

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

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**K.M., Appellant**

**and**

**DEPARTMENT OF JUSTICE, DETROIT  
IMMIGRATION COURT, Detroit, MI, Employer**

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**Docket No. 08-1924  
Issued: January 22, 2009**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On June 30, 2008 appellant filed a timely appeal from an October 23, 2007 decision of the Office of Workers' Compensation Programs denying her claim for fact of injury. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of this claim.

**ISSUE**

The issue is whether appellant established that she sustained a right elbow injury in the performance of duty.

**FACTUAL HISTORY**

On September 17, 2007 appellant, then a 32-year-old legal clerk and technician, filed an occupational disease claim (Form CA-2) alleging that on December 14, 2006 she was lifting a heavy file and felt her arm and elbow pull. She noted that she was diagnosed with lateral medial epicondylitis and cubital tunnel syndrome due to the heavy lifting required by her employment duties. Appellant stopped work on December 28, 2006 and returned on February 22, 2006 with lifting restrictions.

In a letter dated September 21, 2007, the Office notified appellant of the deficiencies in her claim and requested she provide additional information.

Appellant thereafter submitted a personal statement and several detailed medical reports from Dr. Ronald L. Meisel, an osteopath, dated June 8 through September 28, 2007. The record reveals that this evidence was received by the Office on October 22, 2007.

In a decision dated October 23, 2007, the Office denied appellant's claims on the grounds that she failed to provide sufficient medical evidence relating her right elbow condition to her federal employment. It found that she did not submit any evidence in response to the September 21, 2007 letter advising her of the deficiencies in her claim.

### **LEGAL PRECEDENT**

The Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision.<sup>1</sup> As the Board's decisions are final with regard to the subject matter appealed, it is crucial that the Office consider all relevant evidence that was properly submitted prior to the issuance of its final decision.<sup>2</sup>

### **ANALYSIS**

In the October 23, 2007 decision, the Office specifically stated that appellant did not provide any evidence subsequent to a September 21, 2007 letter noting deficiencies in the claim. However, the record reveals that on October 22, 2007 the Office received appellant's personal statement and medical reports from Dr. Meisel dated June 8 through September 28, 2007. Although the medical reports and statement were received prior to the October 23, 2007 decision, it is evident that the Office did not consider this evidence. The Board finds that the Office failed to address relevant evidence submitted prior to the October 23, 2007 decision. Accordingly, the case is remanded for a proper review of the evidence and issuance of a final decision.

### **CONCLUSION**

The Board finds that the case is not in posture for decision.

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<sup>1</sup> 20 C.F.R. § 501.2(c).

<sup>2</sup> 20 C.F.R. § 501.6(c). See *William A. Couch*, 41 ECAB 548, 553 (1990); *William McKennon*, 51 ECAB 145 (1999).

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 23, 2007 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further consideration consistent with this decision.

Issued: January 22, 2009  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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

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