United States Department of Labor Employees' Compensation Appeals Board

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K.J., Appellant	,)
and) Docket No. 11-680) Issued: August 12, 2011
U.S. POSTAL SERVICE, POST OFFICE, Houlton, ME, Employer)))
Appearances: Appellant, pro se Office of Solicitor, for the Director	Case Submitted on the Record

ORDER REMANDING CASE

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge

On January 20, 2011 appellant filed an application for review of an Office of Workers' Compensation Programs' (OWCP) decision dated September 22, 2010 which denied her claim of compensation. Pursuant to the Federal Employees' Compensation Act¹ and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

The Board has duly considered the matter and finds that the case is not in posture for a decision and must be remanded to OWCP. In the case of *William A. Couch*, the Board held that, when adjudicating a claim, OWCP is obligated to consider all evidence properly submitted by a claimant and received by OWCP before the final decision is issued.

On June 29, 2010 OWCP sent appellant an initial development letter requesting submission of a medical report that contained a diagnosis of her condition, including whether the condition was caused or exacerbated by specific factors of her employment. The letter specified that appellant had 30 days to submit the requested evidence.

¹ 5 U.S.C. §§ 8101-8193.

² The record on appeal contains evidence received after OWCP issued its August 6, 2010 decision. The Board is precluded from considering evidence that was not in the case record at the time OWCP rendered its final decision. 20 C.F.R. § 501.2(c)(1) (2010).

³ 41 ECAB 548 (1990).

The September 22, 2010 OWCP decision referenced the initial development letter and noted that "[n]o further evidence was received" within the 30-day period following the date of the request. OWCP denied appellant's claim because causal relationship, a crucial element of her claim, has not been established by the medical evidence.

The record indicates, however, that on July 26, 2010, appellant had in fact submitted additional evidence. This included two medical reports, one dated October 14, 2009 from Dr. Ted. L. Sussman, and another from Dr. Julie A. Long, dated January 5, 2010. Both these reports contained a diagnosis of appellant's physical condition, and referenced her employment when discussing her claimed condition. Both documents were received by OWCP on July 27, 2010.

The Board finds that OWCP, in its September 22, 2010 decision, did not review the October 14, 2009 report from Dr. Sussman and the January 5, 2010 report from Dr. Long that were received by OWCP on July 27, 2010. For this reason, the case will be remanded to OWCP to enable it to properly consider all the evidence submitted at the time of the September 22, 2010 decision. Following such further development as OWCP deems necessary, it shall issue an appropriate decision on the merits of the claim.

IT IS HEREBY ORDERED THAT the September 22, 2010 decision of the Office of Workers' Compensation Programs be set aside. The case is remanded for further proceedings consistent with this order of the Board.

Issued: August 12, 2011 Washington, DC

Richard J. Daschbach, Chief Judge Employees' Compensation Appeals Board

Alec J. Koromilas, Judge Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge Employees' Compensation Appeals Board