECAB 992 (1990); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁹ See *Robert A. Gregory*, 40 ECAB 478 (1989).

¹⁰ *Corlisa Sims*, 46 ECAB 963 (1995).

¹¹ See *Major W. Jefferson, III*, 47 ECAB 295 (1996).

A November 21, 1997 magnetic resonance imaging (MRI) scan of the lumbar spine a diffuse extrusion herniation at L4-S1 with some mass effect on both the right and left S1 root, degenerative changes and early annular tear at L4-5 and minimal facet arthropathy on the left at L5-S1.

In a November 24, 1997 report, Dr. Peter M. Ciejek, a Board-certified orthopedic surgeon, noted the MRI findings and advised that appellant should be on light duty until December 5, 1997. In a December 22, 1997 report, he advised that she could not work for four weeks and in a form report dated January 12, 1998, indicated that appellant's condition was caused by lifting sacks of mail at work. Dr. Ciejek advised that she was totally disabled. By report dated March 30, 1998, he noted a history of "doing a lot of lifting mail sacks" and made findings on examination.

By report dated April 7, 1998, Dr. Reeves stated:

"[Appellant] knows the back pain was caused by her work-related stress to back with lifting. My note [of] August 18, 1997 relates her pain to heavy lifting at work. This seems to be a work-related injury."

In an April 30, 1998 report, Dr. Reeves advised:

"My office notes from August 18, 1997 do not specifically implicate lifting heavy bags the day previously as causing a sudden exacerbation of her back pain. It would certainly make sense that an event the day previously triggered her to come in the office as an emergency work-in, however, that is not specifically noted. I cannot remember the details of the conversation so I have to go by my notes. My assessment, I believe, does implicate her work as causing her back pain.

"In later visits with Dr. Ciejek, an orthopedic surgeon, [she] was more specific in implicating lifting the mailbags on a particular day as causing the exacerbation of her back pain.... I believe that lifting mail sacks with a reasonable degree of medical certainty is the cause of [her] current back problem. It would be reasonable to believe her that a specific event on August 17, 1997 could have been the triggering event, however, my particular note on August 18, 1997 does not appear to be so specific...."

Dr. Ciejek submitted a May 4, 1998 report, stating:

"According to my office notes, [appellant] did relate a history of having right back, right buttocks, right leg pain and some occasional numbness in her right leg since August 1997, after lifting sacks of mail at the [employing establishment].... If [she] indeed had no previous problems and had no other injuries to her back, then this would be a logical cause of her problem. I have no other information of other injuries or previous back problems in my records regarding her."

In a May 20, 1998 report, Dr. Cordovado noted that he had first seen appellant on September 20, 1997 for injuries sustained in a work-related accident on August 17, 1997 which

she described as “lifting multiple sacks of mail, some of which weighed up to 70 pounds, when she felt something give in her back.” He stated that vertebral subluxation complex was diagnosed by x-ray and noted the MRI findings of disc herniation. Dr. Cordovado concluded:

“The nature of [appellant’s] injury indicates a traumatic incident. The diffuse herniation, which is located at the level of L5-S1, is not typically found in a chronic type of injury. Therefore, it is my opinion, beyond any reasonable doubt, that [she] did suffer a traumatic injury, such as a lifting injury, on the date of August 17, 1997.”

In the instant case, the Office found that the evidence of record established that appellant sustained an employment-related back injury on August 17, 1997 but that the evidence was insufficient to establish that her current condition was causally related to the accepted injury. The reports of Drs. Reeves and Ciejek are generally supportive of appellant’s claim that she was disabled due to the employment injury. The Board finds that, while these reports are not sufficiently detailed to determine the period of disability in which appellant would be entitled to wage-loss compensation, they are sufficient to require further development of the record. It is well established that proceedings under the Act¹² are not adversarial in nature,¹³ and while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.¹⁴ The case will be remanded to the Office for further development regarding whether the August 17, 1997 injury resulted in any condition for which she would be entitled to medical benefits or any periods of disability. After such further development as is deemed necessary, the Office shall issue a *de novo* decision.

¹² 5 U.S.C. §§ 8101-8193.

¹³ See, e.g., *Walter A. Fundinger, Jr.*, 37 ECAB 200 (1985).

¹⁴ See *Dorothy L. Sidwell*, 36 ECAB 699 (1985).

The decision of the Office of Workers' Compensation Programs dated July 24, 1998 is hereby set aside and the case is remanded to the Office for proceedings consistent with this opinion.

Dated, Washington, D.C.
June 9, 2000

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member