

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANTHONY A. SMITH and U.S. POSTAL SERVICE,
POST OFFICE, San Diego, Calif.

*Docket No. 97-1456; Submitted on the Record;
Issued December 16, 1998*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant has established that he was disabled from work after August 31, 1995 due to his accepted April 4, 1995 employment injury.

In the present case, the Office of Workers' Compensation Programs accepted that appellant, a part-time flexible letter carrier, sustained a right ankle strain in the performance of his federal employment on April 4, 1995. Appellant was terminated from his employment on August 30, 1995 due to performance. Appellant was performing light duty at the time he was terminated from his employment. On September 18, 1995 appellant filed a claim for disability benefits commencing August 31, 1995. The Office denied appellant's claim by decision dated November 9, 1995.

Appellant thereafter requested reconsideration and submitted a copy of an Equal Employment Opportunity Commission (EEOC) settlement agreement. Pursuant to the EEOC settlement agreement, appellant was reinstated to his part-time flexible letter carrier position effective September 28, 1996. The Office denied modification of the prior decision, after merit review, on January 14, 1997.

Section 8102(a) of the Federal Employees' Compensation Act¹ sets forth the basis upon which an employee is eligible for compensation benefits. That section provides:

“The United States shall pay compensation as specified by this subchapter for the disability or death of an employee resulting from personal injury sustained while in the performance of his duty....”

¹ 5 U.S.C. § 8102(a).

In general the term “disability” under the Act means “incapacity because of injury in employment to earn the wage which the employee was receiving at the time of such injury.” This meaning, for brevity, is expressed as “disability for work.”²

The record reveals that the employing establishment provided work for appellant within the work restrictions outlined by his physician, Dr. Lawrence S. Pohl. Appellant was terminated from his position by the employing establishment on August 30, 1995 because of performance. The employing establishment specifically stated that employment within appellant’s work restrictions would have been available to him if he had not been removed from his employment.

There is no evidence in the record that because of his employment injury, appellant was terminated due to his physical inability to perform his assigned duties, nor is there evidence that appellant stopped work due to his physical condition. As there is no evidence in the record that appellant was not capable of performing his assigned duties after August 31, 1995, due to his employment-related injury, he had no disability within the meaning of the Act.³ The fact that appellant may have entered into an EEOC settlement agreement which allowed him to return to work in 1996 is not relevant to the issue of whether appellant was medically disabled from his employment after August 31, 1995 due to his accepted employment injury.

The decision of the Office of Workers’ Compensation Programs dated January 14, 1997 is hereby affirmed.

Dated, Washington, D.C.
December 16, 1998

David S. Gerson
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

² *Gene Collin*, 35 ECAB 544 (1984).

³ *John W. Normund*, 39 ECAB 1378 (1988).