

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of SALLIE L. GIBSON and DEPARTMENT OF VETERANS AFFAIRS,  
MEDICAL CENTER, Saginaw, Mich.

*Docket No. 97-1381; Oral Argument Held April 21, 1998;  
Issued June 17, 1998*

Appearances: *Robert A. Taylor, Jr., Esq.*, for appellant; *Sheldon G. Turley, Jr., Esq.*,  
for the Director, Office of Workers' Compensation Programs.

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DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether appellant's conditions of the cervical and thoracic spine, the right shoulder, and the right wrist are causally related to factors of her employment.

Appellant's claim for severe pain of the right side and neck, and for swelling and numbness, filed on December 2, 1994 was denied by the Office of Workers' Compensation Programs by decision dated July 19, 1995 on the basis that fact of injury was not established. On July 14, 1996 appellant, through her attorney, requested reconsideration of this decision, and submitted additional medical evidence, including a medical report from Dr. Katherine L. Maurath, a Board-certified physiatrist, dated April 4, 1996 and a transcript of a deposition taken from Dr. Maurath on June 4, 1996. By decision dated October 1, 1996, the Office found that appellant's December 2, 1994 claim was not timely filed.

Appellant requested reconsideration, contending that the claim was timely filed. By decision dated November 26, 1996, the Office modified its prior decision to find that fact of injury was established but that the evidence of record did not establish a causal relation between appellant's condition and factors of her employment. The Office's decision stated that, following its July 19, 1995 decision, "The claimant has submitted no new medical evidence that supports a causal relationship between her condition and specific factors of her federal employment."

On February 21, 1997 appellant appealed this decision to the Board, and by letter dated April 3, 1997 requested oral argument. Oral argument was scheduled for April 21, 1998. On March 9, 1998 the Director of the Office filed a motion to remand the case to the Office and to cancel the oral argument. The Director conceded that the Office had failed to properly adjudicate the claim on the basis of all the evidence before it by not considering Dr. Maurath's

June 4, 1996 deposition. The Director requested that the Board set aside the Office's November 26, 1996 decision and remand the case to the Office for consideration of all the evidence submitted by appellant, and, after such further development as deemed necessary, for issuance of an appropriate merit reconsideration decision. Appellant's attorney was served with a copy of the motion to remand and cancel oral argument, and filed a pleading in opposition to the motion. Appellant's attorney contended that the Director's delay in requesting a remand had greatly prejudiced appellant, that the Board could review Dr. Maurath's deposition since it was part of the record before the Office at the time of its November 26, 1996 decision, and that, if the Board should grant the motion, it should impose a specific date by which the Office must issue its *de novo* decision.

By order dated March 27, 1998, the Board denied the Director's motion to remand and cancel oral argument. The Board noted that "there appear to be material questions of fact or law that remain in appellant's claim," and stated, "In order to give a full and fair adjudication, the appeal should proceed to adjudication before the Board so that all issues presented may receive appropriate consideration by the Board." Oral argument was held on April 21, 1998.

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

The Federal Employees' Compensation Act<sup>1</sup> provides that the Office shall determine and make findings of fact in making an award for or against payment of compensation after considering the claim presented by the employee and after completing such investigation as the Office considers necessary with respect to the claim.<sup>2</sup> Since the Board's jurisdiction of a case is limited to reviewing that evidence which was before the Office at the time of its final decision,<sup>3</sup> it is necessary that the Office review all evidence submitted by a claimant and received by the Office prior to issuance of its final decision. As Board's decisions are final as to the subject matter appealed, it is crucial that all evidence relevant to that subject matter which was properly submitted to the Office prior to the time of issuance of its final decision be addressed by the Office.<sup>4</sup>

In the present case, the Office, in its November 26, 1996 decision, stated that appellant, since the Office issued its July 19, 1995 decision, had not submitted new medical evidence supporting causal relation. This was, as conceded by the Director on appeal, a failure to properly adjudicate appellant's claim on the basis of all the evidence submitted. On July 14, 1996 appellant, through her attorney, had submitted an April 4, 1996 report and a June 4, 1996 deposition from Dr. Maurath addressing the issue of the causal relation between appellant's conditions and factors of her employment.

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> 5 U.S.C. § 8124(a)(2); 20 C.F.R. § 10.130.

<sup>3</sup> 20 C.F.R. § 501.2(c) states that the Board's "review of a case shall be limited to the evidence in the case record which was before the Office at the time of its final decision."

<sup>4</sup> 41 ECAB 548 (1990).

The Board finds that pursuant with its decision in *William A. Couch*, the case will be returned to the Office to fully consider the evidence submitted by appellant prior to its November 1995 decision.

The decision of the Office of Workers' Compensation Programs dated November 26, 1996 is set aside and the case remanded to the Office for further action consistent with this decision of the Board.

Dated, Washington, D.C.  
June 17, 1998

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member