

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLARD McKENNON and DEPARTMENT OF DEFENSE,
DEFENSE PERSONNEL SUPPORT CENTER, Philadelphia, PA

*Docket No. 98-1513; Submitted on the Record;
Issued October 21, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant has established a recurrence of disability causally related to his March 24, 1997 employment injury.

In the present case, the Office of Workers' Compensation Programs accepted that appellant sustained a left knee contusion in the performance of duty on March 24, 1997. On January 13, 1998 appellant filed a notice of recurrence of disability.

By decision dated April 3, 1998, the Office denied appellant's claim for a recurrence of disability.

The Board has reviewed the record and finds that the case is not in posture for decision.

In the present case, the record indicates that, on the date the Office issued its decision, April 3, 1998, it received a March 24, 1998 report from appellant's attending physician, Dr. Carl Mogil, a Board-certified orthopedic surgeon. As the Board found in *Linda Johnson*,¹ when the Office receives relevant evidence, it must be properly reviewed by the Office. This principle applies whether the Office receives evidence on the date that it issues the decision, or several days prior to issuance of the decision.² The Office's March 25, 1998 memorandum incorporated into the undated decision predated the receipt of the March 24, 1998 report of Dr. Mogil, which was April 3, 1998. Therefore it is clear from the record that the Office did not consider the March 24, 1998 report from Dr. Mogil in evaluating this claim. Since this report was in the Office's possession at the time it issued its April 3, 1998 decision, it must be considered by the Office in weighing the evidence.

¹ 45 ECAB 439 (1994).

² *Id.*; see also *William A. Couch*, 41 ECAB 548 (1990).

Accordingly, the case must be remanded for a proper review of the evidence and an appropriate final decision.

The decision of the Office of Workers' Compensation Programs dated April 3, 1998 is set aside and the case remanded for further action consistent with this decision of the Board.

Dated, Washington, D.C.
October 21, 1999

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member