

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of CAROL BARNES and U.S. POSTAL SERVICE,  
POST OFFICE, Coppel, Tex,

*Docket No. 96-831; Submitted on the Record;  
Issued January 5, 1998*

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DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,  
A. PETER KANJORSKI

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

On October 5, 1995 appellant, then a 35-year-old mail handler, filed a notice of traumatic injury, claiming that on September 28, 1995 she injured her lower left shoulder while lifting a tray of mail. In support of her claim, appellant submitted a work excuse signed by Dr. Michael B. White and a form stating that she had hurt her left lower back but could resume work on October 16, 1995.

On October 27, 1995 the Office of Workers' Compensation Programs wrote a letter to appellant at the 5944 Skillman address, informing her that further medical evidence and factual information were needed to substantiate her claim. Subsequently, the Office received duty status and attending physician's reports, which indicated a diagnosis of shoulder tendinitis due to a work injury, limited-overhead work and lifting, and stated that appellant could return to work on October 25, 1995.

On November 20, 1995 the Office denied the claim on the grounds that the record evidence was insufficient to establish that an injury had occurred. The decision was mailed to appellant at the 5944 Skillman address. On November 30, 1995 appellant called the Office to request reconsideration, pointing out that her proper address was 9455 Skillman. On December 6, 1995 the Office wrote to appellant at her correct address, provided 20 days for appellant to submit the necessary information and medical evidence, and enclosed copies of the pertinent forms.

On December 13, 1995 the Office denied appellant's request for reconsideration on the grounds that she had submitted no relevant evidence showing that she sustained an injury in the performance of duty.

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

While appellant has the burden of proof in establishing entitlement to compensation, the Office shares responsibility in the development of the evidence.<sup>1</sup> The Board has long held that proceedings under the Act are not adversarial in nature, and the Office is not a disinterested arbiter.<sup>2</sup> The Office's procedures provide that while an employee claiming compensation must show sufficient cause for the Office to proceed with processing and adjudicating a claim, the Office has the obligation to assist in this process.<sup>3</sup>

In this case, the Office indicated in its December 6, 1995 letter that appellant had 20 days to submit the information and evidence necessary to substantiate her claim and stated that if the documents were not received, it would render a decision based on the evidence in the file. The Office then issued a decision on December 13, 1995, only seven days after its December 6, 1995 letter providing 20 days.

Thus, the Board finds that the Office erred in issuing a decision without affording appellant the allotted time to submit the evidence it requested. Therefore, the December 13, 1995 decision must be set aside and the case remanded to give appellant an opportunity to provide the evidence necessary to substantiate her claim.<sup>4</sup>

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<sup>1</sup> *Leon C. Collier*, 37 ECAB 378, 379 (1986).

<sup>2</sup> *Richard Kendall*, 43 ECAB 790, 799 (1992) and cases cited therein.

<sup>3</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Development of Claims*, Chapter 2.800.3(a)

<sup>4</sup> *See Rebel L. Cantrell*, 44 ECAB 660, 666 (1993) (finding that only in rare instances where the evidence indicates that no additional information could possibly overcome one or more defects in the claim is it proper for the Office to deny a case without further development).

The December 13, 1995 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further proceedings consistent with this opinion.

Dated, Washington, D.C.  
January 5, 1998

Michael J. Walsh  
Chairman

George E. Rivers  
Member

A. Peter Kanjorski  
Alternate Member