

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of THERESA L. AGIN and U.S. POSTAL SERVICE,
POST OFFICE, Colleyville, TX

*Docket No. 01-2242; Submitted on the Record;
Issued September 26, 2002*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issues are: (1) whether appellant sustained a recurrence of disability as of August 11, 2000 causally related to her accepted February 6, 1997 lower back injury; and (2) whether the Office of Workers' Compensation Programs properly denied her request for an oral hearing on her claim by an Office hearing representative.

On February 6, 1997 appellant, a 35-year-old rural carrier, was struck in the left shoulder by a coworker. She filed a claim for benefits on February 11, 1997, which the Office accepted for upper back contusion.

On August 14, 2000 appellant filed a Form CA-2 claim for benefits, alleging that she sustained a recurrence of disability on August 11, 2000 which was caused or aggravated by her February 6, 1997 employment injury. She submitted a September 8, 2000 report indicating that she was treated on August 11, 2000 for rotator cuff tear and supraspinatus muscle tear; a form report dated August 29, 2000; and an unsigned August 15, 2000 medical report.

By letter dated October 24, 2000, the Office advised appellant that it required additional factual and medical evidence, including a medical report, to support her claim that her current condition/or disability as of August 11, 2000 was caused or aggravated by her accepted February 6, 1997 employment injury.

Appellant submitted a November 17, 2000 narrative medical report by Dr. Kenneth J. Buley, a specialist in physical medicine and rehabilitation, which the Office received on November 27, 2000. Dr. Buley examined appellant, reviewed the medical history and stated:

“Overall, [appellant] has been showing some improvement, but has continued to have significant chronic pain as described above.... [Appellant] has chronic post-traumatic myofascial pain/tension myositis syndrome, chronic pain syndrome with depression and sleep disturbance, and evidence of left rotator cuff tendonitis with possible rotator cuff tear. She has seen a surgeon recently who believes she

should have a trial of subacromio steroid injections prior to pursuing any surgical intervention and I concur with that treatment approach.

“In my opinion [appellant] has been treated for the same injuries that resulted from her work-related injury of February 6, 1997. She has always had anterior, lateral, and posterior pain, left shoulder pain and upper back pain. Her pain is muscular in nature and also includes the costochondral junctions of the anterior chest wall. Since the ribs are attached to the spine posteriorly and the sternum anteriorly, injuries of this nature, which include a forceful blow to the left upper back and shoulder region, can certainly cause pain anteriorly in the left chest area. In my opinion there is no doubt the pain she is experiencing today is a direct consequence of her work-related injury of February 6, 1997.”

By decision dated December 12, 2000, the Office denied appellant compensation for a recurrence of her accepted lower back condition.¹ The Office found that appellant failed to submit further medical evidence following the October 24, 2000 Office request, to establish that the claimed condition or disability as of August 11, 2000 was caused or aggravated by the February 6, 1997 employment injury.

By letter postmarked January 12, 2001, appellant requested an oral hearing.

By decision dated April 3, 2001, the Office found that appellant’s request for an oral hearing was untimely filed. The Office noted that appellant’s request was postmarked January 12, 2001, which was more than 30 days after the issuance of the Office’s December 12, 2000 decision and that she was therefore not entitled to a hearing as a matter of right. The Office nonetheless considered the matter in relation to the issue involved and denied appellant’s request on the grounds that the issue was factual and medical in nature and could be addressed through the reconsideration process by submitting additional evidence.

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

The Federal Employees’ Compensation Act² 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,³ 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.⁴ As the Board’s decisions are final as to the subject

¹ By telephone call of January 19, 2001 and subsequently by letter dated January 22, 2001, appellant advised the Office that a different claimant’s name was listed on the heading of the memorandum in support of the December 12, 2000 decision. The Office issued an amended decision dated January 19, 2001, correctly listing appellant’s name on the heading of the memorandum.

² 5 U.S.C. § 8101, *et seq.*

³ 20 C.F.R. § 501.2(c).

⁴ 5 U.S.C. § 8124(a)(2); 20 C.F.R. § 10.130. *See generally* Federal (FECA) Procedure Manual, Part 2 -- Claims,

matter appealed,⁵ 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.⁶

In this case, the Office did not review evidence received prior to the issuance of its January 19, 2001 final decision, *i.e.*, Dr. Buley's November 17, 2000 report date stamped November 27, 2000. The Office therefore acted improperly in not considering Dr. Buley's November 17, 2000 report before finding in its January 19, 2001 decision that appellant did not sustain a recurrence of disability as of August 11, 2000 causally related to her accepted February 6, 1997 lower back injury. Accordingly, the Board finds that the Office did not consider all evidence submitted in support of appellant's claim.

The Board, therefore, must set aside the Office's January 19, 2001 decision and remand the case to the Office to fully consider the evidence which was properly submitted by appellant prior to the January 19, 2001 decision.

The decision of the Office of Workers' Compensation Programs dated January 19, 2001 is hereby set aside and the case remanded for further action as set forth in this decision.⁷

Dated, Washington, DC
September 26, 2002

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

Reconsideration, *Receipt of New Evidence in Burden of Proof Cases*, Chapter 2.1602.8 (January 1990).

⁵ 20 C.F.R. § 501.6(c).

⁶ *See William A. Couch*, 41 ECAB 548 (1990).

⁷ In light of this decision, the Board need not reach the issue of whether the Office properly denied appellant's request for an oral hearing.