

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TANIA SAAVEDRA and U.S. POSTAL SERVICE,
POST OFFICE, Los Angeles, CA

*Docket No. 98-1924; Submitted on the Record;
Issued March 6, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
WILLIE T.C. THOMAS

The issue is whether appellant has met her burden of proof to establish that she sustained an injury in the performance of duty on February 5, 1998.

The Board has duly reviewed the case on appeal and finds that this case is not in posture for a decision.

On February 11, 1998 appellant, then a 45-year-old window clerk, filed a claim for traumatic injury (Form CA-1) alleging that on February 5, 1998 she developed nausea, blurred vision and extreme pain in her face and head as a result of exposure to paint fumes in the performance of duty. In a narrative statement submitted in support of her claim, appellant stated that she has preexisting sinusitis and that, on the date of the incident, the station at which she worked was being painted with oil-based paint, which caused her existing condition to worsen and necessitated her leaving the premises. The employing establishment confirmed that there were paint fumes at appellant's work station on the day in question. Appellant stopped work on February 6, 1998 and returned to work on February 11, 1998.

In a letter dated March 12, 1998, the Office of Workers' Compensation Programs informed appellant that the only medical evidence contained in the file consisted of a February 11, 1998 report from the employing establishment health unit, in which Dr. Mark Newman diagnosed possible sinusitis unrelated to paint fume exposure. The Office advised appellant that this evidence was insufficient to establish her claim, and allowed her 20 days to provide a detailed rationalized medical report from her treating physician.

By decision dated April 1, 1998, the Office denied appellant's claim finding that she failed to submit sufficient evidence to establish that her sinusitis condition is in any way causally related to her exposure to paint fumes on February 5, 1998. The Office specifically noted that appellant had not submitted any additional medical evidence in response to the Office's March 12, 1998 letter.

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing the essential elements of his or 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. These are the essential elements of each and every claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.²

There is no dispute that appellant is a federal employee, that she timely filed her claim for compensation benefits, and that she was exposed to paint fumes on February 5, 1998 while in the performance of duty. The Office denied benefits, however, on the grounds that the record contained no medical evidence which supported a finding that appellant's sinusitis condition was related to her paint fume exposure by either proximate causation, precipitation, acceleration or aggravation. The Board notes, however, that the record contains a narrative medical report dated March 19, 1998 from Dr. Robert Faries, a Board-certified otolaryngologist and appellant's treating physician, in which the physician concludes that appellant's preexisting sinusitis symptoms were exacerbated by her February 5, 1998 paint fume exposure. While this report was received by the Office on March 23, 1998, within the 20 days granted to appellant for the submission of additional medical evidence, it appears it was not assimilated into the record until after the Office issued its decision on April 1, 1998, and, therefore, was not considered by the Office in making its determination.

In *William A. Couch*,¹ 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 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."

In the present case, the Office received Dr. Faries' report on March 23, 1998, as established by the Office's date stamp on the document. As the Office had Dr. Faries' medical report, in which he opined that appellant's sinusitis was exacerbated by her exposure to paint fumes in her employment, before it issued its April 1, 1998 decision denying benefits on the grounds that there was no medical evidence in the record that supported a finding of causal

¹ 41 ECAB 548 (1990).

relationship between the diagnosed condition and the employment exposure, it was necessary for the Office to consider the contents of this report. The case will be remanded to the Office for its consideration of Dr. Faries' report, to be followed by an appropriate decision.

The decision of the Office of Workers' Compensation Programs dated April 1, 1998 is set aside and the case remanded to the Office for action consistent with this decision of the Board.

Dated, Washington, D.C.
March 6, 2000

Michael J. Walsh
Chairman

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member