

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SMITA A. PATEL and U.S. POSTAL SERVICE,
PROCESSING & DISTRIBUTION CENTER, Palatine, IL

*Docket No. 02-2323; Submitted on the Record;
Issued January 16, 2003*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant sustained an injury in the performance of duty on April 8, 2002.

On April 17, 2002 appellant, then a 42-year-old supervisor, filed a claim for a traumatic injury to both her knees sustained on April 8, 2002 by moving all-purpose containers. Appellant stopped work on April 9, 2002.

Appellant submitted a note dated April 10, 2002 from a Dr. Shah,¹ who stated that she could return to work, but was to avoid weight bearing, standing and lifting.

By letter dated June 6, 2002, the Office of Workers' Compensation Programs advised appellant that it needed a further description of her injury and of any prior similar condition. The Office allotted appellant 14 days to respond.

On June 21, 2002 the Office received appellant's response dated June 18, 2002. Appellant further described the events of April 8, 2002, stated that she was disabled and immobile in the two days between the injury and the date she received medical care, and contended that she had no right knee problems before the injury. Appellant submitted additional medical evidence, including a June 3, 2002 report from Dr. Shah on an Office form. This form, also received by the Office on June 21, 2002, set forth a history of lifting, pushing, and moving an extremely heavy weight load at work, listed the date of injury as April 8, 2002, diagnosed inflammatory joint disease, indicated appellant was totally disabled from April 10 to May 3, 2002, and answered "yes" to the question "Do you believe the condition found was caused or aggravated by an employment activity?"

¹ The Board is unable to decipher Dr. Shah's full name from the doctor's signatures.

By decision dated June 21, 2002, the Office found that the initial evidence supported that appellant actually experienced the claimed accident, but that the evidence did not establish that a condition had been diagnosed in connection with the accident. The Office's decision then states:

"You were advised of this by letter dated June 6, 2002, and afforded the opportunity to provide supportive evidence.

"Additional evidence was not received. Evidence of record was not sufficient because the medical of file does not support that you sustained an injury caused by your Federal job...."

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

In *William A. Couch*, 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 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, 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 the Board's decisions are final as to the subject matter appealed, it is critical 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."²

In this case, the Office received Dr. Shah's June 3, 2002 report and appellant's June 18, 2002 statement further describing the circumstances of her April 8, 2002 injury on June 21, 2002, the same day that it issued its compensation order rejecting appellant's claim. By stating that no evidence was received in response to its June 6, 2002 inquiry, the Office's June 21, 2002 decision makes it clear that Dr. Shah's June 3, 2002 report and appellant's June 18, 2002 statement were not reviewed. Because this evidence was received but not reviewed by the Office in rejecting appellant's claim, the case must be remanded for a proper review of the evidence and an appropriate final decision on appellant's entitlement to compensation.³

² 41 ECAB 548 (1990).

³ *Linda Johnson*, 45 ECAB 439 (1994) (evidence received the same day as the date the Office issues its final decision must be considered.)

The June 21, 2002 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to the Office for action consistent with this decision of the Board.

Dated, Washington, DC
January 16, 2003

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member