

**United States Department of Labor  
Employees' Compensation Appeals Board**

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MASUD S. HAMEED, Appellant )

and )

DEPARTMENT OF VETERANS AFFAIRS, )  
VETERANS ADMINISTRATION MEDICAL )  
CENTER, Richmond, VA, Employer )

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**Docket No. 04-1794  
Issued: October 20, 2004**

*Appearances:*  
*Masud S. Hameed, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Member  
DAVID S. GERSON, Alternate Member  
MICHAEL E. GROOM, Alternate Member

**JURISDICTION**

On July 12, 2004 appellant filed a timely appeal from the April 14, 2004 merit decision of the Office of Workers' Compensation Programs, which denied his claim on the grounds that he failed to establish that he sustained an injury on February 16, 2004. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this claim.

**ISSUE**

The issue is whether appellant has established that he sustained an injury in the performance of duty on February 16, 2004.

**FACTUAL HISTORY**

On March 8, 2004 appellant, a 56-year-old housekeeping aid, filed a traumatic injury claim alleging he injured his back on February 16, 2004 when he lifted a heavy trash can that was filled with books.

By letter dated March 16, 2004, the Office advised appellant that the evidence of record was insufficient to establish his claim. The Office further advised him about the medical evidence he needed to submit to establish his claim and allowed him 30 days within which to submit the requested information. Appellant did not respond.

In a decision dated April 14, 2004, the Office denied appellant's claim on the grounds that he failed to establish that he sustained an injury as alleged.<sup>1</sup> The Office noted that there was no medical evidence providing a diagnosis to support "the alleged trauma."

### **LEGAL PRECEDENT**

Section 10.121<sup>2</sup> of the Office's regulation provides:

"If the claimant submits factual evidence, medical evidence or both, but the [Office] determines that, this evidence is not sufficient to meet the burden of proof, [the Office] will inform the claimant of the additional evidence needed. The claimant will be allowed at least 30 days to submit the evidence required. [The Office] is not required to notify the claimant a second time if the evidence submitted in response to its first request is not sufficient to meet the burden of proof."

At this point, the burden of proof is still on the claimant, but the Office has a duty to assist in some measure in the development of the claim. Proceedings before the Office are not adversarial in nature and the Office is not a disinterested arbiter; therefore, in a case where the Office "proceeds to develop the evidence and to procure medical evidence, it must do so in a fair and impartial manner."<sup>3</sup> The Office has an obligation to see that justice is done.<sup>4</sup>

### **ANALYSIS**

In this case, the Office failed to allow appellant the specified 30 days within which to submit additional evidence. As noted above, the Office advised appellant of the deficiencies in his claim on March 16, 2004 and properly stated that he would be allowed 30 days to submit supportive factual or medical evidence. However, on April 14, 2004, only 29 days later, and less than the 30 days specified by the implementing federal regulations, the Office issued its decision denying appellant's claim for benefits.

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<sup>1</sup> The Board notes that, on May 27, 2004, subsequent to the issuance of the April 14, 2004 decision, the Office received a March 22, 2004 magnetic resonance imaging scan by Dr. Ray A. Beauchamp, a Board-certified diagnostic radiologist. The Board has no jurisdiction to review this evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c); *Sherry L. McFall*, 51 ECAB 436 (2000).

<sup>2</sup> 20 C.F.R. § 10.121.

<sup>3</sup> *Vanessa Young*, 55 ECAB \_\_\_\_ (Docket No. 04-562, issued June 22, 2004).

<sup>4</sup> *Richard E. Simpson*, 55 ECAB \_\_\_\_ (Docket No. 04-14, issued May 3, 2004); *John J. Carlone*, 41 ECAB 354, 360 (1989).

**CONCLUSION**

The Board will set aside the Office's April 14, 2004 decision and remand the case for further appropriate development. On remand, the Office shall again advise appellant of the defects in this claim and allow him 30 days in which to submit responsive evidence. Following this and such other development as the Office deems necessary, it shall issue an appropriate decision.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated April 14, 2004 is set aside and the case remanded for further development consistent with this opinion of the Board.

Issued: October 20, 2004  
Washington, DC

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member