

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of LENEASE NORMAN and U.S. POSTAL SERVICE,  
POST OFFICE, Coppell, Tex.

*Docket No. 95-2973; Submitted on the Record;  
Issued February 23, 1998*

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DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,  
A. PETER KANJORSKI

The issue is whether appellant has met her burden of proof in establishing that she sustained a back injury during the performance of duty on June 27, 1995.

On July 14, 1995 appellant, then a 39-year-old mail processor, filed a notice of traumatic injury and claim for continuation of pay/compensation Form CA-1 alleging that the injury to her back was employment related. Appellant stated that during the week of June 27, 1995, each time she placed or turned to place mail into a mail tray she felt a very sharp pain in her back. The record shows that appellant stopped work on July 3, 1995, returned to work on July 13, 1995 and was placed on light duty on July 14, 1995.

In a July 27, 1995 letter, the Office of Workers' Compensation Programs advised appellant of the type of factual and medical evidence needed to establish her claim and requested that she submit such evidence. The Office particularly requested that appellant submit a physician's reasoned opinion addressing the relationship of her claimed condition and specific employment factors. Appellant was allotted twenty (20) days within which to submit the requested evidence.

By decision dated August 17, 1995, the Office denied appellant's claim for compensation benefits on the grounds that the evidence of record failed to support the fact of an injury in this case. In an accompanying memorandum, the Office noted that appellant was advised of the deficiency in her claim on July 27, 1995, and afforded appellant twenty (20) days in which to provide supportive evidence; however, no medical evidence of any kind was submitted to support the fact that appellant sustained an injury on June 27, 1995, as alleged.

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

Section 20 C.F.R. § 10.110(b) of the Code of Federal Regulations of the Office 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 Act<sup>1</sup> are not adversarial in nature nor is the Office a disinterested arbiter.<sup>2</sup> While appellant has the burden to establish entitlement to compensation when adjudicating a claim,<sup>3</sup> the Office shares responsibility in the development of the evidence. The Office has an obligation to see that justice is done.<sup>4</sup> 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 thirty (30) days for the claimant to submit responsive evidence.<sup>5</sup>

In the instant case, the Office failed to grant appellant at least thirty (30) days within which to submit responsive evidence. As noted above, the Office advised appellant of the deficiencies in her claim on July 27, 1995, and allotted appellant only twenty (20) days within which to submit the supporting factual and/or medical evidence. Thereafter, on August 17, 1995, only twenty-one (21) days later, and less than the thirty (30) calendar days specified by section 10.110(b) of the regulations which required the Office to grant appellant at least thirty (30) days in which to submit responsive evidence, the Office issued its decision denying appellant’s claim for benefits.

The Board will therefore set aside the Office’s August 17, 1995 decision and remand the case for further appropriate development. On remand, the Office shall again advise appellant of the defects of her claim and properly grant her at least thirty (30) days in which to submit responsive evidence.<sup>6</sup> Following this and after such further development as it deems necessary, the Office shall issue a *de novo* decision.<sup>7</sup>

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

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

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

<sup>4</sup> See *John J. Carlone*, 41 ECAB 354 (1989).

<sup>5</sup> 20 C.F.R. § 10.110(b).

<sup>6</sup> *Id.*

<sup>7</sup> On appeal appellant submitted additional evidence. The Board may not consider such evidence for the first time on appeal. 20 C.F.R. § 501.2(c).

The decision of the Office of Workers' Compensation Programs dated August 17, 1995 is hereby set aside and the case is remanded to the Office for further proceedings consistent with this opinion.

Dated, Washington, D.C.  
February 23, 1998

David S. Gerson  
Member

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski  
Alternate Member