

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DEBORAH S. WILSON and DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, Cincinnati, Ohio

*Docket No. 96-1224; Submitted on the Record;
Issued April 27, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has met her burden of proof in establishing that she sustained an injury in the performance of duty on November 6, 1995, as alleged.

On November 14, 1995 appellant, then a 40-year-old management assistant, filed a notice of traumatic injury (Form CA-1) alleging that on Saturday, November 4, 1995, a water pipe above her desk broke, causing water and ceiling tile particles to land on her desk and work area. She went on to say that when she arrived at work on Monday, November 6, 1995, she had to clean up the area as well as old boxed paper that had gotten wet. Appellant stated that her exposure to the water, ceiling tile particles and wet paper (papermites) caused a flare-up of her nasal and chest allergies identified as allergic rhinitis and sinus infection. On the reverse side of the form the employing establishment indicated that appellant stopped work on December 4, 1995 and returned on December 9, 1995.

By letter dated January 29, 1996, the Office of Workers' Compensation Programs advised appellant of the type of factual and medical evidence needed to establish her claim, specifically, a narrative report from her doctor which included a history of injury, physical findings upon examination, a diagnosis, treatment recommendation, and an opinion supported by objective findings, as to the medical connection between appellant's condition and her employment. The Office allotted appellant 21 days from the date of the letter in which to submit the requested evidence.

On February 21, 1996 the Office issued a decision denying appellant's claim for compensation benefits on the grounds that the evidence of record failed to establish that she sustained an injury as a result of the November 6, 1995 incident.

The Board finds that this case is not in posture for decision and must be remanded for further development.

Section 10.110(b) of the Code of Federal Regulations provides:

“If a claimant initially submits supportive factual and/or medical evidence which is not sufficient to carry the burden of proof, the Office will inform the claimant of the defects in proof and grant at least thirty (30) calendar days for the claimant to submit the evidence required to meet the burden of proof.”

As of this point, the burden of proof is still on the claimant, but the Office has a duty to assist in some measure in the development of the claim. Furthermore, it is well established that proceedings under the Federal Employees’ Compensation Act¹ are not adversarial in nature nor is the Office a disinterested arbiter.² While appellant has the burden to establish entitlement to compensation when adjudicating a claim,³ the Office shares responsibility in the development of the evidence. The Office has an obligation to see that justice is done.⁴ Office regulations provide that if a claimant initially submits supportive evidence that is not sufficient to meet the burden of proof, the Office will inform the claimant of the defects in the claim and grant at least 30 days for the claimant to submit responsive evidence.⁵

In the instant case, the Office failed to grant appellant at least 30 days within which to submit the requested evidence. As mentioned above, the Office advised appellant of the deficiencies in her claim on January 29, 1996, and allowed appellant only 21 days within which to submit the requested evidence. Appellant did provide a factual statement which was received by the Office on February 8, 1996. Then, on February 21, 1996, 23 days later, but less than the 30 calendar days specified by section 10.110(b) of the regulations which required the Office to grant appellant at least 30 days in which to respond, the Office issued its decision denying appellant’s claim for benefits.⁶

The Board find that the Office’s failure to adhere to section 10.110(b) of the regulations precluded timely competent medical and factual evidence from being considered in the adjudication of her claim and violated appellant’s right granted by regulations to have all evidence submitted within 30 days considered.⁷

¹ 5 U.S.C. §§ 8101-8193.

² See *Elaine K. Kreyborg*, 41 ECAB 256 (1989); *William J. Cantrell*, 34 ECAB 1233 (1983).

³ See *Elaine Pendleton*, 41 ECAB 1143 (1989); see also 20 C.F.R. § 10.110.

⁴ See *John J. Carlone*, 41 ECAB 354 (1989)

⁵ 20 C.F.R. § 10.110(b).

⁶ The Board notes that on February 26, 1996, only 28 days from the Office’s January 29, 1996 letter requesting such evidence, the Office received additional factual and most importantly, a medical report on appellant’s behalf. By informational letter dated February 29, 1996, only 31 days after its original request for additional evidence, the Office advised appellant that its February 20, 1996 decision remained unchanged.

⁷ On appeal appellant submitted several pieces of evidence one of which was the medical report received by the Office on February 26, 1996, but cannot be considered by the Board. 20 C.F.R. § 501.2(c).

In light of the above, the Board will set aside the Office's February 21, 1996 decision and remand the case to the Office for further appropriate development and a *de novo* review of all medical and factual evidence submitted in support of appellant's injury claim. Following this and after such further development as it deems necessary, the Office shall issue a *de novo* decision.

The decision of the Office of Workers' Compensation Programs dated February 21, 1996 is set aside and the case is remanded to the Office for further development consistent with this decision.

Dated, Washington, D.C.

April 27, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member