

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ARNOLD HICKOX and U.S. POSTAL SERVICE,  
POST OFFICE, Waycross, GA

*Docket No. 99-1359; Submitted on the Record;  
Issued October 27, 2000*

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DECISION and ORDER

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

The issue is whether appellant has met his burden of proof in establishing that he sustained an injury in the performance of duty.

On May 8, 1997 appellant filed a traumatic injury claim alleging that on April 30, 1997 he sustained an injury to his lower back while performing his duties as an expeditor. He alleged that the parking pin on the bulk mail container that he was pushing released and the machine suddenly stopped, which caused an injury to his lower back. Appellant submitted with his claim a note from his chiropractor, Dr. R.B. Carswell, dated May 5, 1997, who indicated that appellant had experienced continual back pain and recommended that he be evaluated by Dr. Calvin Hudson, a Board-certified neurologist. His supervisor indicated on the reverse side of the claim form that appellant had been under his physician's care for back problems weeks before the alleged injury. Appellant has not stopped work and returned.

The Office of Workers' Compensation Programs received a letter from Dr. Hudson dated May 14, 1997, which noted his evaluation and treatment of appellant for low back and bilateral leg pain.

By decision dated June 26, 1997, the Office denied appellant's claim for compensation on the grounds that the evidence was insufficient to establish that he sustained an injury due to an employment factor as alleged.

Appellant requested an oral hearing in a letter dated July 11, 1997, received by the Office on July 15, 1997. He submitted with his hearing request a letter from Dr. Hudson dated June 23, 1997 and a letter from Dr. Carswell dated July 8, 1997. Dr. Hudson's letter noted appellant's diagnosis of slight to moderate spondylolisthesis, upon review of a magnetic resonance imaging (MRI) scan and lumbosacral x-ray. Dr. Carswell's letter related that appellant had come to see him with complaints of lower back and bilateral leg pain after he alleged that while pushing a container of mail at work, he felt his lower back pop and give away.

The Office scheduled an oral hearing on March 6, 1998, however, appellant subsequently requested a review of the written record in lieu of a hearing.

By decision dated April 24, 1998, an Office hearing representative affirmed the June 26, 1997 decision on the grounds that appellant had not met his burden of proof to establish that he sustained a low back injury in the performance of duty on April 30, 1997.<sup>1</sup> The hearing representative determined that although the Office accepted that the incident occurred as alleged, appellant did not submit sufficient medical evidence.

On June 18, 1998 appellant requested reconsideration. He submitted a letter from Dr. Hudson, dated June 10, 1998, in which he stated that appellant's low back and bilateral leg pain was caused by unloading a truck at work. Appellant opined that appellant put too much strain on his back, which was already weakened from a preexisting genital weakness of spondylolisthesis in his back. Dr. Hudson further opined that appellant was not able to tolerate the amount of lifting and bending performed in his work duties, therefore, his position caused him to require surgery and work restrictions. He concluded that appellant's current status was a direct result of and caused by his on-the-job injury.

By decision dated July 2, 1998, the Office denied modification of its April 24, 1998 decision.

Appellant, through his attorney, E. Kontz Bennett, requested reconsideration again on March 3, 1999. Mr. Bennett resubmitted Dr. Hudson's June 10, 1998 letter in support of his request. On July 2, 1999 counsel supplemented appellant's March 3, 1999 request for reconsideration with additional evidence. Mr. Bennett submitted a March 5, 1999 letter addressed to himself from Dr. Hudson and a July 1, 1999 letter from Mr. Bennett to Dr. Hudson, referencing appellant's claim. In the March 5, 1999 letter report, Dr. Hudson stated that appellant began having back and bilateral leg pain after he lifted a heavy object, while working on his job and opined, therefore, that his job had caused his back and bilateral leg pain. He indicated that appellant had a preexisting weakness in his back caused by spondylolisthesis, that caused him to be more susceptible to back injury, but that he had been tolerating the spondylolisthesis condition and had no previous symptoms prior to his work-related injury. Dr. Hudson concluded that appellant's work-related injury caused his current symptomatology and should be covered by workers' compensation.

Mr. Bennet argued in his July 1, 1999 request letter that Dr. Hudson specifically detailed the cause of appellant's low back and bilateral leg pain and that the Office should have further developed the medical evidence by contacting Dr. Hudson to request a supplemental report of the necessary information to support appellant's claim.

By decision dated July 19, 1999, the Office denied modification of the prior decision on the grounds that the evidence submitted did not establish causal relationship. The Office found that the letter report dated March 5, 1999 from Dr. Hudson did not contain a secure diagnosis or

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<sup>1</sup> The Board notes that the hearing representative also modified the June 26, 1997 decision, in part, on the basis that the element of fact of injury had been established.

medical reasoning explaining the causal relationship between appellant's condition and the April 30, 1997 injury.

The Board finds that the case is not in posture for a final decision.

An employee seeking benefits under the Act 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, that the claim was filed within the applicable time limitation of the Act, that an injury was sustained in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed are causally related to the employment injury.<sup>2</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>3</sup>

The Office, in determining whether an employee actually sustained an injury in the performance of duty, first analyzes whether fact of injury has been established. Generally, fact of injury consists of two components, which must be considered in conjunction with one another. In this case, the Office accepted that the first component, the employment incident, occurred as alleged.<sup>4</sup> The second component is whether the employment incident caused a personal injury and this generally can only be established by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.<sup>5</sup>

In a report dated June 10, 1998, Dr. Hudson stated that appellant's low back and bilateral leg pain was caused by his work injury sustained while unloading a truck. He noted that appellant put too much strain on his back, which was already weakened from a preexisting weakness of spondylolisthesis and opined that appellant was not able to tolerate the amount of lifting and bending that he was doing at work. He concluded therefore that appellant's condition directly resulted from his work-related injury. In a March 5, 1999 letter to appellant's attorney, Dr. Hudson stated that appellant began having back pain and bilateral leg pain after he lifted a heavy object while working on his job. Dr. Hudson noted that appellant had a preexisting weakness in his back that caused him to be more susceptible to back injury, namely the spondylolisthesis, however appellant had tolerated this weakness and had no symptoms prior to his work-related injury. Dr. Hudson opined therefore that appellant's work-related injury caused his back and bilateral leg pain. While the Office has accepted that an incident occurred on April 30, 1997, Dr. Hudson's reports provide support that appellant's back and bilateral leg pain is causally related to the April 30, 1997 employment incident. Although the medical evidence is not sufficient to meet appellant's burden of proof in establishing his claim, it raises an

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<sup>2</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>3</sup> *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

<sup>4</sup> *Elaine Pendleton*, *supra* note 2.

<sup>5</sup> 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

uncontroverted inference of causal relationship sufficient to require further development of the evidence.<sup>6</sup> The case will therefore be remanded to the Office.

On remand, the Office should prepare a statement of accepted facts and refer appellant, along with the statement of accepted facts and a copy of the medical record, to an appropriate specialist for an examination of appellant and a rationalized medical opinion as to whether appellant's back and bilateral leg pain was caused or aggravated by factors of his federal employment. After such further development as it may deem necessary, the Office shall issue a *de novo* decision.

The decisions of the Office of Workers' Compensation Programs dated July 19, 1999 and July 2 and April 24 1998 are set aside and the case is remanded for further consideration consistent with this opinion.

Dated, Washington, DC  
October 27, 2000

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>6</sup> *John J. Carlone*, 41 ECAB 354 (1989).