

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of REYNA M. GONZALEZ and DEPARTMENT OF THE TREASURY,
IMMIGRATION & NATURALIZATION SERVICE, Los Angeles, CA

*Docket No. 03-1023; Submitted on the Record;
Issued June 17, 2003*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant sustained an injury on November 21, 2002, as alleged.

On November 23, 2002 appellant, then a 46-year-old immigration inspector, filed a traumatic injury claim alleging that a fellow student kicked her left knee during a high and low arrest demonstration on November 21, 2002. She identified the nature of her injury as a deep bruise of the left knee with swelling and pain. Appellant attached a more detailed narrative description of the incident. Her physical education instructor completed the reverse of the claim form and indicated that appellant was injured in the performance of duty. His knowledge of the facts of the injury agreed with appellant's statements.

Appellant sought medical attention at the employing establishment health unit on November 23, 2002. A memorandum that date indicated that she was examined and identified the right wrist and left knee as the body parts affected.¹ Restrictions were reported as follows: "No strenuous activity with right wrist (*i.e.*, twisting, pushing, pulling) for one week -- may participate in firearms. Re: Right wrist tendinitis."

Appellant was terminated from employment on November 27, 2002.

On January 15, 2003 the Office of Workers' Compensation Programs advised appellant that the evidence received was insufficient to support her claim for compensation because it failed to establish that she actually experienced the incident or employment factor alleged to have caused the injury; no diagnosis of any condition resulting from her left knee injury was provided; the evidence failed to support that she was injured while performing any duty of her employment; and she failed to provide a physician's opinion on how the injury resulted in a condition diagnosed. The Office requested that appellant respond to an attached set of questions and to submit additional evidence in support of her claim, including a physician's explanation of whether the diagnosed condition was

¹ She stated that she reported an injury to her right wrist on a separate injury report.

caused or aggravated by the claimed injury. The Office notified appellant that, if the information was not received within 30 days, it would base its decision upon the evidence in the file.

The record indicates that on January 22, 2003 the Office received a medical report, also dated January 22, 2003, from a Dr. Orlin of the Cooperative Care Medical Group, Inc., in Torrance, California. Dr. Orlin related appellant's history, complaints and findings on physical and x-ray examination. He diagnosed left knee contusion; right ankle sprain, status post medial meniscus repair in 1981; and posterior cruciate ligament repair in 1998, left knee. Dr. Orlin addressed appellant's disability status, and he discussed the issue of causal relationship between the reported incident (which he dated to November 23, 2002) and appellant's diagnosed left knee and right ankle conditions.

The record indicates that on February 14, 2003 the Office received a narrative statement, also dated February 14, 2003, from appellant, who explained the circumstances of the injury, the nature of her condition, her treatment on November 23, 2002 and her continuing physical difficulties.

In a decision dated February 14, 2003, the Office denied appellant's claim for compensation on the grounds that the evidence was insufficient to establish that she sustained an injury on November 2, (sic) 2002. The Office noted that it had asked appellant to provide supportive evidence by letter dated January 15, 2003 but that appellant did not respond: "No additional factual or medical information in response to the Office's inquiry was provided by you to clarify the facts of your injury or how that incident was related to your performance of duty." The Office added: "Since you did not respond to the specifics as requested by the Office to clarify the circumstances of your injury or the time, manner and place of your injury, they remain alleged but not established."

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

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.² The Board has held that the Office should make its decisions on the basis of all the evidence.³ A decision that rests on only part of the evidence will be set aside.⁴

In the case of *William A. Couch*,⁵ the Office did not review medical evidence received four days prior to the issuance of its final decision denying the claim. The Board set aside the final decision and remanded the case for the Office to consider the evidence fully. The Board explained that its jurisdiction of a case was limited to reviewing the evidence that was before the Office at the time of the Office's final decision,⁶ and that Board decisions were final as to the subject matter

² 5 U.S.C. § 8124(a).

³ *Jovita Weaver*, 2 ECAB 122 (1948).

⁴ *Marshall G. Wright*, 2 ECAB 182 (1949).

⁵ 41 ECAB 548 (1990).

⁶ 20 C.F.R. § 501.2(c).

appealed;⁷ therefore, it was critical that the Office review all evidence relevant to that subject matter and received by the Office prior to the issuance of its final decision.

In the case of *Linda Johnson*,⁸ the Office did not review medical evidence received on the same day it issued its final decision denying the claim. Although this presented a slightly different picture from that presented in *Couch*, wherein the Office received evidence several days before its final decision, the Board found that the principle of *Couch* applied with equal force and remanded the case for a proper review of the evidence and an appropriate final decision.

The Office made clear in its February 14, 2003 decision that it did not review Dr. Orlin's January 22, 2003 report on appellant's diagnosed condition and its causal relationship to her federal employment. The Office received this report on January 22, 2003, well before its decision on appellant's claim for compensation. The Office also failed to review appellant's February 14, 2003 narrative statement explaining the circumstances of her injury. The Office received this evidence on the same day it issued its final decision.

The Board finds that the Office failed to review all of the relevant evidence submitted in this case. Accordingly, the Board will set aside the Office's February 14, 2003 decision and remand the case for proper consideration of all the evidence and for an appropriate final decision on appellant's claim for compensation.

The February 14, 2003 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
June 17, 2003

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁷ *Id.* at § 501.6(c).

⁸ 45 ECAB 439 (1994).