

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SEO N. KIM and U.S. POSTAL SERVICE,
POST OFFICE, New York, NY

*Docket No. 03-1894; Submitted on the Record;
Issued November 12, 2003*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

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

On May 2, 2003 appellant, a 54-year-old automated mark-up clerk, filed a traumatic injury claim alleging that on April 12, 2003 she reinjured her left knee when she lifted a heavy package.

In an undated letter received by the Office of Workers' Compensation Programs on May 14, 2003, Sandra Vitti, a supervisor of computerized mail forwarding, controverted appellant's claim. She noted that appellant did not immediately report the incident but waited 11 days before filing her claim.

In an undated and unsigned typed letter received on May 15, 2003, appellant referred to an incident on March 6, 2000 and that her knee injury was work related.

In an April 19, 2003 note, Dr. John Yung Shim, an attending physician, diagnosed a left knee sprain and indicated that appellant could return to work on April 21, 2003.

By letter dated May 29, 2003, the Office informed appellant that the evidence was insufficient to support her claim and advised her as to the type of medical and factual evidence which was required to support her claim. The Office allotted appellant 30 days within which to submit the requisite evidence.

In a June 20, 2003 statement, appellant responded to the Office's request for additional factual information regarding her injury.

By decision dated June 27, 2003, the Office found that the evidence was insufficient to establish that the incident occurred as alleged. The Office noted that appellant was afforded the opportunity to provide supportive evidence, but that such evidence was not received.

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

The Office received additional evidence in the form of a statement by appellant on June 25, 2003, two days before it issued its decision denying appellant's claim. Because the Office specifically stated that no additional medical or factual documentation was received subsequent to its May 29, 2003 letter, it is clear that the Office did not consider the newly submitted evidence in reaching its decision. In situations such as this, Board precedent holds that the case must be remanded to the Office for a proper review of all the evidence and for an appropriate final decision on appellant's entitlement to compensation.¹

The June 27, 2003 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this opinion.

Dated, Washington, DC
November 12, 2003

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

¹ *Linda Johnson*, 45 ECAB 439 (1994); *William A. Couch*, 41 ECAB 548 (1990).