

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOE PENA and U.S. POSTAL SERVICE,
POST OFFICE, San Antonio, Tex.

*Docket No. 96-1991; Submitted on the Record;
Issued June 15, 1998*

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 to terminate appellant's compensation benefits effective March 30, 1996.

The Board has duly reviewed the case on appeal and finds that the Office did not meet its burden of proof to terminate appellant's compensation benefits.

Appellant filed a claim on May 16, 1994 alleging that on May 14, 1994 he developed low back pain in the performance of duty. The Office accepted appellant's claim for lumbosacral strain on July 13, 1994. Appellant returned to light-duty work on June 15, 1994. The employing establishment terminated appellant's appointment effective March 3, 1995. The Office authorized compensation benefits for temporary total disability beginning March 4, 1995. The Office proposed to terminate appellant's compensation benefits on February 1, 1996. By decision dated March 1, 1996, the Office terminated appellant's compensation benefits effective March 30, 1996 finding appellant was no longer disabled due to his date-of-injury position. Appellant requested reconsideration and the Office denied modification of this March 1, 1996 decision on April 8, 1996.

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened to order to justify termination or modification of compensation benefits.¹ After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation, without establishing that the disability has ceased or that it is no longer related to the employment.² Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.³ To

¹ *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

² *Id.*

³ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition, which require further medical treatment.⁴

In this case, appellant's date-of-injury position of letter carrier required that appellant lift up to 70 pounds. Appellant's attending physician, Dr. Gerardo, Zavala, a Board-certified neurosurgeon, opined that appellant was capable of light-duty work on a series of form reports. Dr. Zavala referred appellant for a work hardening program and approved the restrictions provided in that report. This report indicated that appellant's physical capacity was at the light-to-medium level in that he could lift and carry 45 pounds occasionally. The report further indicated that the employing establishment had downgraded appellant's lifting requirement from 75 pounds to 35 pounds.

The Office relied upon the work hardening report to reach its determination that appellant was no longer disabled for his date-of-injury position. However, this report, clearly indicates that appellant cannot lift over 45 pounds and that the requirement for his date-of-injury position was 75 pounds. This requirement is confirmed by several documents provided by the employing establishment and by the Office's statement of accepted facts. The work hardening evaluation as adopted by Dr. Zavala indicates that if the employing establishment provided appellant with light duty by reducing his lifting requirement from 75 pounds to 35 pounds then he could return to his date-of-injury position. This report does not establish that appellant has no disability due to his accepted employment injury as he has restrictions, which prevent him from performing his date-of-injury position requirements. As there is no medical evidence in the record that establishes that appellant no longer has residuals, the Office failed to meet its burden of proof to terminate appellant's compensation benefits.

The decisions of the Office of Workers' Compensation Programs dated April 8 and March 1, 1996 are hereby reversed.

Dated, Washington, D.C.
June 15, 1998

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁴ *Id.*