

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LINDA S. MAZZA and DEPARTMENT OF HEALTH & HUMAN
SERVICES, FOOD & DRUG ADMINISTRATION, Chicago, Ill.

*Docket No. 96-2525; Submitted on the Record;
Issued October 13, 1998*

DECISION and ORDER

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

The issues are: (1) whether appellant met her burden of proof in establishing that she sustained an injury to her back as alleged; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for a review of the written record.

On January 24, 1996 appellant, then a 47-year-old program analyst, filed a claim alleging that she twisted and sprained her back while loading paper into a printer. Appellant stopped work on January 25, 1996 and returned to work on January 30, 1996. By letter dated February 21, 1996, the Office advised appellant that it needed additional information relevant to her claim, including a statement concerning any prior or similar injuries and a medical report by the examining physician or her claim might be denied. In a decision dated March 15, 1996, the Office denied appellant's claim on the grounds that she was advised of the deficiencies in her claim but no additional evidence was received, and therefore fact of injury was not established. By letter dated April 12, 1996, appellant requested an examination of the written record, asserting that evidence had been submitted to the Office in a timely fashion in response to its request for additional information. In a letter decision dated May 22, 1996, the Office denied appellant's request for a review of the written record as untimely, noting that it was postmarked April 17, 1996 and the decision she wished reviewed was rendered on March 15, 1996.

The Board has carefully reviewed the entire case record on appeal and finds that this case is not in posture for review with respect to the issue of whether fact of injury was established.

On March 12, 1996 appellant submitted additional evidence which the Office did not address in its March 15, 1996 decision denying appellant's claim for compensation.¹ The record also contains a form medical report by Dr. Mary T. Sylora, a Board-certified family practitioner, which was received on February 13, 1996. A review of the record indicates that this evidence had not been previously submitted and considered by the Office. The Board has held that it is

¹ Appellant resubmitted this evidence and additional evidence with her request for a review of the written record.

crucial that all relevant evidence properly submitted to the Office prior to the time of issuance of its final decision be addressed by the Office.² Therefore, this case will be remanded to the Office for full consideration of the evidence submitted by appellant and such further development as the Office deems necessary, to be followed by a *de novo* decision on the merits of the claim.

The Board further finds that the Office improperly denied appellant's request for a review of the written record.

The Board notes that effective June 1, 1987 the Office's regulations implementing the Federal Employees' Compensation Act were revised. Several revisions were made which affect the appellate rights of employees who seek review of Office final decisions. Section 8124 of the Act provides that a claimant is entitled to a hearing before an Office representative when a request is made within 30 days after issuance of an Office final decision.³ The Office's regulations have expanded section 8124 to provide the opportunity for a "review of the written record" before an Office hearing representative in lieu of an "oral hearing." The Office has provided that such review of the written record is also subject to the same requirement that the request be made within 30 days of the Office's final decision.⁴

In the present case, the Office issued a decision denying appellant's claim on March 15, 1996. By letter dated April 12, 1996, appellant requested a review of the written record. Although this letter was date stamped as received by the Office on April 17, 1996, the record does not contain the envelope indicating when the letter was postmarked. Thus, in the absence of evidence to the contrary, appellant's letter which was dated April 12, 1995 is deemed to have been sent within 30 days of the Office's decision and appellant is entitled to a hearing as a matter of right.⁵

² *William A. Couch*, 41 ECAB 548 (1990).

³ 5 U.S.C. § 8124.

⁴ 20 C.F.R. § 10.131(b); *see Michael J. Welsh*, 40 ECAB 994 (1989).

⁵ *See* Federal (FECA) Procedural Manual, Part 2 -- Claims, 2.1601(3)(b); *Lee F. Barrett*, 40 ECAB 892 (1989).

The decisions of the Office of Workers' Compensation Programs dated May 22 and March 15, 1996 are hereby set aside, and this case is remanded for further proceedings consistent with this decision of the Board.

Dated, Washington, D.C.
October 13, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

Michael E. Groom
Alternate Member