

FACTUAL HISTORY

On December 2, 2002 appellant, then a 43-year-old transportation security screener, filed a traumatic injury claim alleging that she injured her neck and back in the performance of duty on November 30, 2002 when a motor vehicle struck the bus she was riding.

In a decision dated March 14, 2003, the Office denied appellant's claim for failure to establish fact of injury. The Office found that the initial evidence supported that she actually experienced the claimed incident; however, there was no medical evidence to substantiate that she incurred a medical condition to her neck and back as a result.

Appellant requested reconsideration. She submitted electrodiagnostic studies of the cervical and lumbar spine, a disability certificate and a statement from Dr. Thomas V. Venice, a chiropractor.

On May 29, 2003 the Office advised appellant of the deficiencies of the medical evidence and asked her to submit, within 15 days, a reasoned opinion from her physician on whether the incident of November 30, 2002 caused, aggravated or otherwise contributed to the reported diagnosis:

“You must show the physician this letter. The physician must detail the medical reasoning that was used to arrive at this conclusion or the physician's opinion will be considered to have little probative value. The physician's discussion of causal relationship is crucial to the claim.”

In a decision dated June 16, 2003, the Office reviewed the merits of appellant's claim and denied modification of its prior decision. The Office stated that it had received no further evidence from appellant in response to its May 29, 2003 letter. As she submitted no reasoned medical opinion from her physician on the issue of causal relationship, the evidence was insufficient to establish that the claimed medical conditions were attributable to the work incident of November 30, 2002.

On the date of its decision, June 16, 2003, the Office received appellant's response to its May 29, 2003 development letter. In addition to copies of medical reports previously submitted, appellant submitted 142 pages of new medical reports, electrodiagnostic studies, treatment notes and other medical documents.

In a June 18, 2003 letter to appellant, the Office claims examiner explained that he had not received this evidence when he issued his decision on June 16, 2003:

“A review of the documents you refer to indicates that you mailed them to the Office's central mail location in London, Kentucky. With regard to your first allegation, therefore, it would have been impossible for me to have received and signed for the evidence myself since I work out of the OWCP district Office in New York City.

“The record further shows that the evidence was received in the central mail location in Kentucky on June 16, 2003. However, the release date on those

documents is June 18, 2003. What this means is that, while the documents may have been received in the Office's central mail location in Kentucky on June 16, 2003, they were not put into your imaged case file housed in New York until on or about June 18, 2003 and were thus not available for viewing until on or after June 18, 2003. In short, neither I nor anyone else in this district Office had access to the documents you submitted until at least June 18, 2003, or two days after my decision was issued.

"I have also been advised that you intend to request reconsideration of my June 16, 2003 decision based on the new evidence you submitted. I encourage you to do so and will do everything that I can to ensure that your request is processed expeditiously."

On July 1, 2003 appellant requested reconsideration. She resubmitted her medical documents and asked the Office to look over the evidence.

In a decision dated October 2, 2003, the Office denied a merit review of appellant's claim. The Office found, upon limited review, that the evidence submitted was cumulative, repetitious or irrelevant and immaterial to the issue of causal relationship and, therefore, insufficient to warrant a merit review of her claim.

LEGAL PRECEDENT -- ISSUE 1

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 the 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.¹

ANALYSIS -- ISSUE 1

In its May 29, 2003 development letter, the Office gave appellant 15 days to submit a reasoned opinion from her physician on whether the incident of November 30, 2002 caused, aggravated or otherwise contributed to her diagnosed condition. When the Office denied appellant's claim on June 16, 2003, it stated that it had received no further evidence from appellant in response to its May 29, 2003 development letter. In fact, the Office received a considerable amount of new medical evidence from appellant that same day. Although the claims examiner did not realize that the evidence was in the Office's possession, for reasons

¹ *William A. Couch*, 41 ECAB 548 (1990) (Office did not consider new evidence received four days prior to the date of its decision); *see Linda Johnson*, 45 ECAB 439 (1994) (applying *Couch* where the Office did not consider a medical report received on the date of its decision).

stated in his June 18, 2003 letter to appellant, Board precedent requires the Office to review all evidence submitted by a claimant and received by the Office prior to the issuance of its final decision, including evidence received on the date of the decision.² It makes no difference that the claims examiner was not directly in possession of the evidence. Indeed, Board precedent envisions evidence received by the Office but not yet associated with the case record when the final decision is issued. The present case differs from previous cases only insofar as the Office properly received the evidence at its central mail location in London, Kentucky, instead of locally at its district Office, but the principle applies with equal force. The Office must base its decision on all of the evidence.³

CONCLUSION

The Board finds that this case is not in posture for a decision on whether appellant sustained an injury in the performance of duty on November 30, 2002. The Office denied appellant's claim for compensation without reviewing evidence received on the date of its final decision. The Board will set aside the Office's June 16 and March 14, 2003 decisions and remand the case for a merit review of all the evidence received and for an appropriate final decision on appellant's entitlement to compensation benefits. The second issue on appeal, whether the Office properly denied a merit review of appellant's claim, is rendered moot.

² *Id.*

³ *Marshall G. Wright*, 2 ECAB 182 (1949) (finding that a decision which rests on only part of the evidence will be set aside); *Jovira Weaver*, 2 ECAB 122 (1948) (finding that the Office -- at that time known as the Bureau -- erroneously disallowed a claim on the basis of a Government hospital report without evaluating or weighing other evidence submitted by the claimant).

ORDER

IT IS HEREBY ORDERED THAT the October 2, June 16 and March 14, 2003 decisions of the Office of Workers' Compensation Programs are set aside. The case is remanded for further action consistent with this opinion.

Issued: April 22, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member