U. S. DEPARTMENT OF LABOR

# Employees' Compensation Appeals Board

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In the Matter of CALVIN W. BRYANT and DEPARTMENT OF THE ARMY, HEADQUARTERS, U.S. ARMY, Europe

*Docket No. 98-2177; Submitted on the Record;*
*Issued February 8, 2000*

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DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
MICHAEL E. GROOM

The issue is whether appellant has established disability for the period between May 1 to June 14, 1997.

On January 8, 1997 appellant, then a 47-year-old store worker, filed a claim for compensation alleging that on September 28, 1996 he injured his lower back while in the performance of duty. In support of his claim, appellant submitted a September 30, 1996 report from Dr. Johan De Jong, an attending physician, who related appellant's history of injury and diagnosed lower back pain. Appellant also submitted a magnetic resonance imaging (MRI) scan taken on November 19, 1996 which was read by Dr. Gary L. George, Board-certified in radiology. He stated that it revealed a small central focal disc protrusion at L4-5 with mild degenerative changes, and a large right-sided L5 transverse process.

On May 2, 1997 the Office of Workers' Compensation Programs accepted appellant's claim for mild disc herniation, L4-5.

On June 6, 1997 appellant filed a claim for wage loss from May 1 to June 14, 1997. The employing establishment noted that appellant was on sick leave from October 15 through November 23, 1996, and from January 12 to January 18, 1997; and that he was on annual leave from April 13 to April 27, 1997. He received continuation of pay from November 24, 1996 to February 8, 1997. Appellant's pay stopped on April 30, 1997 and his claim for compensation noted May 1, 1997 as the beginning date for lost wages.

By letter on September 25, 1997, the Office advised appellant that he needed to submit medical evidence to support his claim of disability for work commencing May 1, 1997.[1]

[1] The claims examiner noted that his letter was in response to a telephone call from appellant. It is not clear why the claims examiner asked for bridging medical evidence dated from January 15, 1997 to the date of his letter.

Appellant submitted a medical report dated March 26, 1997 from Dr. Gary M. Flangas, a specialist in neurological surgery, who stated that he had examined appellant on that day and reviewed the history of injury. He stated that upon examination appellant had mild left-sided L5 radiculopathy, noting:

> "[Appellant] presents rather minimal symptoms. Have discussed surgical options but have also explained that his rather minimal symptoms at present, it might be prudent to continue with conservative measures. Patient relates that he improves with rest. I think he would be more functional in a change of job position where he does less heavy lifting. Also have initiated him on low impact exercises."

In a report dated April 16, 1997, Dr. Geoffrey B. Higgs, appellant's attending physician Board-certified in orthopedic surgery, stated that appellant's restrictions included no heavy lifting, prolonged standing or repetitive stooping, and no lifting over 10 pounds. He added that appellant could "sit for 48 minutes at a time then 5 minutes standing break."

By decision dated April 13, 1998, the Office denied appellant's claim on the grounds that the medical evidence failed to establish that appellant was disabled from work from May 1 to June 14, 1997.

An employee seeking benefits under the Federal Employees' Compensation 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 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.

Establishing whether an injury, traumatic or occupational, was sustained in the performance of duty as alleged, *i.e.*, "fact of injury," and establishing whether there is a causal relationship between the injury and any disability and/or specific condition for which compensation is claimed, *i.e.*, "causal relationship," are distinct elements of a compensation claim. While the issue of "causal relationship" cannot be established until "fact of injury" is established, acceptance of fact of injury is not contingent upon an employee proving a causal relationship between the injury and any disability and/or specific condition for which compensation is claimed. An employee may establish that an injury occurred in the performance of duty as alleged but fail to establish that his or her disability and/or a specific condition for which compensation is claimed are causally related to the injury.

In the present case, the Office accepted appellant's claim for mild disc herniation, L4-5. Appellant filed a claim for wage loss from May 1 to June 14, 1997. The Office, on September 25, 1997, notified appellant that he would need to submit additional medical evidence including a rationalized medical opinion as to the relationship between the original injury and his disability for work as of May 1, 1997. However, none of the medical reports of record support appellant's claim that he was disabled for work from May 1 to June 14, 1997. Dr. Flangas reported minimal symptoms and did not address the issue of appellant's disability from work as a result of the work-related injury. Dr. Higgs, appellant's attending physician, listed work

restrictions for appellant but did not indicate that appellant was disabled from working either regular or limited duty.

Appellant did not support his claim with medical evidence which would have established his claim that his time lost from work from May 1 to June 14, 1997 was causally related to his September 28, 1996 work-related mild disc herniation.

The April 13, 1998 decision of the Office of Workers' Compensation Programs is affirmed.[2]

Dated, Washington, D.C.
February 8, 2000

Michael J. Walsh
Chairman

George E. Rivers
Member

Michael E. Groom
Alternate Member

[2] The Board notes that subsequent to the Office's April 3, 1998 decision, appellant submitted additional evidence. The Board has no jurisdiction to review this evidence for the first time on appeal. 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).