

Appellant filed claims for compensation (Form CA-7) from April 28 to July 19, July 21 to August 2 and August 4 through September 26, 2008. By letter dated August 18, 2004, the Office advised her of the deficiencies in the medical evidence. It requested that she submit additional medical evidence within 30 days.

On September 8, 2008 the Office received an August 27, 2008 progress note from Dr. David Seltzer, an attending Board-certified psychiatrist, who diagnosed major depressive affective disorder, post-traumatic stress disorder, bipolar disorder and generalized anxiety. Dr. Seltzer noted that appellant was working part time. On October 3, 2008 the Office received an additional report from him addressing her capacity for employment.

By decision dated October 3, 2008, the Office denied appellant's claim for a recurrence of disability commencing April 28, 2008. It found that the medical evidence did not establish that a recurrence of disability was due to the accepted work injury. The Office noted that appellant only submitted an August 27, 2008 report in response to its request for additional evidence.¹

LEGAL PRECEDENT

It is necessary for the Office to review all evidence submitted by a claimant and received by the Office prior to the issuance of a final decision.²

ANALYSIS

The Office accepted that appellant developed post-traumatic stress disorder and panic disorder in the performance of duty. Appellant filed claims for compensation alleging wage loss due to disability related to her accepted conditions from April 28 to September 27, 2008. When the Office denied her claim on October 3, 2008, it noted that it only received an August 27, 2008 progress note from Dr. Seltzer. However, the evidence reflects that it received an October 3, 2008 report from Dr. Seltzer that day. It is well established that the Office shall determine and make findings of fact for or against payment of compensation after considering the claim presented by the employee and after completing such investigation as it considers necessary with respect to the claim. Since the Board's jurisdiction on appeal is limited to reviewing that evidence which was before the Office at the time of its final decision, it is necessary that the Office review all evidence submitted by a claimant and received prior to the issuance of its final decision. The Office is required to review all evidence submitted by a claimant and received prior to the issuance of its final decision, including evidence received on the date of the

¹ On October 31 2008 the Office accepted appellant's recurrence of disability claim. As appellant filed an appeal with the Board on October 22, 2008, any decision issued by the Office on the same issue that is pending before the Board on appeal, is null and void. The Office and the Board may not have concurrent jurisdiction over the same issue. *See D.S.*, 58 ECAB ____ (Docket Nos. 06-1408 & 06-2061, issued March 1, 2007); *Russell E. Lerman*, 43 ECAB 770 (1992). Appellant advised the Board that she did not wish to withdraw her appeal in light of the acceptance of her claim.

² *See Kenneth R. Love*, 50 ECAB 193 (1998). *See also William A. Couch*, 41 ECAB 548 (1990) and *Linda Johnson*, 45 ECAB 439 (1994).

decision.³ For this reason, the Board will set aside the October 3, 2008 decision and remand the case to the Office for further development and an appropriate decision on her claim.

CONCLUSION

The Board finds that the case is not in posture for decision on whether appellant is entitled to wage-loss compensation from April 28 to September 27, 2008.

ORDER

IT IS HEREBY ORDERED THAT the October 3, 2008 decision of the Office of Workers' Compensation Programs be set aside. The case is remanded for further action consistent with this decision.

Issued: August 10, 2009
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

³ *Id.*