

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of GERALD W. QUARLES and DEPARTMENT OF THE ARMY,  
PINE BLUFFS ARSENAL, Pine Bluffs, Ark.

*Docket No. 97-2293; Submitted on the Record;  
Issued April 12, 1999*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether appellant's disability, causally related to his June 16, 1992 employment injury, ended by July 20, 1993.

This case has previously been on appeal before the Board. By decision dated September 21, 1995, the Board found that the Office of Workers' Compensation Programs had not established that appellant's disability, causally related to his June 16, 1992 employment injury, ended by December 11, 1992.<sup>1</sup> Following the Board's decision, the Office reinstated appellant's compensation for temporary total disability.

By decision dated January 31, 1996, the Office found that the evidence established that appellant's disability after July 20, 1993 was not causally related to his June 16, 1992 employment injury. Appellant requested reconsideration and the Office, by decision dated May 8, 1994, refused to modify its prior decision.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. 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.<sup>2</sup>

The Board finds that the Office did not meet its burden of proof.

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<sup>1</sup> Docket No. 94-352.

<sup>2</sup> *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

Subsequent to the Board's September 21, 1995 decision, the Office did not obtain any further medical evidence showing that appellant's disability had ceased or that it was no longer related to his employment injury. A physician's assistant at the employing establishment indicated in reports dated July 2 and 21, 1993 that appellant could return to light work and set forth work tolerance limitations. A physician's assistant, however, is not a "physician" under section 8101(2) of the Federal Employees' Compensation Act<sup>3</sup> and is not competent to give a medical opinion.<sup>4</sup> The opinion of the physician's assistant that appellant could return to light work is of no probative medical value.<sup>5</sup>

Reviewing the work tolerance limitations provided by the physician's assistant, appellant's supervisor at the employing establishment indicated on July 21, 1993 that appellant could not perform his regular job and a higher level supervisor concurred. On January 5, 1994 the employing establishment concluded that there were no vacant positions there that appellant could perform.

Appellant did return to work on July 20, 1993, working 10 hours each on that date, July 21 and 26 and 4 hours on July 27, 1993. Appellant's supervisor indicated that appellant was assigned duties from his regular job that he could perform. This temporary assignment of odd lot or makeshift work does not establish that appellant's disability ended.<sup>6</sup> Also, the fact that appellant has another disabling condition not related to his employment -- in this case, asthma -- does not lead to a conclusion that his employment-related back condition was no longer causing disability.<sup>7</sup> The physician who was treating appellant for his asthma indicated, in a January 13, 1997 report,<sup>8</sup> that appellant was disabled by both conditions. It was not appellant's burden, however, to prove that he continued to be disabled by his back condition. It was the Office's burden to prove that appellant's disability, causally related to his June 16, 1992 employment injury, ended by July 20, 1993. The Office has not met that burden.

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<sup>3</sup> 5 U.S.C. § 8101(2).

<sup>4</sup> *Guadalupe Julia Sandoval*, 30 ECAB 1491 (1979).

<sup>5</sup> *John D. Williams*, 37 ECAB 238 (1985).

<sup>6</sup> *See Elizabeth E. Campbell*, 37 ECAB 224 (1985) (The Board found that makeshift work designed for an employee's particular needs cannot be used to represent the employee's wage-earning capacity.)

<sup>7</sup> *Marie Vavrecan*, 33 ECAB 350 (1981).

<sup>8</sup> This report was an only partially legible copy.

The decision of the Office of Workers' Compensation Programs dated May 8, 1997 is reversed.

Dated, Washington, D.C.  
April 12, 1999

Michael J. Walsh  
Chairman

David S. Gerson  
Member

Willie T.C. Thomas  
Alternate Member