

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KATHY L. ROWLAND and DEPARTMENT OF VETERANS AFFAIRS,
HARRY S. TRUMAN MEMORIAL HOSPITAL, Columbia, MO

*Docket No. 02-1643; Submitted on the Record;
Issued November 27, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant sustained an injury in the performance of duty.

On October 26, 2001 appellant, then a 43-year-old cardiac catheterization technician, filed a notice of traumatic injury and claim for compensation (Form CA-1), alleging that she injured her back while moving equipment and supplies. Appellant indicated that she experienced low back and right leg pain down to her foot with numbness and tingling in her right foot.¹

Appellant's medical history included a 1992 nonwork-related surgical fusion at L4-5 and L5-S1 and an occupational disease claim that was accepted for lumbar stenosis² on August 4, 2000 and motor vehicle accidents on July 11 and September 4, 2000.

In support of her claim, appellant submitted an October 26, 2001 note from an emergency room that she experienced sudden and severe pain while moving equipment.

Appellant submitted a November 5, 2001 report from her treating physician, Dr. Thomas R. Highland, who indicated that appellant recently had a flare up while arranging some supplies in the laboratory and had to go to the emergency room. She was returned to work with restrictions of no lifting 25 pounds or more and no wearing a lead apron.

In a November 12, 2001 progress note, Dr. Highland wrote that he told appellant he thought her symptoms were probably from the L3-4 disc space and that she needed to consider an operation at this level.

¹ The Board notes that the case record contains documents from two cases filed with the Office of Workers' Compensation Programs by appellant. The record numbers are 112005944 and 110179528. The case being appealed to the Board is 112005944.

² Claim No. 110179528

In a November 30, 2001 letter, the Office requested more information.

In a December 10, 2001 report, Dr. Highland responded that appellant's diagnosis was a bulging disc at L3-4. Appellant experienced increasing pain in her back and pain down her leg while at work, which persisted despite extensive nonsurgical treatment that left her with significant pain.

In a January 9, 2002 decision, the Office denied appellant's claim, finding that the evidence of record did not establish that a medical condition was causally related to the October 26, 2001 incident.

In a January 14, 2002 letter, appellant requested reconsideration.

In a February 15, 2002 decision, the Office found that an incident occurred on October 26, 2001 as alleged and that appellant was diagnosed with spinal stenosis and a herniated disc. The Office found that appellant did not establish that her medical condition was causally related to the incident of October 26, 2001 and denied the claim.

In a March 12, 2002 letter, appellant requested reconsideration and submitted the March 12, 2002 report of Dr. R. Curtis Mace, who stated:

"I did not see [appellant] on October 26, 2001 but have reviewed her employee health record. She was seen in the emergency room [ER] by the attending physician.... His notes state that she presented to the ER on a stretcher from the cath[eterization] lab[oratory] where she had been working. That she was moving some equipment in an awkward position and developed increased lower back pain that was 9/10 in severity. This story of her injury is consistent with the work she was assigned at the time. I have no reason to doubt that her actions in the cath[eterization] lab[oratory] that day caused an increase in pain in her back that day.

"As she did not have new neurological deficits or present a history of trauma, further extensive imaging studies were not immediately performed in the ER at that time. She has had prior back injuries and prior back surgery. A sudden increase in back pain related to an awkward position is certainly plausible and is a common scenario. Whether this involves microscopic tears in previously damaged tissues, further displacement of bony structures, or some other microscopic change in the lower back is an ongoing debate in the medical literature. The fact remains that a proximate event during her routine work led immediately to increased back pain. With a reasonable degree of medical certainty I thus believe that the work activity caused the increased pain."

In a May 9, 2002 decision, the Office denied modification of its prior decisions.

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

An employee who claims benefits under the Federal Employees' Compensation Act³ has the burden of establishing the essential elements of his or her claim.⁴ The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of the employment. As part of this burden, the claimant must present rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, establishing causal relationship.⁵ However, it is well established that proceedings under the Act are not adversarial in nature, and while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.⁶

The Board notes that, while none of the reports of appellant's attending physicians are completely rationalized, they are consistent in supporting that appellant sustained an injury on October 26, 2001 and are not contradicted by any substantial medical or factual evidence of record. The record reflects that following the October 21, 2001 incident appellant was treated for low back pain which was diagnosed by Dr. Highland as a bulging disc at L3-4. Appellant's records were reviewed by Dr. Mace, who described appellant as moving equipment in an awkward fashion and experiencing low back pain, which he related to her job duties on that date. While the reports are insufficient to meet appellant's burden of proof to establish her claim, they raise an uncontroverted inference between appellant's claimed back condition and the employment incident of October 26, 2001 and are sufficient to require the Office to further develop the medical evidence.⁷

Accordingly, the case will be remanded to the Office for further development regarding the issue of whether appellant sustained an employment-related injury on October 26, 2001. The Office should prepare a statement of accepted facts and obtain a medical opinion on this matter. After such development of the case record as the Office deems necessary, an appropriate decision shall be issued.

³ 5 U.S.C. §§ 8101-8193.

⁴ *Ruthie Evans*, 41 ECAB 416, 423-24 (1990); *Donald R. Vanlehn*, 40 ECAB 1237, 1238 (1989).

⁵ *Brian E. Flescher*, 40 ECAB 532, 536 (1989); *Ronald K. White*, 37 ECAB 176, 178 (1985).

⁶ *Dorothy L. Sidwell*, 36 ECAB 699 (1985); *William J. Cantrell*, 34 ECAB 1233 (1983).

⁷ *See Robert A. Redmond*, 40 ECAB 796, 801 (1989).

The May 9, 2002 decision of the Office of Workers' Compensation Programs is hereby set aside and the case remanded for further action in conformance with this decision.

Dated, Washington, DC
November 27, 2002

Alec J. Koromilas
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member