

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MARY CRONIN COOPER and U.S. POSTAL SERVICE,  
POST OFFICE, Oaklyn, NY

*Docket No. 99-854; Submitted on the Record;  
Issued August 9, 2000*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
MICHAEL E. GROOM

The issue is whether appellant met her burden of proof to establish that she sustained an emotional condition in the performance of duty.

On September 23, 1996 appellant, then a 41-year-old letter carrier, filed an occupational disease claim, alleging that excessive harassment, intimidation and threats at work caused anxiety, gastritis, vertigo and insomnia. The Office of Workers' Compensation Programs developed the claim and, by decision dated April 25, 1997, denied the claim on the grounds that appellant failed to establish that she sustained an injury in the performance of duty. She timely requested a review of the written record and, in a July 15, 1997 decision, an Office hearing representative affirmed the prior decision. On June 25, 1998 appellant requested reconsideration and submitted additional evidence. By decision dated September 28, 1998, the Office denied modification of the prior decision. The instant appeal follows.

The Board finds that this case is not in posture for decision.

The record in this case contains a packet of evidence, found in the record at pages 119 through 204, that was not stamped received by the Office. There is some indication that this was received with appellant's request for review of the written record and at some point became separated. The request for review was date-stamped received on May 27, 1997 and is found at page 2 of the record. The first page of her accompanying statement, which was not date-stamped by the Office, is found at page 1 of the record. The second and third pages of her statement are found at pages 203 and 204 of the record. The evidence, which was not date-stamped, consists of, *inter alia*, medical evidence, statements by appellant, copies of grievance settlements and letters rescinding suspensions.

The Board has held that, when the Office receives relevant evidence, it must be properly reviewed by the Office.<sup>1</sup> In the July 15, 1997 decision, the Office hearing representative stated

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<sup>1</sup> See *Linda Johnson*, 45 ECAB 439 (1994).

that, while appellant stated that she had filed numerous grievances, she did not submit evidence of a resolution in her favor. The evidence, which was not date-stamped, however, contains several grievance settlements and evidence that a suspension and letter of warning had been rescinded. It would, therefore, appear that the Office hearing representative did not consider this evidence. Similarly, there is no indication that this evidence was reviewed in the Office decision dated September 28, 1998. In that decision, the Office indicated that it reviewed statements from Vince Evans and Ed Legenski and a letter dated July 16, 1998 from Donald G. Herzog, the postmaster.

The Board held in *William A. Couch*<sup>2</sup> that, as the Board's jurisdiction of a case is limited to reviewing that evidence, which was before the Office at the time of its final decision,<sup>3</sup> it is necessary that the Office review all evidence submitted by a claimant and received by the Office prior to issuance of its final decision. Office procedures in effect in 1998 required that each piece of mail must be date-stamped.<sup>4</sup> This was not done in the instant case. Accordingly, the case must be remanded for a proper review of the evidence and an appropriate final decision.

The decision of the Office of Workers' Compensation Programs dated September 28, 1998 is hereby set aside and the case remanded for further action consistent with this decision of the Board.

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

Michael J. Walsh  
Chairman

David S. Gerson  
Member

Michael E. Groom  
Alternate Member

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<sup>2</sup> 41 ECAB 548 (1990).

<sup>3</sup> 20 C.F.R. § 501.2(c).

<sup>4</sup> Federal (FECA) Procedure Manual, Part 1 -- Mail and Files, *Processing Mail*, Chapter 1.200.3(b)(3) (March 1982). These procedures were revised in February 2000 and can now be found at Chapter 1.300.4(b) (February 2000).