

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of VALDA T. NORRIS and DEPARTMENT OF JUSTICE,  
JUSTICE MANAGEMENT DIVISION, Washington, DC

*Docket No. 98-1380; Submitted on the Record;  
Issued September 22, 1999*

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DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT,  
A. PETER KANJORSKI

The issue is whether appellant has met her burden of proof in establishing that she sustained an injury in the performance of duty on February 12, 1996.

On February 14, 1996 appellant, then a 26-year-old accounting technician, filed a notice of traumatic injury (Form CA-1) alleging that “[a]fter going into the fifth floor stairwell, I proceeded down the stairs. After taking the first step, I lost my footing and fell approximately seven to eight steps to the next landing. I landed face down, arms out on my stomach.” She alleged that she hit her head, chin and knee against the wall and stairs and sustained a cut to her chin, severe dizziness and soreness in her neck, arms, jaw, shoulder and knee/leg. She alleged that the injury occurred on February 12, 1996 at 1:30 p.m. and that she notified her supervisor of the injury on February 14, 1996. Kathy A. Fletcher, appellant’s supervisor, filed the CA-1 on February 21, 1996.

On October 10, 1997 the employing establishment submitted a verification of treatment report dated February 16, 1996 from Kaiser Permanente. The report reveals that appellant was treated by a physician<sup>1</sup> who diagnosed “laceration of chin.” He excused appellant from work and noted that she may be able to return on February 21, 1996.

By letter dated October 20, 1997, the Office of Workers’ Compensation Programs notified appellant and the employing establishment that the information submitted was insufficient to establish that appellant sustained an injury in the performance of duty on February 12, 1996 and requested that medical evidence in support of appellant’s claim be submitted. The letter to appellant was returned to the Office as “Returned to Sender -- Attempted not Known.” However, on January 6, 1998 the employing establishment submitted emergency room reports, a nursing diagnosis report and a patient instruction sheet from Howard University Hospital, which offered a diagnosis of appellant’s incident.

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<sup>1</sup> The physician’s name is illegible.

By decision dated January 16, 1998, the Office denied appellant's claim on the grounds that the evidence submitted was insufficient to establish fact of injury. The decision stated:

"The initial evidence of file supported that you actually experienced the claimed event. However, the evidence did not establish that a condition has been diagnosed in connection with this incident. Therefore, an injury within the meaning of the Federal Employees' Compensation Act (FECA) was not demonstrated.

"You were advised of this by letter dated October 20, 1997 and afforded the opportunity to provide supportive evidence. Additional evidence was not received. Evidence of record was not sufficient because no medical evidence was provided to substantiate the claimed injury."

The Board finds that this case is not in posture for decision. The Board finds that the Office did not consider all evidence submitted in support of appellant's claim.

The Federal Employees' Compensation Act<sup>2</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>3</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>4</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.<sup>5</sup> As Board's decisions are final as to the subject matter appealed,<sup>6</sup> 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.

In the instant case, the Office did not review evidence received prior to the issuance of its January 16, 1998 final decision, *i.e.*, Howard University Hospital's February 12 and 14, 1996 medical reports. The January 16, 1998 decision noted that no additional evidence had been received after the October 20, 1997 letter advised appellant that additional medical evidence was necessary. The Office had, however, on January 6, 1998 received additional medical evidence. The Board, therefore, must set aside the Office's January 16, 1998 decision and remand the case to the Office to fully consider the evidence which was properly submitted by appellant's employing establishment prior to the January 16, 1998 decision.

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> 5 U.S.C. § 8124(a)(2); 20 C.F.R. § 10.130; *see generally* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsideration, Receipt of New Evidence in Burden of Proof Cases*, Chapter 2.1602.8 (January 1990).

<sup>4</sup> *See* 20 C.F.R. § 501.2(c).

<sup>5</sup> *See William A. Couch*, 41 ECAB 548 (1990).

<sup>6</sup> 20 C.F.R. § 501.6(c).

The decision of the Office of Workers' Compensation Programs, dated January 16, 1998, is hereby set aside and the case remanded for further action as set forth in this decision.

Dated, Washington, D.C.  
September 22, 1999

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski  
Alternate Member