

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHRISTINA M. PALMIERI and DEPARTMENT OF THE AIR FORCE,
EIELSON AIR FORCE BASE, Anchorage, AK

*Docket No. 01-1433; Submitted on the Record;
Issued May 9, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, COLLEEN DUFFY KIKO,
DAVID S. GERSON

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration.

On April 23, 1996 appellant, then a program technician in a child development center, was bending over to pick up toys when she felt severe back pain and could not straighten up. She stopped working on April 24, 1996 and returned to work shortly thereafter. On May 30, 1996 appellant sustained another injury when a child jumped on her back. The Office accepted appellant's claim for lumbar strain.

On October 14, 1997 appellant filed a claim for recurrence of disability, effective March 24, 1997. She stated that she was still in pain due to the employment injuries and was restricted to light duty. In a January 5, 1998 decision, the Office rejected appellant's claim on the grounds that the medical evidence of record failed to show that the claimed recurrence was causally related to the employment injuries.¹

Appellant requested reconsideration. In a November 19, 1998 decision, the Office found that the medical evidence failed to establish that appellant sustained an employment-related herniated disc and therefore was disabled for the period August 25, 1997 through July 28, 1998.

In an August 18, 1999 letter, appellant's representative again requested reconsideration. In a February 17, 2000 merit decision, the Office denied appellant's request for modification of the prior decision.

In a January 19, 2001 letter, appellant's representative requested reconsideration. In a February 9, 2001 decision, the Office denied appellant's request for reconsideration on the

¹ On January 22, 1998 appellant developed back pain after pushing a crib through the snow in the course of a fire drill. The Office accepted her claim for lumbar strain.

grounds that appellant had not submitted new and relevant medical evidence nor had raised new, substantive legal questions. In the decision, the Office noted that appellant had intended to submit an additional medical report, but that no such report had been received.

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

In *William A. Couch*,² the Board remanded the case because the Office, in issuing a decision, failed to consider new evidence submitted four days prior to that decision. The Board stated:

“The Federal Employees’ Compensation Act provides that the Office shall determine and make findings of fact in making an award for or against 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 that was before the Office at the time of its final decision, it is necessary that the Office review all the 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 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.”

The Office found that appellant had not submitted any new evidence in support of her request for reconsideration. However, prior to the February 9, 2001 decision, appellant submitted a report from Dr. Thomas Brown, a Board-certified radiologist, on a magnetic resonance imaging scan, which was received by the Office on February 6, 2001. Dr. Brown indicated that appellant had mild to moderate disc degeneration and mild disc space narrowing at L5-S1, as well as a small shallow left paramedian disc protrusion. No nerve root impingement or significant stenosis was seen. The Office did not review this report prior to the issuance of the February 9, 2001 decision. The case must therefore be remanded for appropriate consideration of the new evidence submitted by appellant. After further review as it may find necessary, the Office should issue an appropriate decision.

² 41 ECAB 548 (1990).

The decision of the Office of Workers' Compensation Programs dated February 9, 2001 is hereby set aside and the case is remanded for further action consistent with this decision.

Dated, Washington, DC
May 9, 2002

Michael J. Walsh
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member