

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GENE LOGAN and DEPARTMENT OF THE ARMY,
WATERWAYS EXPERIMENT STATION, Vicksburg, MS

*Docket No. 00-1713; Submitted on the Record;
Issued April 25, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issues are: (1) whether appellant has met his burden of proof in establishing that he sustained a left shoulder condition in the performance of duty; and (2) whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's request for an oral hearing.

On February 25, 1999 appellant, then a 48-year-old research model builder, filed an occupational disease claim, alleging that the tendinitis in his left shoulder was caused by loading 45- to 50-pound rolls of plastic into trucks, picking up 50-pound boxes of nails and stacking lumber.¹ Appellant submitted a personal statement, a treatment note dated February 26, 1999 diagnosing him with "left shoulder tendinitis" and an attending physician's report dated February 26, 1999 diagnosing him with "bursitis with tendinitis with rot[ta]or cuff disease."

By letter dated March 10, 1999, the Office requested that appellant submit additional medical evidence to substantiate his claim.

On April 14, 1999 appellant submitted a description of his duties and medical reports from Dr. Jose L. Ferrer, a Board-certified orthopedic surgeon, dated February 26 through March 29, 1999. In his initial report dated February 26, 1999, Dr. Ferrer diagnosed appellant with "left shoulder bursitis and tendinitis secondary to repetitive stress on the job." Appellant also submitted a statement from his supervisor stating that they agreed with appellant's claim.

¹ During this time appellant was on temporary duty status in Puerto Rico helping clean up after tornado damage. The Board notes that where an employee is on a temporary duty assignment away from his regular place of employment, he is covered by the Federal Employees' Compensation Act 24 hours a day with respect to any injury that results from activities incidental to his temporary assignment. The fact that an employee was on a special mission or in travel status during the time a disabling condition manifested itself does not raise an inference that the condition was causally related to the incidents of the employment. *See Stanley K. Takahaski*, 35 ECAB 1065 (1984).

By decision dated April 15, 1999, the Office found that appellant failed to establish fact of injury since he failed to provide rationalized medical opinion evidence to support his claim.

By letter dated December 29, 1999 appellant, requested an oral hearing. By decision dated February 18, 2000, the hearing representative found that appellant was not entitled to an oral hearing since his request was received over 30 days after the Office's final decision.

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.

The Act² 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.³ 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,⁴ 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 Board decisions are final as to the subject matter appealed,⁵ 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.⁶

In the instant case, the Office did not review evidence received prior to the issuance of its April 15, 1999 decision, *i.e.*, the medical reports from Dr. Ferrer dated February 26 through March 29, 1999, the description of appellant's duties and the statement from appellant's supervisor. The Board, therefore, must set aside the Office's April 15, 1999 decision and remand the case to the Office to fully consider the evidence which was properly submitted by appellant prior to the April 15, 1999 decision.

² 5 U.S.C. §§ 8101-8193.

³ 5 U.S.C. § 8124(a)(2); 20 C.F.R. §§ 10.130. *See generally* Federal (FECA) Procedure Manual, Part 2 -- Reconsiderations, *Receipt of New Evidence in Burden of Proof Cases*, Chapter 2.1602.8 (January 1990).

⁴ 20 C.F.R. § 501.2(c).

⁵ 20 C.F.R. § 501.6(c).

⁶ *William A. Couch*, 41 ECAB 548 (1990).

The decision dated April 15, 1999 of the Office of Workers' Compensation Programs is hereby set aside and the case remanded for further action as set forth in this decision.⁷

Dated, Washington, DC
April 25, 2001

Michael J. Walsh
Chairman

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

⁷ Due to the disposition of the first issue in this matter, the second issue is rendered moot.