

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MATTHEW S. NOTCH and DEPARTMENT OF THE INTERIOR,  
FISH & WILDLIFE SERVICE, Kilauea, HI

*Docket No. 98-2449; Submitted on the Record;  
Issued February 11, 2000*

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DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,  
BRADLEY T. KNOTT

The issue is whether appellant has established that he sustained a left wrist injury on September 1, 1997 in the performance of duty, causally related to factors of his federal employment.

On June 17, 1998 appellant, then a 25-year-old park ranger, filed a claim alleging that on September 1, 1997 he strained his left wrist while using power and hand tools to construct a trail, which caused a ganglion cyst to return.<sup>1</sup> Appellant indicated that he had had a previous ganglion cyst problem which had been treated with surgery, and which had been quiescent for several years thereafter. On appellant's claim form his supervisor indicated that his knowledge of the facts about this injury agreed with the statements of appellant, that appellant was injured in the performance of duty, that the injury was not caused by appellant's willful misconduct, intoxication or intent to injure himself, that the injury was not caused by a third party, and that appellant sought medical treatment with a Dr. Eron at the Kauai Medical Clinic on October 2, 1997.<sup>2</sup> No time was lost from work, and the claim was filed for medical expenses incurred only.

By letter dated June 26, 1998, the Office of Workers' Compensation Programs located in San Francisco, California advised appellant that further information was needed to adjudicate his claim, and it advised him that he was being allowed 21 days within which to submit the requested

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<sup>1</sup> At that time appellant was working in the Hanalei National Wildlife Refuge, Kauai, HI.

<sup>2</sup> The medical clinic was located in Lihue, Kauai, HI on the opposite side of the island from appellant's working and residential location.

information.<sup>3</sup> The Office advised that if the information was not received within 21 days from the date of the letter, his claim might be denied.

By decision dated July 21, 1998, the Office rejected appellant's left wrist injury claim finding that he failed to establish fact of injury.<sup>4</sup> It found that appellant failed to provide the additional requested evidence, and that the record was devoid of medical evidence to establish that he sustained an injury on September 1, 1997.<sup>5</sup>

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

The Office's implementing regulations address the time limitation period allowed by the Office for the development of claims.<sup>6</sup> The Office procedures provide that, if a claimant submits evidence which is not sufficient to carry the burden of proof, the Office will inform the claimant of the defects in proof and provide 30 days for the claimant to submit additional evidence, as required.

As the decision in this case was issued only 25 days after the letter requesting further information and evidence was written, it was premature and does not conform with the Office's procedures which allow a claimant at least 30 days within which to provide the requested additional evidence to meet his burden of proof to establish his claim.

This case will, therefore, be remanded to the Office for full consideration of the evidence timely submitted, to be followed by a *de novo* decision on the case merits.

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<sup>3</sup> The Office posed multiple questions regarding the length of time in reporting the injury, how many days appellant used power tools and when his symptoms arose, immediate effects, other injuries, reason for delay in seeking medical treatment, previous history of left wrist problems with applicable medical documentation and history of previous workers' compensation claims.

<sup>4</sup> This decision was issued only 25 days after the June 26, 1998 letter was written.

<sup>5</sup> On July 27, 1998 the Office in San Francisco received appellant's response dated July 20, 1998, and multiple medical reports, the earliest dating from September 16, 1997, and the most recent dated July 10, 1998. No envelope bearing a postmark for this response and evidence was included in the case record, such that the date of the letter and the evidence must be relied upon to determine whether it was timely submitted; *see Brian R. Leonard*, 43 ECAB 255 (1991); *Gloria J. Catchings*, 43 ECAB 242 (1991). However, since the Office failed to consider this evidence, it is not now before the Board on this appeal; *see* 20 C.F.R. § 501.2(c).

<sup>6</sup> 20 C.F.R. § 10.110(b) (1997). This section stated that "if a claimant initially submits supportive factual and/or medical evidence which is not sufficient to carry the burden of proof, the Office will inform the claimant of the defects in proof and grant *at least 30-calendar days* for the claimant to submit the evidence required to meet the burden of proof." (Emphasis added.)

Consequently, the decision of the Office of Workers' Compensation Programs dated July 21, 1998 is hereby set aside and the case is remanded for further development in accordance with this decision of the Board.

Dated, Washington, D.C.  
February 11, 2000

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member