

counsel contends that the April 26, 2010 decision should be reversed and the case remanded to the Office to fully consider the evidence which was properly submitted by appellant prior to the issuance of the termination decision.

The Board has duly considered the matter and finds that this case is not in posture for decision. The Board notes that when the Office issued its termination decision on April 26, 2010 it found that appellant failed to submit any evidence or argument in response to its March 24, 2010 notice of proposed termination. However, on April 23, 2010 the Office received appellant's April 19, 2010 letter disagreeing with its proposed action.

The Board's jurisdiction of a case is limited to reviewing that evidence which is before the Office at the time of its final decision.³ Since the Board's decisions are final as to the subject matter appealed,⁴ it is crucial that all evidence which was properly submitted to the Office prior to the time of issuance of its final decision be addressed.⁵ 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.⁶ This is particularly important in this appeal where, as noted above, appellant submitted evidence contending that she continued to be totally disabled for work due to her accepted employment-related conditions, but there is no indication that this was considered by the Office before issuing its final decision. As the Office did not consider the evidence that it received on April 23, 2010 in reaching its April 26, 2010 decision, the Board cannot review such evidence for the first time on appeal.⁷ The Board finds that the case must be remanded for the Office to consider appellant's April 19, 2010 letter.⁸ Following this and such other development as deemed necessary, the Office shall issue an appropriate merit decision.

³ 20 C.F.R. § 501.2(c)(1).

⁴ *Id.* at § 501.6(d).

⁵ *William A. Couch*, *supra* note 2; *see also Linda Johnson*, 45 ECAB 439 (1994) (applying *Couch* where the Office did not consider a medical report received on the date of issuance of its decision).

⁶ *Id.*

⁷ *Supra* note 3.

⁸ The Board notes that appellant filed a timely request for oral argument, explaining the need to address the evidence of record before the Board. As the case is not in posture for a decision, the Board finds that oral argument is unnecessary in this instance. Consequently, the Board, in its discretion, denies appellant's request for oral argument. *See* 20 C.F.R. § 501.5(a), (b).

IT IS HEREBY ORDERED THAT the April 26, 2010 decision of the Office of Workers' Compensation Programs be set aside and the case is remanded to the Office for further proceedings consistent with this order of the Board.

Issued: May 25, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board