

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM B. RIGERO and U.S. POSTAL SERVICE,
POST OFFICE, Shrewsbury, MA

*Docket No. 97-1905; Submitted on the Record;
Issued September 16, 1999*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant sustained an injury in the performance of duty on March 6, 1996 causally related to factors of his federal employment.

On March 6, 1996 appellant, then a 31-year-old letter carrier, filed a claim for compensation benefits alleging that he sustained an injury to his lower back on that date when he attempted to stand up.

In a report dated March 7, 1996, Dr. Francis P. Ermilio, a chiropractor, related that appellant felt low back pain when he attempted to stand up at work on March 6, 1996. He diagnosed lumbar subluxation and lumbar radicular neuralgia based upon findings of a straight leg raising test, minimal lumbar range of motion and severe pain.

In a report dated March 12, 1996, Dr. Howard Fixler, a Board-certified internist, provided a history of the condition, noting that appellant felt a sharp pain at work when he attempted to stand up. He recommended that appellant continue with his treatment by his chiropractor.

By decision dated July 11, 1996, the Office of Workers' Compensation Programs denied appellant's claim for compensation benefits on the grounds that the medical evidence of record failed to establish that appellant had sustained an injury in the performance of duty.

By letter dated August 9, 1996, appellant requested an oral hearing.

By decision dated December 23, 1996, the Office hearing representative vacated the Office's July 11, 1996 decision and remanded the case for further development.

By letter dated January 22, 1997, the Office asked appellant to submit additional evidence.

By letter dated February 19, 1997, appellant provided additional factual information explaining what he was doing at work when the alleged injury occurred.

The record contains a memorandum of a February 21, 1997 telephone call from the chiropractor's office inquiring as to whether additional medical evidence could be faxed to the Office. The Office claims examiner indicated that the chiropractor could fax the information.

On February 21, 1997 Dr. Ermilio faxed a report dated February 20, 1997 to the Office. In this report, Dr. Ermilio stated that x-rays had shown a lumbar subluxation at L4. The hard copy of this faxed report is stamped as having been received by the Office on February 24, 1997.

By decision dated February 25, 1997, the Office denied appellant's claim for compensation benefits. In its decision, the Office made no mention of Dr. Ermilio's February 20, 1997 report and stated that appellant had not submitted any additional evidence in response to the Office's January 22, 1997 letter.¹

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

In *William A. Couch*,² the Board remanded the case because the Office, in issuing a decision 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 issuance of its final decision be addressed by the Office."

In this case, the Office received Dr. Ermilio's faxed February 20, 1997 report on February 21, 1997 and a hard copy on February 24, 1997 and the Office issued its decision on February 25, 1997. Because Dr. Ermilio's February 20, 1997 report was 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 benefits.

¹ The Board notes that this case record contains a document belonging to another claimant. Upon return of the record, this document should be placed in the correct file.

² 41 ECAB 548 (1990).

The February 25, 1997 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this decision.

Dated, Washington, D.C.
September 16, 1999

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member