United States Department of Labor Employees' Compensation Appeals Board

V.G., Appellant)
and) Docket No. 10-1767 Issued: June 28, 2011
DEPARTMENT OF JUSTICE, FEDERAL BUREAU OF INVESTIGATION,) issued. June 20, 2011)
Washington, DC, Employer)
Appearances: Johnnie L. Johnson, III, Esq., for the appellant 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 June 22, 2010 appellant filed an application for review of decisions of the Office of Workers' Compensation Programs dated April 8 and May 21, 2010. The appeal was docketed as No. 10-1767.

The Board, having reviewed the case record submitted by the Office, finds that the record is incomplete, as it does not contain relevant evidence referenced in the case file. Appellant filed a claim for an emotional condition on September 1, 2009. She submitted medical reports dated May 12 and June 13, 2009 in support of her claim. On November 18, 2009 the Office asked appellant to submit additional factual and medical evidence in support of her claim. In addition, it asked the employing establishment for additional information. By letter dated December 2, 2009, the employing establishment rebutted numerous allegations made by appellant in support of her claim for an emotional condition and referenced appellant's letter containing these allegations. This letter, however, is not contained in the instant record. Thus the case file does not include a portion of the record pertaining to the history and development of appellant's claim, as is required for an informed adjudication of this case.

In addition, the Board notes that section 10.126 requires the Office to issue a decision containing findings of fact and a statement of reasons. In an April 8, 2010 decision, the Office denied appellant's claim for an emotional condition, finding that appellant failed to establish any compensable factor of employment and that fact of injury was therefore not established. It erred in this decision by failing to make findings regarding the factual and medical evidence appellant presented. Instead it merely stated in summary fashion that it was not sufficient to establish that the events occurred as alleged. Additionally, it did not provide a statement of reasons supporting its determination. Therefore the Board finds that the Office failed to give proper consideration to the evidence appellant submitted in support of her claim.

Accordingly, as all the records pertaining to appellant's claim are necessary for complete consideration and adjudication of the issue raised on appeal, the Board, therefore, finds that the appeal docketed as No. 10-1767 is not in posture for a decision. The Board is unable to render an informed adjudication of the case. In addition, the Office failed to make detailed findings and state the reasons for its denial of compensation in its April 8, 2010 decision. The appeal docketed as No. 10-1767 must be set aside and remanded for adjudication of the case pursuant to section 8128(a).

Accordingly, the April 8, 2010 decision will be set aside and remanded for reconstruction of the record to include the entire case file pertaining to claim number xxxxxx272. The Office will consider all of appellant's evidence pursuant to the standards set out in section 8128(a) and section 10.126 to determine whether she has established that she sustained an emotional condition in the performance of duty. After such further development as it deems necessary, it should issue an appropriate decision to protect appellant's appeal rights.

¹ 20 C.F.R. § 10.126.

² By decision dated May 21, 2010, an Office hearing representative denied appellant's request for a hearing on the grounds that it had not been filed in a timely manner.

IT IS HEREBY ORDERED THAT this case be remanded for reconstruction of the case record and for a determination of the issue at bar based on a consideration of the entire case record.

Issued: June 28, 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