

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARGUERITE A. McCARTHY and U.S. POSTAL SERVICE,
CHICAGO POST OFFICE, Chicago, IL

*Docket No. 00-1437; Submitted on the Record;
Issued January 9, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has met her burden of proof in establishing that her foot condition was causally related to factors of her federal employment and was, therefore, sustained in the performance of duty.

On August 19, 1999 appellant, then a 46-year-old letter carrier, filed a notice of occupational disease and claim for compensation (Form CA-2), alleging that she developed plantar fibroma in her right foot due to walking up and down stairs as a letter carrier. She indicated that on June 15, 1999 she noticed a small lump on the bottom of her right foot. She further stated that, since June, the lump has become enlarged and more painful, making it difficult to walk.

By letter dated November 9, 1999, the Office of Workers' Compensation Programs requested that appellant provide additional factual and medical information, including a medical report which provided a definitive diagnosis of her condition and an explanation as to the exact cause of the condition. The Office also informed appellant that 30 days would be allowed for the submission of all requested evidence.

In support of her claim, on January 7, 2000, appellant faxed several doctors' reports to the Office which were received on the same day. Dr. John F. Grady, a podiatrist, provided a note dated January 7, 2000, stating that appellant is being treated for plantar fibroma. Dr. Grady stated that it is okay for her to walk, but she cannot climb stairs at this time. By letter dated August 30, 1999, Dr. Emil Zager, also a podiatrist, assessed that appellant has plantar fibroma in the right foot. Appellant also submitted a progress report from Dr. Grady that she had been examined by him on September 13 and 24, 1999, and it was found that her condition had not

improved. The Office received all of these documents on January 7, 2000, three days before the date of the Office's final decision.¹

By decision dated January 10, 2000, the Office denied appellant's claim for compensation as the evidence was not sufficient to meet the guidelines for establishing that she sustained an injury due to the employment factor, as required by the Federal Employees' Compensation Act. The Office specifically noted that appellant had not submitted any medical evidence in support of her claim.

The Board finds that this case is not in posture for decision. The Board finds that the Office did not consider all evidence submitted in support of appellant's claim.

The Act² provides that the Office shall determine and make findings of fact in making an award for or against payment of compensation after considering the claim presented by the employee and after completing such investigation as the Office considers necessary with respect to the claim.³ Since 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,⁴ it is necessary that the Office review all evidence submitted by a claimant and received by the Office prior to issuance of its final decision. As Board's decisions are final as to the subject matter appealed,⁵ it is crucial that all evidence relevant to that subject matter which was properly submitted to the Office prior to the time of issuance of its final decision be addressed by the Office.⁶

In the instant case, the Office did not review evidence received prior to the issuance of its January 10, 2000 decision, *i.e.*, the reports from Drs. Grady and Zager. The Board, therefore, must set aside the Office's January 10, 2000 decision and remand the case to the Office to fully consider the evidence which was properly submitted by appellant prior to the January 10, 2000 decision.

¹ It should be noted that appellant also submitted a report from Dr. Brady dated February 23, 2000, which was not received by the Office until March 22, 2000. The report may not be considered on appeal because it was received after the Office's January 10, 2000 decision.

² 5 U.S.C. §§ 8101-8193.

³ 5 U.S.C. § 8124(a)(2); 20 C.F.R. § 10.130. *See generally* Federal (FECA) Procedure Manual, Part 2 -- Reconsideration, *Receipt of New Evidence in Burden of Proof Cases*, Chapter 2.1602.8 (January 1990).

⁴ 20 C.F.R. § 501.2(c).

⁵ 20 C.F.R. § 501.6(c).

⁶ *William A. Couch*, 41 ECAB 548 (1990).

The decision of the Office of Workers' Compensation Programs, dated January 10, 2000, is hereby set aside and the case remanded for further action as set forth in this decision.

Dated, Washington, DC
January 9, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member