

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of CONNIE L. PENNER and U.S. POSTAL SERVICE,  
POST OFFICE, Vancouver, WA

*Docket No. 02-1007; Submitted on the Record;  
Issued September 3, 2002*

---

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,  
DAVID S. GERSON

The issue is whether appellant has established a recurrence of disability causally related to her accepted left knee injury.

On February 14, 1997 appellant filed a claim alleging that on February 7, 1997 she injured her knee in the performance of duty while loading a vehicle. The Office of Workers' Compensation Programs accepted the claim for a left knee strain and authorized arthroscopic left knee surgery on July 18, 1997.

On September 23, 2001 appellant filed a notice of recurrence of disability commencing in April 2001. By letter dated December 3, 2001, the Office requested that appellant submit additional evidence regarding her claim.

In a decision dated January 17, 2002, the Office denied the claim. The Office stated that no response had been received to the December 3, 2001 letter.

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

The record indicates that, on January 16, 2002, the Office received additional evidence from appellant, including a December 21, 2001 report from Dr. Matthew S. Shapiro, an orthopedic surgeon, who addressed some of the specific medical questions raised by the Office in the December 3, 2001 letter.

It is well established that when the Office receives relevant evidence, it must properly review such evidence.<sup>1</sup> As the Board's decisions are final as to the subject matter appealed, it is

---

<sup>1</sup> See *Willard McKennon*, 51 ECAB \_\_\_\_ (Docket No. 98-1513, issued October 21, 1999); *Linda Johnson*, 45 ECAB 439 (1994).

critical that all evidence relevant to the subject matter that was properly submitted to the Office prior to time of issuance of its final decision be addressed by the Office.<sup>2</sup>

In this case, the record clearly shows that Dr. Shapiro's report was date stamped as received by the Office on January 16, 2002, and yet the January 17, 2002 Office decision finds that no response was received regarding the request for additional evidence. Since the Office did not consider relevant evidence that was in its possession at the time of the final decision, the case will be remanded for a proper review of the evidence and an appropriate final decision.

The decision of the Office of Workers' Compensation Programs dated January 17, 2002 is set aside and the case remanded to the Office for further action consistent with this decision of the Board.

Dated, Washington, DC  
September 3, 2002

Michael J. Walsh  
Chairman

Alec J. Koromilas  
Member

David S. Gerson  
Alternate Member

---

<sup>2</sup> *William A. Couch*, 41 ECAB 548 (1990).