

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SARAH L. RUSSELL and U.S. POSTAL SERVICE,
POST OFFICE, Miami, FL

*Docket No. 01-1754; Submitted on the Record;
Issued February 15, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant sustained an injury in the performance of duty, as alleged.

On July 11, 2000 appellant, then a 49-year-old postal clerk, filed a traumatic injury claim, Form CA-1, alleging that on that day, after repeatedly answering the telephone in the performance of duty, she experienced pain and swelling in her left hand, shoulder, elbow and arm. In support of her claim, appellant submitted treatment notes and form reports dated July 11, 2000 from the Workers' Compensation Medical Center.

By letter dated July 21, 2000, the employing establishment controverted the claim on the grounds that the claim was actually one for occupational disease, therefore, negating any entitlement to continuation of pay and that the medical evidence was insufficient to establish a causal relationship between the claimed condition and appellant's employment.

On August 2, 2000 the Office of Workers' Compensation Programs advised appellant that the information submitted was insufficient to determine whether she was eligible for compensation benefits and requested that she submit a comprehensive medical report from her physician, as well as a detailed factual statement describing, among other things, the development of her condition and the employment-related activities she believed contributed to it. The Office allowed appellant 30 days to submit the requested information.

By letter dated August 30, 2000 and received by the Office on September 6, 2000, appellant explained the development of her condition and the employment duties she ascribed it to and submitted numerous medical reports from her treating physicians, Dr. Robert J. Rudas and Dr. Miriam A. Feliz.

By decision dated September 15, 2000, the Office rejected appellant's claim on the grounds that fact of injury was not established. The Office found that appellant failed to respond to its August 2, 2000 request for additional information and therefore had failed to establish that the claimed event, incident or exposure occurred at the time, place and in the manner alleged.

By letter dated September 26, 2000 and received by the Office on September 29, 2000, appellant requested reconsideration of the Office's prior decision. Appellant stated that she had in fact responded to the Office's August 2, 2000 request for information and provided copies of the certified mail receipts indicating that the Office had received appellant's response on September 6, 2000. Noting that the previously submitted information had obviously been misplaced by the Office, appellant submitted complete duplicate copies of her prior narrative response and supporting medical evidence and asked that this information be considered on reconsideration.

The Office did not respond to appellant's request for reconsideration.

By letter dated November 20, 2000, appellant again submitted copies of the previously submitted material, and noted that her request for reconsideration had not been acknowledged by the Office and that when she telephoned the Office, she was informed that her claim was still in denied status. Appellant stated that she felt she had no other option than to request an oral hearing, and by separate letter to the Branch of Hearings and Review, also dated November 20, 2000, appellant submitted a formal request for an oral hearing before an Office representative.

In a decision dated April 24, 2001, the Office denied appellant's request for a hearing on the grounds that it was untimely filed pursuant to section 8124 of the Federal Employees' Compensation Act. The Office exercised its discretion but decided not to grant appellant a discretionary hearing on the grounds that she could have her case further considered on reconsideration by submitting relevant evidence not previously considered by the Office.

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

In *William A. Couch*,¹ the Board remanded the case because the Office, in issuing a decision dated July 17, 1989, failed to consider new evidence that it received on July 13, 1989. The Board stated:

"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 issuance of its final decision. 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."

In this case, the Office received appellant's narrative statement and supporting medical evidence on September 6, 2000, as evidenced by the certified mail receipt submitted by appellant. Because appellant's narrative statement and supporting medical evidence was

¹ 41 ECAB 548 (1990).

received but not reviewed by the Office in rejecting appellant's claim, and because the Office further failed to cure this defect by failing to respond to appellant's request for reconsideration, the case must be remanded for a proper review of the evidence and an appropriate final decision on appellant's entitlement to compensation.²

The April 24, 2001 and September 15, 2000 decisions of the Office of Workers' Compensation Programs are set aside and the case remanded for further action consistent with this opinion.

Dated, Washington, DC
February 15, 2002

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

² In light of this disposition, the issue of whether the Office properly denied appellant's hearing request is moot.