

U.S. Department of Labor

Employment Standards Administration
Office of Workers' Compensation Programs-N00
Division of Federal Employees' Compensation
P.O. Box 8300
London, Kentucky 40742-8300



File Number: 06-2169653

FEB 1 2007

John Stacks
4505 Staten Road
Valdosta, GA 31605

Dear Mr. Stacks:

This is in reference to your workers' compensation claim. Pursuant to your request for a hearing, the case file was transferred to the Branch of Hearings and Review.

A preliminary review was completed on the case. Based upon that review, it has been determined that the decision of the District Office should be reversed as outlined in the attached decision.

Future correspondence should be addressed to: U.S. Department of Labor, Office of Workers' Compensation Programs, DFEC Central Mailroom, P.O. Box 8300, London, KY 40742.

Sincerely,

A handwritten signature in black ink, appearing to read "T. Van Tien".

Thomas Van Tien
Hearing Representative

Enclosure

cc: U.S. Postal Service
South Georgia Performance Cluster
Injury Compensation
451 College Street
Macon, GA 31213



U.S. Department of Labor
Office of Workers' Compensation Programs

DECISION OF THE HEARING REPRESENTATIVE

In the matter of the claim for compensation under Title 5, U.S. Code 8101 et seq. of John Stacks, claimant; employed by U.S. Postal Service. Case No: 06-2169653.

Merit consideration of the case file was completed on February 1, 2007 in Washington, D.C. Based on this review, the October 26, 2006 Decision of the District Office is vacated for the reason(s) set forth below.

The claimant, born on May 12, 1961 (presently 45 years old) was employed as a mail processing clerk on July 14, 2006 when he submitted Notice of Occupational Disease and Claim for Compensation on Form CA-2, claiming that his low back pain was causally related to his employment. He cited March 29, 1995 as the date he first became aware that his back condition was caused or aggravated by his employment. The official supervisor's portion of the CA-2 form was completed on July 16, 2006 by Donald Snipes, Postmaster. He stated that he became postmaster in June 2002 and had no knowledge of the March 29, 1995 injury. He stated that the claimant had been issued discipline for failure to follow instructions (a letter of warning, a seven day suspension, a 14 day suspension, and a removal which was reduced to a 30 day suspension). He stated that the claimant was also calling in for months for an unrelated FMLA condition. He indicated that the claimant last worked on June 7, 2006.

In a statement submitted with his claim, the claimant indicated that he initially injured his back lifting a box of registered mail weighing about 50 pounds. He stated that he had had occasional low back pain, pain in the buttocks and in the back of his legs since then. He stated that his job duties required lifting and carrying boxes, sacks, and trays of mail weighing up to 70 pounds. He stated that the continuous lifting and bending throughout his years with the Postal Service had intensified the pain. He stated that treatment had included chiropractic treatment and epidural steroid injections.

In a letter dated July 26, 2006 the employing agency challenged the claim. The agency stated that no medical documentation had been received. The agency stated that file no. 06-0621409 (date

of injury March 29, 1995) had been archived since September 4, 1997. The agency also provided copies of the disciplinary actions taken against the claimant for his failure to follow instructions. The agency contended that the claim was not timely filed.

By correspondence dated August 11, 2006 the Office requested the claimant to submit additional medical and factual information. The Office noted that the claimant had filed a similar claim for a back injury on January 9, 2005 using the date of March 30, 1993 as the date he was aware that his condition was related to his employment. The Office noted that this claim was denied due to time limitations and the information on his current CA-2 form was conflicting. The Office requested the claimant to explain the difference between the two claims and the dates used to file each. The Office also requested that the claimant send a copy of his letter concerning the job activities which he believed contributed to his condition to the employer for concurrence. He was also requested to describe all activities outside his federal employment and also describe the development of his condition. He was requested to provide a report from his physician which described his symptoms, provided the results of examinations and tests, stated a diagnosis, and included the doctor's opinion, with medical reasons, on the cause of his condition. The claimant was advised that, if his doctor felt that exposure or incidents in his federal employment contributed to his condition, an explanation of how such exposure contributed should be provided.

In a letter dated August 22, 2006 the claimant stated that he was hired as a clerk on February 7, 1984 and that his duties involved lifting, carrying, stooping, bending and dragging mail. He described the following tasks: pulling, pushing, tugging a hand jack to unload mail containers weighing over 700 pounds; working on the dock loading and unloading containers with sacks of mail, boxes and parcels; loading letters, flats, bundles of magazines, and parcels onto a conveyor belt; lifting boxes, parcels, and mail out of hampers and mail containers to distribute from one location to another; and standing while sorting letters and flats. He stated that his outside activities consisted of doing yard work, reading and writing, and working on a computer. He stated that the onset of his injury was due to a lifting incident in February 1993, that he was examined by Dr. Domenic Esposito on June 29, 1993, that he had a relapse of back pain while lifting a box of registered mail out of a hamper on March 29, 1995 and was seen by Dr. Bipin Patel on March 30, 1995, and that his back pain had gradually gotten worse since the injury in February 1993 with sporadic episodes of severe pain lasting longer than one month. He stated that he had various treatment throughout the years, including chiropractic treatment, epidural steroid injections,

medication, and physical therapy. He stated that his duties with the Postal Service for more than 22 years involved lifting, bending, pulling and pushing and that these activities had affected his injury.

By correspondence dated August 24, 2006 the claimant provided the employing agency with a description of the job activities contained in his letter to the Office.

A report dated August 17, 2006 was submitted from Dr. Thomas Walsh, an orthopedic surgeon. He noted that the claimant returned for follow up concerning an MRI scan of the lumbar spine performed on August 15, 2006. He noted that this study indicated moderate degenerative disc disease at L5-S1 with central disc herniation more to the right (which was consistent with the claimant's complaints of right sciatica). He noted that the claimant continued with low back pain and pain into the posterior right thigh. He made the following comments:

"He has a workers' compensation date of injury from March 29, 1995, and he has continued to have problems with it every (sic) since. On that date, he was lifting some heavy boxes of mail and his back went out on him. He has had trouble with it every (sic) since. He initially saw Dr. Patel, neurologist in Valdosta. He has records from that. He had a workers' compensation claim at that time. Mr. Stacks feels that he continues to have problems from the same injury site and that this continues to be problematic from the same injury."

Dr. Walsh diagnosed the following conditions: L5-S1 degenerative disc disease, disc herniation, and spinal stenosis. He stated that "based on his history, physical examination and imaging studies, I believe that his current complaint is still related to the pain that he had in 1995, which is related to the lifting injury at work." He noted that the claimant had been off work for two months and did not feel he could return to work because of his back problem. He noted that the claimant had undergone various forms of treatment but was still symptomatic. He opined that he would ultimately need surgery (L5-S1 anterior-posterior fusion with complete discectomy).

Also submitted was a copy of a job description for mail processing clerk.

By Order dated October 26, 2006 the Office rejected the claim for compensation on the basis that it was not timely filed. I find that this decision must be reversed.

The Act at 5 USC 8122 states that "an original claim for compensation for disability or death must be filed within three years after the injury or death." In a case involving a claim for an occupational disease the time limitation begins to run when the injured employee becomes aware, or reasonably should have been aware of a possible relationship between his disease and his employment.¹ The Board has held that if an employee continues to be exposed to injurious working conditions after such awareness, the time limitation begins to run on the last date of this exposure.²

In this case, the claimant is claiming that the physical activities he performed as a clerk since February 7, 1984 have caused or contributed to his back condition and claimed disability since June 7, 2006. Since he filed his claim on Form CA-2 dated July 14, 2006 within three years of the date he was last exposed to the injurious work factors, his claim is timely filed. Accordingly, the Order dated October 26, 2006 is hereby reversed. The case is remanded to the District Office to address the merits of the claim.

DATED: FEB 1 2007
WASHINGTON, D.C.



Thomas Van Tiem
Hearing Representative
For
Director, Office of Workers'
Compensation Programs

¹ Edwin Anderson, 31 ECAB 507.
² Richard Jacobson, 33 ECAB 1517; see also Federal (FECA) Procedure Manual, Chapter 2-801.6.