

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of YOLANDA B. GONZALES and U.S. POSTAL SERVICE,
POST OFFICE, Houston, TX

*Docket No. 01-203; Submitted on the Record;
Issued November 6, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether appellant sustained an injury to her lower back in the performance of duty.

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

On June 14, 1999 appellant, then a 48-year-old postal clerk, filed a claim alleging that she sustained lower back pain that day while in the performance of duty.

In a duty status report dated June 15, 1999, Dr. Victor S. Ha stated that appellant sustained a lower back muscular strain.

By letter dated October 25, 1999, the Office of Workers' Compensation Programs advised appellant regarding what kind of evidence she needed to submit to process her claim. The Office specifically requested a complete medical history, dates of examination, a detailed description of findings and her physicians opinion supported by a medical explanation as to how the reported incident caused or aggravated the claimed injury.

By decision dated November 29, 1999, the Office denied appellant's claim noting that the medical evidence of record consisted of Dr. Ha's duty status report. The Office stated that appellant had not submitted the requested information included in its October 25, 1999 letter, and, therefore, had failed to establish that she sustained an injury as alleged.

The Board's jurisdiction over a case is limited to reviewing that evidence which was before the Office at the time of its final decision.¹ Inasmuch as the Board's decisions are final as to the subject matter appealed,² it is crucial that all relevant evidence which was properly

¹ 20 C.F.R. § 501.2(c).

² 20 C.F.R. § 501.6(c).

submitted to the Office prior to the time of issuance of its final decision be addressed by the Office.³

In this case, the Office did not address certain factual evidence received prior to the issuance of its November 29, 1999 final decision. The Office makes no reference to a June 17, 1999 report from Dr. Adam E. Klein, an orthopedic surgeon, who examined appellant on that day and stated that she had sustained a lumbar strain based on a work-related injury on June 14, 1999. The above evidence is date-stamped as being received by the Office on June 23, 1999, more than five months prior to the issuance of its November 29, 1999 decision. The Board, therefore, must set aside the Office's November 29, 1999 decision and remand the case to the Office to consider the evidence that was properly submitted prior to the issuance of the Office's decision.

The November 29, 1999 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this opinion.

Dated, Washington, DC
November 6, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member

³ *William A. Couch*, 41 ECAB 548, 553 (1990); *Linda Johnson*, 45 ECAB 439 (1994).