

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

---

C.S., Appellant )

and )

**DEPARTMENT OF LABOR, OFFICE OF  
WORKERS' COMPENSATION PROGRAMS,  
New York, NY, Employer**

---

**Docket No. 08-2503  
Issued: September 23, 2009**

*Appearances:*  
*Thomas R. Uliase, Esq., for the appellant*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**ORDER REMANDING CASE**

Before:

DAVID S. GERSON, Judge  
COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge

On September 22, 2008 appellant filed a timely appeal from November 13, 2007 and May 27, 2008 decisions of the Office of Workers' Compensation Programs denying her claim for an emotional condition. The appeal was docketed as No. 08-2503. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

The Board, having reviewed the case record submitted by the Office, finds that this case is not in posture for decision. Appellant, an occupational health nurse, alleged that her emotional condition was caused in part by the difficulties of four injured workers, EB, SJ, DL and GK,<sup>1</sup> in obtaining authorization for medical treatment. By decision dated April 17, 2007, the Board remanded the case for further development of the evidence concerning these injured workers. By decision dated June 21, 2007, the Office denied appellant's claim on the grounds that appellant had not met her burden of proof as the employing establishment could not find any injured workers with the names provided by appellant. By decision dated August 23, 2007, an Office hearing representative remanded the case to the Office, noting that appellant had provided case numbers for four different injured workers. The hearing representative remanded the case for the Office and the employing establishment to both review the cases alleged by appellant.

---

<sup>1</sup> These injured workers are identified by their initials for privacy reasons.

On remand, the Office provided the employing establishment with the case record numbers of the four injured workers and asked for a detailed review of appellant's involvement in each of these cases. The employing establishment provided statements discussing appellant's involvement in the cases. In a November 13, 2007 decision, an Office senior claims examiner stated that she had personally examined the case records for the four injured workers. She provided a summary of what she concluded from her review. The case records of the four injured workers are not a part of appellant's case record before the Board. By decision dated May 27, 2008, an Office hearing representative affirmed the November 13, 2007 decision.

By application for review dated September 10, 2008, appellant's representative requested that the Board remand the case to the Office for a determination that appellant had established a compensable factor of employment in the performance of duty and for further evaluation of the medical evidence. By motion dated September 21, 2009, the Director of the Office requested that the Board remand the case to the Office. The Director stated that the Office should request that the employing establishment clearly address appellant's allegations and submit such a statement to the record. The Director noted that the Office claims examiner should thereafter make findings of fact based only on the evidence in appellant's case record and issue a *de novo* decision on appellant's claim for compensation.

The Board will grant the Director's motion for remand. The November 13, 2007 Office decision and the May 27, 2008 affirmance by the hearing representative relied upon evidence which was not part of appellant's case record. The Board's Rules of Procedure at 20 C.F.R. § 501.2(c)(1) state: "The Board's review of a case is limited to the evidence in the case record that was before [the Office] at the time of its final decision." As not all evidence reviewed by the Office is of record, the Board is precluded from access to and is improperly unable to review all of the evidence that was evaluated by the Office at the time of the November 13, 2007 and May 27, 2008 decisions. The case will be remanded to the Office for further development of the evidence regarding appellant's allegations as necessary, in accordance with the Director's motion and this order. Following such further development of the evidence the Office shall issue a *de novo* decision.

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated May 27, 2008 and November 13, 2007 are set aside and the case is remanded for further action consistent with this order of the Board.

Issued: September 23, 2009  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board