

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GERALD N. PEARLMAN and CORPORATION FOR NATIONAL &
COMMUNITY SERVICE, VISTA VOLUNTEERS LITERACY CORPORATION,
Washington, DC

*Docket No. 98-1955; Submitted on the Record;
Issued February 11, 2000*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has established that he sustained an injury in the performance of duty on September 5, 1996.

On October 26, 1998 appellant, then a 61-year-old Vista volunteer, filed a claim for compensation stating that September 5, 1996 he pulled his back muscles resulting in a "ruptured disc and facet impingement on the nerve -- numbness and pain in the left leg." Appellant described the injury as "sciatic nerve injury, left leg -- toes." A witness stated that he had seen appellant shortly after the incident and stated that appellant "appeared to be in great pain and was uncomfortable being seated for any length of time."¹ The employing establishment, however, noted that the incident occurred on September 3, 1996.

In support of his claim, appellant submitted a September 25, 1996 report on a magnetic resonance imaging (MRI) scan of the lumbar spine taken on September 23, 1996. The scan was read by Dr. Thomas Hans Newton, Board-certified in radiology, to reveal an L4-5 central and left paracentral disc herniation with moderate effacement at the left lateral sac, L3-4 facet hypertrophy with mild neural foraminal stenosis and L5-S1 diffuse disc bulge.

On May 14, 1997 the Office of Workers' Compensation Programs notified appellant that it needed additional evidence to process his claim. The Office noted that his claim did not indicate whether he was injured while in the performance of duty, nor did the medical evidence contain medical evidence in support of causality.

In a narrative dated May 27, 1997, appellant stated that his injury occurred on September 15, 1996 after he had driven a housing authority board member to her home. He stated that, while returning to his office, he made a sharp right-hand turn, which he initially

¹ Appellant left AmeriCorps/VISTA service on February 22, 1997.

believed caused only a left-sided muscle pull. Appellant further stated that he attempted to report to work for several days after the injury but was unable to do so due to pain. He noted that he opted for physical therapy rather than surgical intervention.

In a medical report dated May 23, 1997, Dr. Deborah Lindes, an internal medicine resident, stated that she had treated appellant on September 8, 1996 and had read the September 1996 MRI scan. Based on examination and her reading of the scan, she found that appellant had a herniated disc L4-5 and left leg and back pain. In the section of the report reserved for whether the doctor believed that the condition was causally related, Dr. Lindes noted “unknown.”

In a medical report dated October 3, 1996 and received on June 27, 1997, Dr. Charles A. Stuart, Board-certified in orthopedic surgery, stated that he had treated appellant that day, noting that he related that appellant “injured his back September 1 1996 in his car.” Dr. Stuart examined appellant, reviewed the MRI scan and found that appellant had a herniated disc at L4-5 on left. He noted that appellant wished to continue a regimen of physical therapy rather than elect surgical intervention.

By decision dated September 15, 1997, the Office denied appellant’s claim on the grounds that the medical evidence failed to establish a causal relationship between appellant’s condition and his employment.

On September 26, 1997 appellant requested a review of the written record. In support of his request, appellant submitted a medical report from Dr. Sylvine Barer Jerome. In her October 16, 1996 report, she noted that she had reviewed appellant’s medical records including his MRI scan and determined that he had mild L5 radiculopathy.

In a decision dated on February 9, 1998 and finalized on February 11, 1998, the hearing representative affirmed the Office’s September 15, 1997 decision denying benefits.

The Board has reviewed the case record in this case and finds that appellant has failed to establish that his medical condition was caused by his employment.

An employee seeking benefits under the Federal Employees’ Compensation Act² 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 timely filed within the applicable time limitation period of the Act, 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.³ These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

² 5 U.S.C. §§ 8101-8193.

³ *Joe Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

In this case, appellant submitted medical reports from several doctors, none of whom explain a causal relationship between appellant's condition and the September 5, 1996 incident. In a May 23, 1997 report, Dr. Lindes stated that the cause of appellant's condition was "unknown," in spite of her having treated appellant on September 8, 1996, three days after the alleged incident. Further, Dr. Stuart stated that appellant related his injury as having occurred on September 1, 1996, but did not relate appellant's herniated disc to the incident. Dr. Jerome likewise noted mild radiculopathy without making reference as to whether the condition was causally related to his September 5, 1996 incident. Although the Office advised appellant on May 14, 1997 regarding the need to submit medical evidence that contained a diagnosis and a rational medical opinion relating appellant's condition to the September 5, 1996, incident, the medical evidence fails to establish a causal relationship between appellant's condition and his alleged work-related incident of September 5, 1996. Consequently, appellant has not submitted sufficient medical evidence to meet his burden of proof in establishing that he sustained an injury in the performance of duty on September 5, 1996.

The decision dated February 9, 1998 and finalized February 11, 1998 and the September 15, 1997 decision of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.
February 11, 2000

George E. Rivers
Member

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member