

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GERALD N. HAMRICK and DEPARTMENT OF TRANSPORTATION,
FEDERAL AVIATION ADMINISTRATION, Miami, FL

*Docket No. 98-2218; Submitted on the Record;
Issued February 28, 2000*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant has established that he sustained an injury in the performance of duty on March 16, 1998.

On March 17, 1998 appellant, then a 50-year-old air traffic controller, filed a claim alleging that on March 16, 1998 he sustained an injury as a result of asbestos fibers which "dropped directly into eyes and face from construction." He lost no time from work.

In an undated medical report, Dr. Craig S. Shapiro, appellant's treating osteopath, noted appellant's history of incident and stated that, pursuant to treatment on March 25, 1998, he found "raw nasal mucous."

By letter dated May 1, 1998, the Office of Workers' Compensation Programs advised appellant that he was required to submit additional information regarding his claim for compensation, including a medical report that contained a history of the March 16, 1998 incident, a secure diagnosis and his doctor's opinion as to the relationship between the diagnosed condition and employment factors.

By decision dated June 2, 1998, the Office denied appellant's claim on the grounds that the evidence of record failed to establish that a condition had been diagnosed in connection with the March 16, 1998 incident.

The Board finds that this case is not in posture for decision. The Board finds that the Office did not consider all evidence submitted in support of appellant's claim.

On May 1, 1998 the Office requested that appellant submit a medical diagnosis and a medical opinion relating appellant's condition to the March 16, 1998 incident. By letter dated May 21, 1998 and received by the Office on June 1, 1998, Dr. Shapiro stated that he had treated appellant on March 25, 1998 for a work-related injury which occurred when appellant breathed a "bunch of particles (which had fallen) from the ceiling" as a result of construction work. The

incident resulted in “a lot of pressure in his sinuses, headaches and burning in the nose,” followed by dryness and nose bleed. Dr. Shapiro noted that he treated appellant on three subsequent occasions and that he had some improvement in pressure and headaches. He further noted that upon examination appellant was symptomatic with congestion, redness and postnasal drainage. Dr. Shapiro diagnosed appellant with “rhinitis, acute and chronic from breathing in particles from the ceiling.” However, the Board notes that it is evident from the June 2, 1998 decision that this piece of evidence was not reviewed by the Office when issuing its final decision. In the decision, the claims examiner stated that no evidence was received after its May 1, 1998 letter to appellant requesting additional evidence.

The Federal Employees’ Compensation Act¹ provides that the Office shall determine and make findings of fact in making an award for or against payment of compensation after considering the claim presented by the employee and after completing such investigation as the Office considers necessary with respect to the claim.² Since 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,³ 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. As the Board’s decisions are final as to the subject matter appealed,⁴ it is crucial that all evidence relevant to that subject matter which was properly submitted to the Office prior to the time of issuance of its final decision be addressed by the Office.

In the instant case, the Office did not review all the evidence received prior to the issuance of its June 2, 1998 final decision, *i.e.*, Dr. Shapiro’s May 21, 1998 medical report. The Board, therefore, will set aside the Office’s June 2, 1998 decision and remand the case to the Office to fully consider the evidence which was properly submitted by appellant prior to the June 2, 1998 decision denying benefits.⁵

¹ 5 U.S.C. §§ 8101-8193.

² 5 U.S.C. § 8124(a)(2); 20 C.F.R. § 10.130.

³ 20 C.F.R. § 501.2(c).

⁴ 20 C.F.R. § 501.6(c).

⁵ See *William A. Couch*, 41 ECAB 548 (1990).

The decision of the Office of Workers' Compensation Programs, dated June 2, 1998, is hereby set aside and the case remanded for further action as set forth in this decision.

Dated, Washington, D.C.
February 28, 2000

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

HAMRICK, 98-2218

CHECK LIST FOR LEGAL STAFF

[YES] Does Board have jurisdiction over the appeal? Office merit decision dated June 2, 1998, appeal dated July 7, 1998

[NA] If appellant is represented on appeal, is the attorney/representative's authorization present?

[NO] Is there an outstanding oral argument request?

[X] What are the issues on appeal? Fact of injury.

[YES] Have all issues properly before the Board been addressed? The draft decision remands the Office's decision because evidence submitted prior to the Office's decision was not reviewed.

[NA] What are the dates of the pertinent reconsideration requests and Office decisions ?

[YES] Have all decisions over which the Board has jurisdiction been disposed of? The Board has jurisdiction over the June 2, 1998 decision denying benefits.

[YES] Has the draft been proofed for typos, grammatical errors and proper citation form?

**Dated, Washington, D.C.
February 28, 2000**

**George E. Rivers
Member**

**David S. Gerson
Member**

**A. Peter Kanjorski
Alternate Member**