

**United States Department of Labor
Employees' Compensation Appeals Board**

LARRY C. LINCOLN, Appellant

and

**DEPARTMENT OF THE NAVY,
NORFOLK NAVAL SHIPYARD,
Portsmouth, VA**

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**Docket No. 03-1029
Issued: January 6, 2004**

Appearances:
Larry C. Lincoln, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On February 28, 2003 appellant filed a timely appeal from the Office of Workers' Compensation Programs decisions dated October 18, 2002 which denied his injury claim. On January 29, 2003 the Office denied appellant's request for an oral hearing. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues on appeal are: (1) whether appellant has established that he sustained an injury in the performance of duty; and (2) whether the Office properly denied appellant's request for an oral hearing.

FACTUAL HISTORY

On August 14, 2002 appellant, then a 49-year-old heavy earth moving machine (H.E.M.M.) operator, filed a claim for a traumatic injury alleging that, on August 12, 2002, he was lubricating a wire cable about 130 feet in the air when the wind shifted the basket and

caused him to feel a small pain in his back and left leg. The employing establishment noted that pending a response from appellant's immediate supervisor, fact of injury was not established.

In support of his claim, appellant provided a statement, a supplemental compensation data sheet, treatment notes from Norfolk Naval Shipyard dated August 14, 2002,¹ and an August 12, 2002 light duty certificate from Dr. Regina Tan, a physician of unknown specialty, limiting appellant to light duty for one week.

By letter dated September 16, 2002, the Office advised appellant that it needed further factual information, including a detailed description of how the injury occurred and a medical report, including a physician's opinion, as to how the reported work incident caused or aggravated the claimed injury.

On October 18, 2002 the Office received a report dated October 4, 2002 from Dr. John F. Shaughnessy, a general practitioner.

By decision dated October 18, 2002, the Office found that the initial evidence of file was insufficient to establish that appellant experienced the claimed accident at the time, place and in the manner alleged because additional factual and medical documentation was needed to support his claim. The Office determined that an injury within the meaning of the Federal Employees' Compensation Act was not demonstrated. The Office indicated "You were advised of this by letter dated September 16, 2002 and afforded the opportunity to provide supportive evidence." The Office indicated that "[t]o date, no additional evidence has been received."

On October 21, 2002 the Office received a packet of materials that included additional medical evidence. On December 5, 2002 appellant requested a hearing. By decision dated January 29, 2003, the Branch of Hearings and Review denied appellant's request for a hearing, finding that his request was untimely. The Branch of Hearings and Review advised appellant that he could request reconsideration by the Office and submit additional evidence.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of his or her claim including the fact that the individual is an employee of the United States within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury. Regardless of whether the asserted claim involves traumatic injury or occupational disease, an employee must satisfy this burden of proof.³

¹ The signature of the treating individual appears to be Ray A. Adams, and it is unclear whether he is a physician.

² 5 U.S.C. §§ 8101-8193.

³ *Gary J. Watling*, 52 ECAB 357 (2001).

The Act further 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.⁴ 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,⁵ 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.⁶ 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.⁷

ANALYSIS

In the instant case, the Office received additional medical evidence on October 18, 2002, the same day it issued its decision denying his claim. The Office's October 18, 2002 decision found that appellant had not responded to its request for further information and had not submitted additional medical evidence. The Office noted that "no additional medical evidence had been received." The record reflects, however, that the Office received the report from Dr. Shaughnessy on October 18, 2002, the same day it issued its decision denying appellant's claim for compensation. The Board finds that the Office did not review the evidence that was received on October 18, 2002. The Board has held that, when adjudicating a claim, the Office is obligated to consider all relevant evidence properly submitted by a claimant and received by the Office before the final decision is issued,⁸ including evidence received on the day a decision is issued.⁹ Here it is clear that the Office did not consider the newly submitted evidence in reaching its decision. The case will therefore be remanded to the Office to properly consider all relevant evidence and for an appropriate final decision on appellant's entitlement to compensation.

CONCLUSION

The Board finds that the case is not in posture for decision as the Office failed to consider relevant medical evidence properly submitted by appellant.

⁴ 5 U.S.C. § 8124(a)(2); *William A. Couch*, 41 ECAB 548, 553 (1990).

⁵ *See* 20 C.F.R. § 501.2(c).

⁶ *C.W. Hopkins*, 47 ECAB 725, 727 (1996).

⁷ 20 C.F.R. § 501.6 (c); *William A. Couch*, *supra* note 4.

⁸ *Id.*

⁹ *Linda Johnson*, 45 ECAB 439 (1994).

ORDER

The decision of the Office of Workers' Compensation Programs dated October 18, 2002 is hereby set aside and the case remanded for further action consistent with the decision.¹⁰

Issued: January 6, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

¹⁰ In light of the Board's resolution of the first issue in this case, the second issue is moot.