

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of EDITH L. SMITH-KAUFMAN and DEPARTMENT OF THE TREASURY,  
INTERNAL REVENUE SERVICE, Richmond, VA

*Docket No. 03-944; Submitted on the Record;  
Issued July 1, 2003*

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DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,  
A. PETER KANJORSKI

The issue is whether appellant sustained an injury on March 11, 1993 in the performance of duty, as alleged.

On August 26, 2002 appellant, then a 76-year-old tax examiner, filed a traumatic injury claim, alleging that on March 11, 1993, while she was working at her computer, she started to stand up from her chair and walk but her foot got caught in loose wires and she fell on her right knee and her hand. A statement from the supervisor dated August 26, 2002 stated that he was not aware that the injury occurred nine years ago, he was not the employee's manager, and the employee had not mentioned the injury to him nor complained about pain.

By letter dated September 18, 2002, the Office of Workers' Compensation Programs requested additional information from appellant including a physician's opinion supported by a medical explanation as to how the report work incident caused or aggravated the claimed injury.

Appellant submitted additional evidence on October 23, 2002. An accident report dated March 17, 1993 stated that on March 11, 1993 appellant fell on her knee and hand when she stood up at her terminal and her foot got caught in wires. A second accident report dated June 8, 1993 stated that on June 3, 1993 appellant fell on her knees and left hand when her foot got caught in wires from the telephone and calculator and she fell to the floor.

In a note dated July 29, 2002, Dr. Stanley Z. Nosheny, a Board-certified internist, stated that he treated appellant since November 25, 1994 for osteoarthritis of the right knee "due to fall" and described his past treatments including aspiration and cortisone injections. Progress notes from Dr. Nosheny dated from April 29, 1994 through June 28, 2002 document that he treated appellant for right and left knee problems.

By decision dated November 22, 2002, the Office denied the claim stating that additional evidence had not been received and the evidence of record did not meet the requirements for establishing that she sustained an injury as alleged.

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

By letter dated September 18, 2002, the Office requested that appellant submit additional evidence. Appellant subsequently submitted the March 17 and June 8, 1993 accident reports and progress notes dated from April 29, 1994 through July 29, 2002 from Dr. Nosheny. The Office, however, did not consider the additional evidence appellant submitted.

The Federal Employees' Compensation Act<sup>1</sup> 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.<sup>2</sup> 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,<sup>3</sup> 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.<sup>4</sup> As Board's decisions are final<sup>5</sup> 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.

Since, in this case, the Office did not consider the additional evidence appellant submitted on October 23, 2002, the Board must set aside the Office's November 22, 2002 decision and remand the case for the Office to fully consider the evidence which was properly submitted by appellant prior to the November 22, 2002 decision.

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *William A. Couch*, 41 ECAB 548, 553 (1990).

<sup>3</sup> *See* 20 C.F.R. § 501.2(c).

<sup>4</sup> *C.W. Hopkins*, 47 ECAB 725, 727 (1996).

<sup>5</sup> 20 C.F.R. § 501.6(c).

The November 22, 2002 decision of the Office of Workers' Compensation Programs is hereby set aside and the case remanded for further action consistent with this decision.

Dated, Washington, DC  
July 1, 2003

Alec J. Koromilas  
Chairman

David S. Gerson  
Alternate Member

A. Peter Kanjorski  
Alternate Member