United States Department of Labor Employees' Compensation Appeals Board

L.A., Appellant)	
and)	Docket No. 10-1872
DEPARTMENT OF HOMELAND SECURITY,)	Issued: May 25, 2011
TRANSPORATION SAFETY ADMINSTRATION, CHICAGO O'HARE)	
AIRPORT, Chicago, IL, Employer)	
)	
Appearances: Alan J. Shapiro, Esq., for the appellant		Case Submitted on the Record
Office of Solicitor, for the Director		

ORDER REMANDING CASE

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

On July 8, 2010 appellant, through counsel, filed a timely appeal from the June 10, 2010 decision of the Office of Workers' Compensation Programs. By that decision, the Office denied her claim for an employment-related traumatic injury sustained in the performance of duty on November 27, 2008, as alleged.

The Board has duly considered the matter and notes that by decision dated August 28, 2009 the hearing representative modified the Office's March 19, 2009 decision and found that the incident occurred as reported by appellant.¹ However, she denied appellant's claim because appellant did not submit sufficient medical evidence diagnosing that a condition resulted from the accepted incident.

By letter dated December 6, 2009, appellant, through her attorney, requested reconsideration. In support of the reconsideration request, she submitted reports detailing her

¹ Appellant, then a 49-year-old transportation security officer (screener), alleged that she sustained a pulled tendon in her knee on November 27, 2008 when she tripped on a taped down rug while rotating from the x-ray machine to a mat.

treatment prior to the November 27, 2008 employment incident including a July 11, 2007 note from Dr. George Branovacki, a Board-certified orthopedic surgeon; and progress notes dated January 7 and August 11, 2008 by Dr. Beverlee A. Brisbin, a physician Board-certified in family practice with a subspecialty of sports medicine. Appellant also submitted a report dated November 13, 2009 wherein Dr. Nasim A. Rana, a Board-certified orthopedic surgeon, stated that he first saw appellant on December 10, 2008 in regards to her right knee pain, that at that time she was known to have arthritis of the knees but that she was able to work until she tripped over a rubber mat and aggravated her pain in the knee which already had arthritis. Dr. Rana noted that consequently appellant was not able to work when he saw her and that she had significant pain in the knee with advanced osteoarthritic changes. He indicated that he told her that nothing short of a total knee replacement was going to be helpful, and she underwent this surgery on December 17, 2008, and made good gradual recovery. Dr. Rana stated that the injury of November 27, 2008 was strain or sprain of the knee on top of her previously known osteoarthritis. He noted that the employment injury aggravated her pains and expedited her surgery. By decision dated June 10, 2010, the Office denied modification of its prior decisions. In reviewing the case on the merits, it listed and discussed every piece of evidence appellant submitted on reconsideration, noted above, with the exception of Dr. Rana's November 13, 2009 report.

In the case of William A. Couch² the Board held that, when adjudicating a claim, the Office is obligated to consider all evidence properly submitted by appellant and received by the Office before the final decision is issued. As the Office failed to consider Dr. Rana's November 13, 2009 report, it did not consider all of the medical evidence of record prior to making its decision on June 10, 2010. Accordingly, the case will be remanded to the Office to enable it to properly consider all the evidence submitted at the time of its decision. Following this and any other development deemed necessary, the Office shall issue a de novo decision on appellant's claim.

² 41 ECAB 548 (1990). *See also Linda Johnson*, 45 ECAB 439 (1994) (applying *Couch* in a situation where the Office did not consider evidence received on the date of its decision).

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 10, 2010 is set aside and the case is remanded for further action consistent with this order of the Board.

Issued: May 25, 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