

Calendar No. 1408

76TH CONGRESS
3d Session

SENATE

{ REPORT
No. 1353

HOWARD DAURY

MARCH 28 (legislative day, MARCH 4), 1940.—Ordered to be printed

Mr. TOWNSEND, from the Committee on Claims, submitted the following

R E P O R T

[To accompany H. R. 5866]

The Committee on Claims, to whom was referred the bill (H. R. 5866) for the relief of Howard Daury, having considered the same, report favorably thereon with the recommendation that the bill do pass without amendment.

The facts are fully set forth in House Report No. 1566, Seventy-sixth Congress, third session, which is appended hereto and made a part of this report.

[H. Rept. No. 1566, 76th Cong., 3d sess.]

The Committee on Claims, to whom was referred the bill (H. R. 5866) for the relief of Howard Daury, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert the following:

"That sections 17 to 20, inclusive, of the Act entitled 'An Act to provide compensation for employees of the United States suffering injuries while in the performance of their duties, and for other purposes', approved September 7, 1916, as amended (U. S. C., 1934 edition, title 5, secs. 767 and 770), are hereby waived in favor of Howard Daury, of Pittsfield, Massachusetts, who allegedly sustained injuries in line of duty on April 27, 1934, at Pittsfield, Massachusetts, while employed by the Civil Works Administration, and his claim for compensation is authorized to be considered and acted upon under the remaining provisions of such Act, as amended, if he files such claim with the United States Employees' Compensation Commission not later than six months after the date of enactment of this Act: *Provided*, That no benefits hereunder shall accrue prior to the approval of this Act."

The purpose of the proposed legislation is to waive in favor of Howard Daury of Pittsfield, Mass., the bar of the time limitations in sections 17 to 20, inclusive, of the Employees' Compensation Act of September 7, 1916, and to leave the Commission free to determine the merits of his claim, when filed, and to afford him such measure of relief as the facts, when established, show him to be entitled to under the remaining provisions of the act.

STATEMENT OF FACTS

On April 27, 1934, while employed by the Civil Works Administration as a laborer on a grading project, the claimant contends that he injured his back while lifting stones from the ground to a truck. He left the job to get medical attention, and there are doctors' statements and bills to show that he did suffer from a strained back.

Without going into the merits of the claim itself your committee is of the opinion that the claimant should be granted the privilege of presenting his claim to the Employees' Compensation Commission. His claim would have been eligible for consideration by the Commission had he filed within 1 year from the date of his injury.

The claimant states that he did not do this because he was ignorant of the compensation law.

Appended hereto is the report of the Employees' Compensation Commission, together with other pertinent evidence.

UNITED STATES EMPLOYEES' COMPENSATION COMMISSION,
Washington, May 13, 1939.

Hon. AMBROSE J. KENNEDY,
House of Representatives, Washington, D. C.

MY DEAR CONGRESSMAN KENNEDY: This will acknowledge receipt of your letter of April 22, 1939, enclosing three copies of H. R. 5866, in connection with the claim of Mr. Howard Daury, Pittsfield, Mass., for compensation on account of an injury he alleges he received April 27, 1934, while employed by the Civil Works Administration.

In reply to your letter you are advised that if a claim in writing had been filed by Mr. Daury within 1 year from the date of his injury his case would have been eligible for consideration by the Commission. Inasmuch as no such claim was filed, this office was without authority under the law to give any consideration to his claim. In view of that fact no steps were taken to obtain specific information regarding his case and this office has no way of knowing whether or not an injury occurred as alleged. In view of the nature of the disability alleged by Mr. Daury and the length of time which has elapsed since the alleged injury, it will be extremely difficult to establish any connection between his present disability and the injury he is supposed to have received on April 27, 1934.

It is trusted that this answers your inquiry. If there is any other information you desire in connection with this case, I shall be pleased to furnish it upon request.

Very truly yours,

JOHN M. MORIN, *Acting Chairman.*

HOUSE OF REPRESENTATIVES,
COMMITTEE ON CLAIMS,
Washington, D. C., April 22, 1939.

Mrs. JEWELL W. SWOFFORD,
*Chairman, United States Employees' Compensation Commission,
Washington, D. C.*

DEAR MRS. SWOFFORD: I am enclosing herewith three copies of H. R. 5866, for the relief of Howard Daury.

This bill was introduced by Congressman Allen T. Treadway, and I have before me a copy of your letter of November 2, 1938, addressed to Congressman Treadway in connection with Mr. Daury's claim.

Your letter would indicate that had a claim been filed by Mr. Daury within 1 year from the date of his injury his case would have been eligible for consideration by the Commission.

I will appreciate your advising me if this is correct.

Very truly yours,

AMBROSE J. KENNEDY, *Chairman.*

UNITED STATES EMPLOYEES' COMPENSATION COMMISSION,
Washington, November 2, 1938.

Hon. ALLEN T. TREADWAY,
Member of Congress, Stockbridge, Mass.

MY DEAR CONGRESSMAN TREADWAY: This will acknowledge receipt of your letter of October 26, 1938, enclosing a letter from Mr. Howard Daury, Pittsfield, Mass., with two medical reports and a statement in connection with Mr. Daury's

claim for compensation on account of an injury he alleges he received sometime in 1934 while employed by the Civil Works Administration.

As you already know, the acts of Congress extending compensation benefits to cases of this nature provide all original claims for disability on account of injury must be filed within 1 year. This provision of the act is mandatory and this office has no authority under the law to extend the time for filing claims under any circumstances.

Upon going over your enclosures, it is apparent Mr. Daury made no claim for compensation in writing on account of his injury within the 1-year period prescribed by law. In view of that fact, regardless of the reason for his failure to comply with the provisions of the law, his claim for compensation is outlawed at this time. Under the circumstances this office has no authority under the law to consider his case at this time and his application for compensation in this connection must be disallowed.

Your enclosures are returned to you herewith, copies having been made for the Commission's file.

Very truly yours,

(Mrs.) JEWELL W. SWOFFORD, *Chairman.*

ST. LUKES HOSPITAL,
Pittsfield, Mass., November 29, 1938.

REPORT OF HOWARD DAURY, MARCH 21, 1938—CHIEF COMPLAINT, PAIN IN BACK AND LEFT LEG

To Whom It May Concern:

Present illness.—Strained back 4 years ago while picking up stones on a Works Progress Administration road job (20-30 pounds) and throwing them into a truck. Pain was low down. He could bend down but could not straighten up while lifting the stone. Went home and called Dr. Woodruff. He had some manipulations and improved except for lower back. Patient went to Dr. Jepson's clinic and had B & M and strapping. For 2 to 3 months received this treatment. Then went back to work. Slept on boards for 1 year and got along fairly well. Since then has had about four recurrences where he had severe pain. Five weeks ago X-ray was negative. Wore a belt for a while. About 3 weeks ago developed pain in left thigh at junction with buttock. Now has some pain in right leg.

Past history.—No other serious illnesses.

Physical examination.—Spasm left lumbar muscle group with tilt of trunk to right. Tender over left side and left side joint, left buttock, and thigh; RA, 38½; LA, 38½.

Recommended.—Advise X-ray in three views and return in 1 week.

Diagnosis.—Lumbosacral back strain with fifth root irritation.

March 28, 1938.—Left ankle reflex absent; X-ray films show a hypertrophic arthritis of lumbosacral joints; advise lumbo-sacral fusion.

May 9, 1938.—Left leg raising to 130°; forward bending limited; left ankle jerk absent; no tenderness in lower back now; leg pain has subsided; advise returning for blood sedimentation test in 2 weeks.

May 23, 1938.—Sedimentation rate normal.

June 18, 1938.—Sedimentation rate normal; improving; continue physiotherapy; try work in 1 month and return to me in 2 months.

F. A. SLOWICK, M. D.

PITTSFIELD, MASS., October 20, 1938.

To Whom It May Concern:

This is to certify that I was working for Civic Works Administration in the spring of 1934, to be exact, it was in April. I was working in the same gang with Howard Daury when he injured his back. He was lifting a heavy stone and in some manner he felt something give in his back. He then left the job to get medical attention.

HENRY HANDY,
Pittsfield, Mass.

MARION V. BETT.

Witness:

COMMONWEALTH OF MASSACHUSETTS, December 9, 1938.

BERKSHIRE, ss:

Then personally appeared before me the above-named Henry Handy and made oath that the foregoing statements made by him are true, to the best of his knowledge and belief.

[SEAL]

CHARLES H. HODECKER, Notary Public.

My commission expires December 14, 1942.

PUBLIC WELFARE DEPARTMENT,
Pittsfield, Mass.

HOWARD DAURY

Spring of 1934 man worked as a laborer on Civil Works Administration, Crane Avenue, grading project. While lifting stones from the ground to a truck, man sustained injury to his back. April 27, 1934, man reported to this department his inability to work any longer. Sent man to Dr. Richard Woodruff, city physician, who examined and reported as follows:

APRIL 27, 1934.

This man is suffering from a back strain and should not work for another week.

RICHARD WOODRUFF, M. D.

September 26, 1934, Mr. Daury went to Dr. Kerman for examination. Dr. Kerman examined and reported as follows:

SEPTEMBER 26, 1934.

I cannot find anything about this man which should excuse him from work. However, it would be well to send him to Dr. Woodruff for confirmation of my report. He first went to Dr. Woodruff when he had same back trouble.

C. KERMAN.

Dr. Woodruff reported:

SEPTEMBER 28, 1934.

I think it would be advisable not to put this man on too heavy labor at once. He is able to do light work and as he becomes accustomed to exercise he will be able to take on more strenuous work.

R. WOODRUFF.

C. F. KERNAN, M. D.,
Pittsfield, Mass., April 9, 1938.

Patient's name: Howard Daury. Address: 287 New West Street.

To Dr. SLOWICK:

The welfare department has notified me that this man may have the operation recommended by you.

C. F. KERNAN, M. D.

R. S. WOODRUFF, M. D.,
Pittsfield, Mass., September 22, 1938.

Howard Daury was treated by me, commencing the latter part of February, 1934, for an injury to his back which he sustained at that time.

R. S. WOODRUFF, M. D.

C. F. KERNAN, M. D.,
Pittsfield, Mass., October 4, 1938.

This is to certify that Howard Daury has been under my care periodically since 1935 for back sprain.

C. F. KERNAN, M. D.

