

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SIGGER P. NEAL and DEPARTMENT OF VETERANS AFFAIRS,
MEDICAL CENTER, Los Angeles, CA

*Docket No. 98-1135; Submitted on the Record;
Issued August 20, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant met her burden of proof to establish that she sustained a right arm injury on June 23, 1997.

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

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.² These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

In the present case, appellant alleged that she sustained injury to her right arm on June 23, 1997 when a patient grabbed her right arm and she had to struggle to free herself. By decision dated September 10, 1997, the Office Of Workers' Compensation Programs denied appellant's claim on the grounds that she did not submit sufficient medical evidence to establish that she sustained an employment injury on June 23, 1997. The Office indicated that the June 25, 1997 medical report submitted by appellant was not adequate to establish her claim.

¹ 5 U.S.C. §§ 8101-8193.

² *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

³ *Delores C. Ellyett*, 41 ECAB 992, 998-99 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-27 (1990).

In *William A. Couch*, the Board remanded the case because the Office, in issuing a compensation order dated July 17, 1989, failed to consider new evidence that it received on July 13, 1989. The Board stated:

“The Federal Employees’ Compensation Act 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. 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, 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 the Board’s decisions are final as to the subject matter appealed, it is critical 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.”⁴

In the present case, appellant submitted several medical reports concerning the treatment of her claimed June 23, 1997 employment injury which were received by the Office on September 10, 1997, *i.e.*, the same day that the Office issued its decision denying appellant’s claim, but which were not considered by the Office in reaching that decision. Although this presents a slightly different picture from that presented in *Couch*, wherein the Office received evidence several days before its final decision, the Board finds that the principle of *Couch* applies with equal force. Because the additional medical reports were received but not reviewed by the Office in rejecting appellant’s claim, the case must be remanded for a proper review of the evidence and an appropriate final decision on appellant’s entitlement to compensation.⁵

⁴ *William A. Couch*, 41 ECAB 548, 553 (1990)

⁵ *See Linda Johnson*, 45 ECAB 439, 440 (1994).

The decision of the Office of Workers' Compensation Programs dated September 10, 1997 is set aside and the case remanded for further action consistent with this opinion.

Dated, Washington, D.C.
August 20, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member