

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BILLY L. TAYLOR and U.S. POSTAL SERVICE,
BARDIN ROAD POST OFFICE, Arlington, TX

*Docket No. 00-699; Submitted on the Record;
Issued January 5, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
VALERIE D. EVANS-HARRELL

The issue is whether appellant has met his burden of proof to establish that he sustained an injury in the performance of duty on July 24, 1999.

The Board has duly reviewed the case on appeal and finds that this case is not in posture for a decision.

On August 17, 1999 appellant, then a 49-year-old clerk, filed a claim for traumatic injury (Form CA-1) alleging that on July 24, 1999 he experienced a sharp pain in his back while lifting parcels in the performance of duty. He stated that the pain went away as fast as it came and that, as there were no supervisors around to inform at the time, he went on with his duties. Subsequently, however, the pain gradually returned. Appellant stopped work on July 29, 1999 and returned to work on August 10, 1999, with restrictions.

In support of his claim, appellant submitted an August 3, 1999 disability slip from Dr. Roger N.C. Pham, indicating that appellant was temporarily disabled for work, and a subsequent slip dated August 11, 1999, on which Dr. Pham released appellant to work with restrictions. Appellant also submitted a more complete set of treatment notes dated August 24, 1999 from Dr. Pham on which the physician noted that appellant stated that when he kneeled down to pick up a parcel he felt a sharp pain in his back, which disappeared when he stood up but gradually worsened over the next several days. On a separate treatment note also dated August 24, 1999, the physician noted that appellant had been feeling pain running from his shoulder to his hand for about four weeks. Dr. Pham diagnosed nerve impingement of the left arm, and on an accompanying duty status report, Form CA-17, noted that this condition was chronic and indicated by check mark that the condition was aggravated by work.

By letter dated September 13, 1999, the Office of Workers' Compensation Programs informed appellant that the information submitted with his claim was insufficient to establish that he sustained an injury on the date, at the place and in the manner alleged, and allowed him

30 days to provide a detailed rationalized medical report from his treating physician as well as answers to several questions of fact contained on an enclosed questionnaire.

On September 15, 1999 appellant submitted his narrative response to the Office's request for factual evidence, which included a description of the mechanism of injury. On September 28, 1999 appellant submitted a September 20, 1999 report from Dr. Warren D. Wilson, a Board-certified neurosurgeon, containing a diagnosis of displaced left C6-7 disc.

In a decision dated October 20, 1999, the Office denied appellant's claim finding that he failed to submit sufficient evidence to establish that he sustained an injury causally related to his employment. The Office specifically noted that appellant had not submitted any additional evidence in response to the Office's September 13, 1999 letter.¹

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury. These are the essential elements of each and every claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.²

There is no dispute that appellant is a federal employee, that he timely filed his claim for compensation benefits, and that he was engaged in lifting parcels on July 24, 1999 while in the performance of duty. The Office denied benefits; however, on the grounds that the record contained insufficient factual and medical evidence to establish that appellant sustained an injury causally related to his employment by either proximate causation, precipitation, acceleration or aggravation. In its October 20, 1999 decision, the Office noted that appellant had failed to respond to its September 13, 1999 letter requesting additional supporting evidence. A review of the record reveals, however, that appellant did complete and return the factual questionnaire provided by the Office, and further submitted a medical report, dated September 20, 1999, from Dr. Wilson. Office date stamps on these documents indicate that appellant's responses to the Office's questions and the requested medical evidence were received by the Office on September 15 and 28, 1999, respectively, within the 30 days allowed by the Office for response.

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,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

¹ The Office also noted that appellant had asked that his claim be withdrawn. While the record does contain a note from appellant stating that he wished to withdraw his CA-1, the record also contains an internal Office note indicating that appellant's claim might be more accurately characterized as an occupational injury, and suggesting that he be sent a Form CA-2 to replace the Form CA-1. Both appellant's request to withdraw his CA-1 and the internal Office note contain an additional notation that the claim could not be withdrawn.

² *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ 20 C.F.R. § 501.2(c).

decision.⁴ As the Board's decisions are final as to the subject matter appealed,⁵ it is crucial that all evidence relevant to the subject matter of the claim which was properly submitted to the Office prior to the time of issuance of its final decision be addressed by the Office. This is particularly important in the instant appeal where, as noted above, appellant submitted the additional evidence requested, but where there is no indication that this was considered by the Office before issuing its final decision. Because it does not appear that the Office considered the evidence that it received on September 15 and 28, 1999, in reaching its October 20, 1999 decision, the Board cannot review such evidence for the first time on appeal.⁶ The case will be remanded to the Office for its consideration of appellant's narrative responses and Dr. Wilson's report, to be followed by an appropriate decision.

The decision of the Office of Workers' Compensation Programs dated October 20, 1999 is set aside and the case remanded to the Office for action consistent with this decision of the Board.⁷

Dated, Washington, DC
January 5, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Valerie D. Evans-Harrell
Alternate Member

⁴ See *William A. Couch*, 41 ECAB 548 (1990).

⁵ See 20 C.F.R. § 501.6(c).

⁶ See 20 C.F.R. § 501.2(c).

⁷ The Board notes that the record contains a January 13, 2000 decision denying appellant's request for a review of the written record issued after he filed his November 9, 1999 appeal with the Board. As this decision involved the same issues before the Board while the Board had jurisdiction over the case, it is null and void. *Douglas E. Billings*, 41 ECAB 880 (1990).