

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of THOMAS A. MERKLINGER and DEPARTMENT OF VETERANS
AFFAIRS, CANANDAIGUA VETERANS ADMINISTRATION HOSPITAL,
Canandaigua, NY

*Docket No. 98-668; Submitted on the Record;
Issued December 8, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant sustained an injury in the performance of duty on August 10, 1997 as alleged.

On September 2, 1997 appellant, then a 38-year-old domiciliary assistant, filed a claim for compensation benefits alleging that on August 10, 1997 he injured his left knee when he slipped in fluid on the floor and fell striking his knee. He stopped work on August 27, 1997 and returned to work on August 31, 1997.

In a report dated August 21, 1997, received by the Office of Workers' Compensation Programs on November 17, 1997, Dr. Olaf U. Lieberg, appellant's attending Board-certified orthopedic surgeon, related that on August 10, 1997 appellant slipped in water on the floor at work and fell and had experienced pain in the medial aspect of his knee since that incident. He provided findings on examination and diagnosed a medial meniscus tear.

In a form report dated September 15, 1997, received by the Office on November 17, 1997, Dr. Lieberg diagnosed a medial meniscus tear of the left knee and checked the block marked "yes" indicating that the condition was caused or aggravated by the August 10, 1997 incident when appellant slipped on water at work.

In a report dated September 19, 1997, received by the Office on October 23, 1997, Dr. Lieberg provided findings on examination and diagnosed internal derangement of the left knee and medial collateral ligament strain and indicated that appellant was able to perform light duty.

By decision dated November 19, 1997, the Office denied appellant's claim on the grounds that the evidence of record failed to establish that he sustained a medical condition

causally related to factors of his employment.¹ The Office addressed Dr. Lieberg's September 19, 1997 report but failed to consider his August 21 and September 15, 1997 reports.

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

The Federal Employees' Compensation Act² 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 an investigation as the Office considers necessary with respect to the claim.³ Since the Board's jurisdiction of a case is limited to reviewing that evidence which is before the Office at the time of its final decision,⁴ 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,⁵ 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.⁶

In the present case, the Office did not review evidence received prior to the issuance of its November 19, 1997 decision, *i.e.*, the August 21 and September 15, 1997 reports of Dr. Lieberg. The Board, therefore, will set aside the decision dated November 19, 1997 and remand the case so that the Office may fully consider the evidence that was properly submitted by appellant prior to the issuance of its decision. Following such further consideration and after such further development as it deems necessary, the Office shall issue an appropriate *de novo* decision.

¹ Subsequent to issuance of the Office's November 19, 1997 decision, appellant submitted new evidence. The Board has no jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).

² 5 U.S.C. §§ 8101-8193.

³ 5 U.S.C. § 8124(a)(2).

⁴ *See* 20 C.F.R. § 501.2(c).

⁵ 20 C.F.R. § 501.6(c).

⁶ *William A. Couch*, 41 ECAB 548, 553 (1990).

The decision of the Office of Workers' Compensation Programs dated November 19, 1997 is hereby set aside and the case remanded for further development consistent with this decision of the Board.

Dated, Washington, D.C.
December 8, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member