

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of WILLIAM A. O'DEEN and DEPARTMENT OF AGRICULTURE,  
AGRICULTURAL RESEARCH SERVICE, Fort Collins, CO

*Docket No. 00-1904; Submitted on the Record;  
Issued April 20, 2001*

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DECISION and ORDER

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

The issues are: (1) whether the Office of Workers' Compensation Programs properly denied appellant's claim for continuation of pay based on its determination that appellant's lumbosacral sprain was due to an occupational disease and not a traumatic injury on August 14, 1998 as alleged; and (2) whether appellant had any disability from August 17 to September 8, 1998 causally related to his accepted employment injury.

On August 21, 1998 appellant, then a 54-year-old chemist, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1), alleging that on August 14, 1998, he was moving heavy objects in his office and strained his back. The Office accepted appellant's claim for lumbosacral sprain. Appellant stopped work on August 18, 1998 and returned to limited duty on September 14, 1998.

In support of his claim appellant submitted progress notes dated September 8 and October 13, 1998 prepared by Dr. Dale C. Kaiser, a Board-certified orthopedic surgeon. Dr. Kaiser's September 8, 1998 note indicated that on August 14, 1998 appellant was lifting and carrying at work and developed an acute onset of low back pain and spasms. He performed x-rays of the back which revealed degenerative disc disease and a narrowing of the L5-1 disc. Dr. Kaiser diagnosed appellant with acute strain and flare up of an underlying degenerative disc disease and recommended appellant return to work on September 14, 1998. Dr. Kaiser's October 13, 1998 note indicated appellant was improving, however, was still subject to work limitations.

The employing establishment submitted appellant's performance improvement period (PIP) report dated August 17, 1998; a letter appellant wrote to his supervisor dated August 20, 1998 and an employing establishment letter of contravention dated September 1, 1998. The PIP report dated August 17, 1998, indicated that appellant's performance was rated at an unacceptable level. Appellant's letter to his supervisor indicated that he injured his back after moving furniture and boxes in his office. The employing establishment letter dated September 1,

1998, indicated that appellant assembled a desk on July 2, 1998; assisted in moving a file cabinet during the week of July 2 to 13, 1998 and assisted in cleaning out, disassembling and moving a bookcase on August 3 and 4, 1998. The employing establishment indicated no knowledge of appellant moving furniture and boxes on August 14, 1998.

In a letter dated November 22, 1998, appellant responded to the employing establishment's letter of September 1, 1998. Appellant noted that his condition was "the culmination of several episodes of moving objects in and out of my office." Appellant indicated that he was experiencing back pain prior to August 14, 1998 as a result of moving objects in his office and on August 14, 1998, when the pain became intense, he contacted his physician for treatment.<sup>1</sup>

In a decision dated July 6, 1999, the Office accepted appellant's claim for a lumbosacral sprain. However, the Office determined appellant was not entitled to continuation of pay for the period August 17 to September 7, 1998 on the grounds that appellant did not visit a physician prior to September 8, 1998 and there was no probative medical evidence to support time off prior to that date.

By letter dated July 19, 1999, appellant requested an oral hearing before an Office hearing representative. The hearing was held on December 16, 1999. Appellant testified that his injury was not something that occurred on one day rather during a period of several weeks from July 2 to August 3, 1998. Appellant indicated that there was a delay in seeking treatment due to his inability to get an earlier appointment with Dr. Kaiser. Appellant submitted additional medical evidence from Dr. Kaiser including a duplicative note dated September 8, 1998 and a report dated July 26, 1999. Dr. Kaiser's report of July 26, 1999, indicated that appellant was disabled from August 14, 1998 until September 8, 1998. He noted it was not uncommon to wait a long time for a routine appointment at his office. Dr. Kaiser further noted that his findings were compatible with the injury and the disability appellant described during his office visit on September 8, 1998. Appellant also submitted an application for leave for the period of August 14 to September 14, 1998 and a work status report dated September 8, 1998 prepared by him, which indicated appellant could return to modified duty on September 14, 1998.

In a decision dated February 22, 2000, the hearing representative affirmed the decision of the Office dated July 6, 1999, on the grounds that appellant did not establish that he sustained a traumatic injury in the performance of duty and was, therefore, not entitled to continuation of pay and that the medical evidence was insufficient to establish that he was disabled for the period claimed.

The Board finds that the Office properly denied continuation of pay for appellant's claim based on its determination that appellant's lumbar strain was due to an occupational disease and not a traumatic injury on August 14, 1998 as alleged.

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<sup>1</sup> In a letter dated December 7, 1998, the Office requested that the employing establishment respond to appellant's letter dated November 22, 1998. The Office did not receive any additional information from the employing establishment.

Section 8118<sup>2</sup> of the Federal Employees' Compensation Act provides for payment of continuation of pay, not to exceed 45 days, to an employee "who has filed a claim for a period of wage loss due to traumatic injury with his immediate supervisor on a form approved by the Secretary of Labor within the time specified in section 8122(a)(2) of this title."<sup>3</sup> The regulations implementing the Act provide that an employee is not entitled to continuation of pay unless the employee has sustained a traumatic injury.<sup>4</sup> The terms "traumatic injury" and "occupational disease" are defined in the regulations. "Traumatic injury" is defined as follows:

*"Traumatic injury means a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected."*<sup>5</sup>

The term "occupational disease" is defined as follows:

*"Occupational disease or illness means a condition produced by the work environment over a period longer than a single workday or shift."*<sup>6</sup>

In the instant case, appellant alleged that he sustained a traumatic injury on August 14, 1998 while moving objects in his office. Appellant has not established by the weight of the factual and medical evidence that his injury, lumbosacral sprain, resulted from a single incident or series of incidents occurring within a single workday or work shift. In support of his claim, appellant submitted a CA-1 form which listed the date of injury as August 14, 1998. On the CA-1 appellant submitted, he indicated that he was moving heavy objects on August 14, 1998 and strained his back. However, in a letter to the Office dated November 22, 1998, appellant indicated his condition was "the culmination of several episodes of moving objects in and out of my office." Appellant also noted that he was experiencing pain prior to August 14, 1998 as a result of moving objects in his office and on August 14, 1998, when the pain became intense, he called Dr. Kaiser seeking treatment for his condition. These statements submitted by appellant failed to establish that a specific injury occurred on August 14, 1998, but rather showed that appellant experienced a significant worsening of a condition over a period of several days. At the oral hearing on December 16, 1999, appellant was asked to provide clarification as to whether his condition was a traumatic injury or an occupational disease. Appellant was specifically asked by the hearing representative whether this injury occurred on August 14, 1998 and appellant responded "no" and indicated the condition occurred "probably a week or so before the August 14[, 1998] date." Therefore, the weight of the medical and factual evidence

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<sup>2</sup> 5 U.S.C. § 8118.

<sup>3</sup> Section 8122(a)(2) provides that written notice of injury was to be given as specified in section 8119, which provides for a 30-day time limitation for filing a claim of a traumatic injury. 5 U.S.C. §§ 8119(a), (c); 8122(a)(2).

<sup>4</sup> 20 C.F.R. § 10.205(a)(1).

<sup>5</sup> 20 C.F.R. § 10.5(ee).

<sup>6</sup> 20 C.F.R. § 10.5(q).

establishes that appellant's injury did not occur on a single date or work shift and thus appellant is not entitled to continuation of pay.

The Board further finds that appellant has failed to establish that his condition during the claimed period of disability is causally related to the accepted employment injury of August 14, 1998.

Appellant has the burden of establishing by the weight of reliable, probative and substantial evidence that the period of claimed disability was caused or adversely affected by the employment injury. As part of this burden, he must submit rationalized medical opinion evidence based on a complete factual and medical background showing a causal relationship between his disability and the federal employment. The fact that the condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.<sup>7</sup>

In this case, the Office accepted appellant's claim's for lumbosacral sprain. However, the medical evidence submitted in support of the wage-loss compensation claim for disability for the period beginning August 14 to September 8, 1998 is insufficient to establish an aggravation of appellant's medical condition. Appellant's treating physician Dr. Kaiser, in a progress note dated September 8, 1998, indicated appellant was lifting and carrying at work and developed low back pain. He noted objective findings upon examination of mild tenderness and mild discomfort on range of motion of the lumbar spine. Dr. Kaiser diagnosed appellant with acute strain and flare up of an underlying degenerative disc disease and recommended appellant return to work on September 14, 1998. He provided no explanation or rationale to support the contention that appellant was disabled retroactively to August 14, 1998. Therefore, such notes are insufficient to establish a causal relationship.<sup>8</sup> Although Dr. Kaiser's report indicated appellant's disability status he did not attempt to explain the relationship between the claimed period of disability and the August 14, 1998 work injuries. Therefore, this report is insufficient to meet appellant's burden of proof.

The report which provides the most support for causal relationship between appellant's employment and the diagnosed condition is Dr. Kaiser's report dated July 26, 1999. Dr. Kaiser indicated that appellant was disabled from August 14, 1998 despite the fact that he was not seen by the doctor until September 8, 1998. He indicated that it was not uncommon to wait a long time for a routine appointment at his office. Dr. Kaiser noted his findings were compatible with the injury and the disability appellant described when he visited Dr. Kaiser's office on September 8, 1998. He provided no explanation or rationale for concluding appellant was disabled retroactively other than a delay in obtaining a routine appointment. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.<sup>9</sup> Therefore, this report is insufficient to meet appellant's burden of proof.

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<sup>7</sup> See *Nicolea Bruso*, 33 ECAB 1138 (1982).

<sup>8</sup> *Lucrecia M. Nielson*, 42 ECAB 583, 594 (1991).

<sup>9</sup> *Id.*

The February 22, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
April 20, 2001

Willie T.C. Thomas  
Member

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski  
Alternate Member