

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM CHEVERE and DEPARTMENT OF JUSTICE,
BUREAU OF PRISONS, Chicago, IL

*Docket No. 01-526; Submitted on the Record;
Issued September 18, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant has met his burden of proof to establish that he sustained an injury in the performance of his federal duty as a facilities manager, as alleged.

On July 14, 2000 appellant, then a 47-year-old facilities manager, filed an occupational disease claim alleging that he was injured while in the performance of his federal duty as a facilities manager. He reported that he was responsible for the construction, budget, powerhouse, maintenance and the operations of the facility. He further stated that he felt that stress from work contributed to his hypertension and that he is developing a mild degree of anxiety over the situations. He reported that he had uncontrolled hypertension and hyperlipidemia.

By letter dated September 12, 2000, the Office of Workers' Compensation Programs requested appellant to provide additional factual and medical information, including a narrative medical report. The Office requested that this information be submitted within a reasonable period of approximately 30 days. The Office noted that the evidence of record, CA-2 and CA-7 forms, were insufficient to determine appellant's eligibility for benefits as the factual and medical evidence did not support that he suffered a work-related emotional condition.

On October 23, 2000 the Office received additional factual and medical evidence.

By decision dated October 23, 2000, the Office denied appellant's claim for failure to submit the necessary factual and medical evidence to support his claim. The Office further stated that appellant was advised of the need for further clarification and afforded the opportunity to provide supportive evidence, but none of the requested evidence had been received.

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.

On September 12, 2000 the Office requested from appellant additional factual and medical information be submitted regarding his claim for benefits. Appellant submitted such evidence on October 23, 2000, the same date the decision denying benefits was rendered.

The Federal Employees' Compensation Act¹ 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,² 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 Board decisions are final as to the subject matter appealed,³ 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.⁴

In the instant case, the Office did not review evidence received simultaneously to the issuance of its October 23, 2000 final decision.⁵ The Board, therefore, must set aside the Office's October 23, 2000 decision and remand the case to the Office to fully consider the evidence which was submitted simultaneous with the October 23, 2000 decision.

¹ 5 U.S.C. §§ 8101-8193.

² See 20 C.F.R. § 501.2(c).

³ 20 C.F.R. § 501.6(c).

⁴ *William A. Couch*, 41 ECAB 548 (1990).

⁵ The Office issued a letter dated October 26, 2000 to appellant which acknowledged "receipt of correspondence or evidence received after the final decision dated October 23, 2000" and advised appellant of his appeal rights. However, contrary to the Office's statement that the correspondence or evidence was received "after" the October 23, 2000 decision, the Office had date stamped the evidence as being received on October 23, 2000.

The decision of the Office of Workers' Compensation Programs dated October 23, 2000 is hereby set aside and the case remanded for further action as set forth in this decision.

Dated, Washington, DC
September 18, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member