

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DEBORAH A. WARREN and DEPARTMENT OF JUSTICE,
FEDERAL CORRECTIONAL INSTITUTION, Bastrop, TX

*Docket No. 02-1979; Submitted on the Record;
Issued December 5, 2002*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant sustained an injury in the performance of duty on April 25, 2001 as alleged.

On April 30, 2001 appellant, then a 46-year-old correctional counselor, filed a claim asserting that she sustained an injury in the performance of duty on April 25, 2001 when she tripped and fell and hit her head on a cement wall.

On June 25, 2001 the Office of Workers' Compensation Programs requested that appellant submit additional factual information to support her claim, including the names and addresses of the physicians who treated her and the approximate dates she was treated.

On July 22, 2001 appellant responded to each of the Office's questions.

In a decision dated July 30, 2001, the Office denied appellant's claim on the grounds that she failed to establish fact of injury. The Office found that the initial evidence of file supported that appellant actually experienced the claimed event, but the evidence failed to establish that a condition was diagnosed in connection with this event. The Office noted: "You were advised of this by letter dated June 25, 2001 and afforded the opportunity to provide supportive evidence. Additional evidence was not received. Evidence of record was not sufficient because medical evidence that give a history of injury and provides a firm diagnosis was not submitted."

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

The Office's procedure manual sets forth the responsibility of the Office in the development of claims under the Federal Employees' Compensation Act:

"In administering the [Act] the [Office] must obtain any evidence which is necessary for the adjudication of the case which is not received when the notice or claim is submitted. The Office is responsible for the following--

(1) Advising the [c]laimant and [o]fficial [s]uperior. The Claims Examiner (CE) must provide information about the procedures involved in establishing a claim, including detailed instructions for developing the required evidence, to all interested parties (the claimant, the employing agency and the representative, if any).

(2) Requesting [e]vidence. Upon initial examination of the case, the CE should request all evidence necessary to adjudicate the case."¹

The Office failed to discharge its responsibility in this case. After receiving appellant's claim for compensation, the Office requested additional factual information, which appellant provided. Because the Office did not ask appellant to submit medical evidence giving a history of injury and establishing a firm diagnosis in connection with the incident of April 25, 2001, it was error for the Office to deny appellant's claim on the grounds that she failed to submit such required evidence. The Board will set aside the denial of appellant's claim and remand the case to the Office for proper development of the evidence and an appropriate final decision on appellant's entitlement to compensation benefits.

The July 30, 2001 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this opinion.

Dated, Washington, DC
December 5, 2002

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Development of Claims*, Chapter 2.800.3.c (April 1993).