

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN W. GRAVES and U.S. POSTAL SERVICE,
POST OFFICE, Harrisburg, PA

*Docket No. 98-511; Oral Argument Held November 9, 2000;
Issued December 7, 2000*

Appearances: *Stephen M. Greecher, Jr., Esq.*, for appellant; *Sheldon G. Turley, Jr., Esq.*,
for the Director, Office of Workers' Compensation Programs.

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs met its burden of proof in rescinding acceptance of appellant's claim.

The Board finds that the Office met its burden of proof in rescinding acceptance of appellant's claim.

On July 7, 1993 appellant, then a 40-year-old mailhandler, filed a traumatic injury claim (Form CA-1) alleging that he sustained a low back injury on June 20, 1993. On October 8, 1993 the Office accepted that he sustained a lumbar strain due to his employment injury on June 20, 1993. On August 18, 1993 appellant informed the employing establishment that he had noted an incorrect date on his CA-1 form and amended the date of his injury to June 19, 1993.

Initially, the Board notes that this case has been before the Board twice previously. In the first appeal, the Board granted the Director's motion to remand for further development and set aside the decisions dated March 21, June 1 and November 29, 1994 which terminated benefits on the basis that appellant had refused an offer of suitable work.¹ On the second appeal, the Board granted the Director's motion to remand on the basis that the Office had incorrectly terminated appellant's compensation benefits on the basis of appellant's February 6, 1995 criminal convictions in connection with his claim for compensation and set aside the August 28, 1995 Office decision.² The Board instructed the Office on remand to issue a *de novo* decision regarding appellant's entitlement to benefits beginning March 16, 1994.

¹ Docket No. 95-1221 (issued July 12, 1995).

² Docket No. 96-19 (issued February 26, 1996).

Subsequent to the Board's February 26, 1996 remand order, the Office issued a June 13, 1996³ decision rescinding acceptance of appellant's claim for a lumbar strain on the grounds that the evidence did not establish that appellant sustained the injury, as alleged. The Office noted that the rescission was supported by new evidence which was not of record at the time appellant's claim was accepted. By letter dated May 28, 1997, appellant requested reconsideration of the Office's June 13, 1996 decision and, by decision dated August 18, 1997, the Office denied appellant's request for reconsideration after conducting a merit review.

The Board has upheld the Office's authority to reopen a claim at any time on its own motion under section 8128 of the Federal Employees' Compensation Act and, where supported by the evidence, set aside or modify a prior decision and issue a new decision.⁴ The Board has noted, however, that the power to annul an award is not an arbitrary one and that an award for compensation can only be set aside in the manner provided by the compensation statute.⁵ Workers' compensation authorities generally recognize that compensation awards may be corrected, in the discretion of the compensation agency and in conformity with statutory provisions, where there is good cause for so doing, such as mistake or fraud.⁶ It is well established that, once the Office accepts a claim, it has the burden of justifying the termination or modification of compensation benefits.⁷ This holds true where, as here, the Office later decides that it erroneously accepted a claim. To justify rescission of acceptance, the Office must establish that its prior acceptance was erroneous based on new or different evidence or through new legal argument and/or legal rationale.⁸ In establishing that its prior acceptance was erroneous, the Office is required to provide a clear explanation of the rationale for rescission.⁹

The Board notes that the Office presented new evidence regarding appellant's accepted June 19 or 20, 1993 injury such as to cast serious doubt upon the validity of the claim. In its decision, the Office explained how this new evidence showed that appellant did not establish the fact of injury on either June 19 or 20, 1993.

Subsequent to the acceptance of appellant's claim, the employing establishment submitted evidence including appellant's February 7, 1995 federal criminal conviction for falsely claiming that he had sustained a work-related back injury on either June 19 or 20, 1993, a postal investigator's memorandum, an absence analysis for appellant and his witnesses and witness statements. On February 7, 1995 appellant was criminally convicted for making false statements

³ The decision was originally dated June 13, 1996, but was remailed on October 13, 1996 to appellant's correct address.

⁴ *Eli Jacobs*, 32 ECAB 1147 (1981).

⁵ *Shelby J. Rycroft*, 44 ECAB 795 (1993); *see also Lorna R. Strong*, 45 ECAB 470 (1994).

⁶ *Kevin J. McGrath*, 42 ECAB 109 (1990).

⁷ *See Frank J. Mela, Jr.*, 41 ECAB 115 (1989); *Harold S. McGough*, 36 ECAB 332 (1984).

⁸ *Frederick C. Smith*, 48 ECAB 132 (1996); *Curtis Hall*, 45 ECAB 316 (1994); *Laura H. Hoexter (Nicholas P. Hoexter)*, 44 ECAB 987 (1993).

⁹ *See Alice M. Roberts*, 42 ECAB 747 (1991).

regarding his June 1993 compensation claim and aiding and abetting false statements. The jury found that appellant made false statements regarding being injured on either June 19 or 20, 1993 when he knew that neither the incident nor the injury had occurred on either date.

The Board finds that appellant's criminal conviction for aiding and abetting false statements and making false statements regarding his June 1993 compensation claim is substantial new evidence that casts doubt on the validity of appellant's claim. This new evidence, particularly when viewed in conjunction with the previous evidence, shows that appellant did not establish fact of injury on either June 19 or 20, 1993. The Office presented new evidence and argument to justify the rescission of its acceptance of appellant's claim for a lumbar strain. On appeal appellant argues that the testimony of Barry F. Holland, a coworker, and John Laus, a supervisor, can be viewed as supporting appellant's claim, but he has provided no argument rebutting his criminal conviction for aiding and abetting false statements or making false statements on his claim. Therefore, the Board finds that the Office properly rescinded acceptance of appellant's claim as the weight of the evidence failed to establish that appellant sustained an injury on either June 19 or 20, 1993.

The decision of the Office of Workers' Compensation Programs dated August 18, 1997 is hereby affirmed.

Dated, Washington, DC
December 7, 2000

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member