

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DIANE C. SMITH and U.S. POSTAL SERVICE,
POST OFFICE, New Brunswick, NJ

*Docket No. 00-834; Submitted on the Record;
Issued April 4, 2001*

DECISION and ORDER

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

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits effective February 1, 1994 on the grounds that she had no further condition or disability causally related to her accepted employment injury; and (2) whether appellant has established that she had any continuing disability after February 1, 1994 causally related to her accepted employment injury.

This case is before the Board for the second time. In a decision dated April 12, 1999, the Board found that the Office abused its discretion by refusing to reopen appellant's case for review of the merits under section 8128.¹ The Board remanded the case for the Office to conduct a merit review of the claim. The findings of facts and conclusions of law from the prior decision are hereby incorporated by reference.

On remand, in a decision dated August 30, 1999, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was insufficient to warrant modification of its November 20, 1995 decision.

The Board finds that the Office did not meet its burden of proof to terminate appellant's compensation benefits.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. The Office may not terminate or modify compensation without establishing that the disabling condition ceased or that it was no longer related to the

¹ *Diane Smith*, Docket No. 97-1823 (issued April 12, 1999).

employment.² The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.³

In this case, the Office accepted appellant's claim for an acute reaction to stress. The Office found that appellant's physical assault by a coworker and being "required to go to court twice in order to follow through with the disciplinary actions the [employing establishment] was taking against the assailant" constituted compensable factors of employment. The Office found that the medical evidence from Dr. Haeng Ko, a psychiatrist, established that her condition was due to the compensable employment factors. The Office paid appellant compensation for temporary total disability from October 18, 1993 to February 1, 1994.

By decision dated January 26, 1995, the Office terminated appellant's compensation effective February 1, 1994 on the grounds that the medical evidence did not establish that she had continuing disability after that date. The Office found that appellant's attending physician, Dr. Ko, had released her to return to work on February 1, 1994 and she had not submitted any evidence establishing total disability after that date.⁴

In terminating appellant's compensation, the Office relied upon a form report completed by Dr. Ko on January 14, 1994. In his report, Dr. Ko diagnosed a work-related adjustment disorder with anxiety and checked "yes" that the condition was caused or aggravated by employment. He indicated on the form that appellant was "responding to treatment" and that her "[t]arget date to return to work is February 1, 1994." The Board has carefully reviewed this report and finds that it is insufficient to carry the weight of the medical evidence in this case, as it does not contain a definite finding that appellant could return to work on February 1, 1994 or establish that residuals due to the accepted condition had ceased.

In a form report dated July 14, 1994, Dr. Ko diagnosed an adjustment disorder with anxious mood, checked "yes" that the condition was due to the injury for which appellant claimed compensation, and found that she was totally disabled from employment. As Dr. Ko did not opine that appellant's employment injury had resolved, but rather indicated that her problems were continuing, this report does not support the Office's decision to terminate her compensation benefits.

In a work restriction evaluation dated December 30, 1994, received by the Office on January 15, 1995, Dr. Ronald P. Willoughby, an osteopath, found that appellant remained disabled from employment due to her perception of an unsafe working environment. In a work restriction evaluation dated September 20, 1994, Dr. Willoughby again found appellant unable to resume employment due to the lack of security at her workplace and fears regarding whether her

² *David W. Green*, 43 ECAB 883 (1992).

³ *See Del K. Rykert*, 40 ECAB 284 (1988).

⁴ By decision dated November 20, 1995, a hearing representative affirmed the Office's January 26, 1995 decision terminating appellant's compensation. Appellant requested reconsideration, which the Office denied in a nonmerit decision dated February 12, 1997. In a decision dated April 12, 1999, the Board remanded the case for the Office to reconsider the merits of appellant's claim.

assailant would be found guilty after the appeals process. While Dr. Willoughby attributed appellant's disability to factors of employment which the Office did not find to be compensable, his work restriction evaluations do not establish that appellant's employment-related disability had resolved by February 1, 1994.

As the record contains no affirmative medical evidence establishing that appellant's residuals from her accepted employment injury of an acute reaction to stress had resolved, the Office did not meet its burden of proof in terminating appellant's compensation effective February 1, 1994.⁵

The decision of the Office of Workers' Compensation Programs dated August 30, 1999 is hereby reversed.

Dated, Washington, DC
April 4, 2001

David S. Gerson
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

⁵ In view of the Board's disposition of the termination of appellant's compensation, the issue of whether appellant has established that she had any continuing disability after February 1, 1994 causally related to her accepted employment injury is moot.