

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARY C. BOYLE and DEPARTMENT OF THE ARMY,
DIRECTORATE OF LOGISTICS, Fort Meade, MD

*Docket No. 99-2298; Submitted on the Record;
Issued October 11, 2000*

DECISION and ORDER

Before WILLIE T.C. THOMAS, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

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

In February 1999 appellant, a 44-year-old parts and tool attendant, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that she sustained a hernia in the performance of duty. She noted that her condition had been documented in her employee health records as early as October 1989. Appellant explained that her job entailed heavy lifting and that as a result of the constant lifting over the years she developed a bump in her abdomen that eventually increased in size. She added that the pain she experienced while lifting intensified over time and ultimately became unbearable. Appellant ceased work on August 25, 1998 and underwent surgery the following day.

By letters dated April 19, 1999, the Office requested, among other things, additional factual information from both appellant and the employing establishment regarding appellant's alleged employment exposure. In response, appellant provided a statement dated April 29, 1999. She indicated that she was aware of a problem with her abdomen as early as 1985, but at the time she did not realize the extent of her injury. Appellant advised her then supervisor that "something was wrong but [she] was n[o]t too sure what." Her supervisor purportedly dismissed her concerns as "probably just female problems."

Appellant further explained that she was diagnosed with a hernia in February 1991 during her annual employment physical. However, the examining physician apparently did not express too much concern regarding her condition. Appellant added that after years of daily lifting on the job, she began to experience increased pain from her hernia and eventually saw to a surgeon in November 1996.

The Office also received an April 27, 1999 statement from appellant's current supervisor, John R. Bowles, who advised that throughout appellant's career she had been required to lift heavy objects, including missiles and their containers as well as other supplies weighing up to

and beyond 80 pounds. Mr. Bowles also explained that in October 1996 he restricted appellant from lifting heavy objects due to the bulge he noticed in her abdomen. He later curtailed all of appellant's lifting duties prior to her surgery. Mr. Bowles added that he fully concurred with appellant's statements concerning her hernia.

By decision dated May 25, 1999, the Office denied appellant's claim for compensation based on her failure to establish fact of injury. The Office stated that appellant had not submitted the requested information regarding the particular work factors allegedly responsible for her claimed condition and, therefore, had failed to establish that she sustained an injury as alleged.

The Board has duly reviewed the case record on appeal and finds that the case is not in posture for a decision.

The Board's jurisdiction over a case is limited to reviewing that evidence which was before the Office at the time of its final decision.¹ Inasmuch as the Board's decisions are final as to the subject matter appealed,² it is crucial that all relevant evidence which was properly submitted to the Office prior to the time of issuance of its final decision be addressed by the Office.³

In this case, the Office did not address certain factual evidence received prior to the issuance of its May 25, 1999 final decision. The Office's decision makes no reference to the April 1999 statements provided by both appellant and Mr. Bowles. In fact, the Office specifically noted, "Additional evidence was not received." The above evidence is date-stamped as being received by the Office on May 10, 1999, more than two weeks prior to the issuance of its decision. The Board, therefore, must set aside the Office's May 25, 1999 decision and remand the case to the Office to consider the evidence that was properly submitted prior to the issuance of the Office's decision.

¹ 20 C.F.R. § 501.2(c).

² 20 C.F.R. § 501.6(c).

³ *William A. Couch*, 41 ECAB 548, 553 (1990); *Linda Johnson*, 45 ECAB 439 (1994).

The May 25, 1999 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this opinion.

Dated, Washington, DC
October 11, 2000

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member