

**United States Department of Labor
Employees' Compensation Appeals Board**

G.L., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Boulder, CO, Employer**

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**Docket No. 08-2533
Issued: May 11, 2009**

Appearances:

Gregory A. Hall, Esq., for the appellant

No appearance, for the Director

Oral Argument February 10, 2009

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 24, 2008 appellant filed a timely appeal of a June 26, 2008 merit decision of the Office of Workers' Compensation Programs which affirmed a May 8, 2007 decision rescinding acceptance of his claim for a recurrence of disability. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether the Office met its burden of proof to rescind its August 25, 2006 acceptance of appellant's claim for a recurrence of disability on August 23, 2003.

FACTUAL HISTORY

On October 27, 2000 appellant, then a 47-year-old letter carrier, filed a claim for a traumatic injury alleging that he sustained a back injury on October 23, 2000 when he attempted to catch a tray of mail falling from his delivery vehicle. The Office accepted his claim for thoracic and lumbar strains and a muscle spasm of the back.

On April 13, 2001 the employing establishment offered appellant a formal modified letter carrier position effective April 13, 2001. Appellant accepted the offer on April 14, 2001 and worked until May 4, 2002. On November 4, 2002 he accepted a temporary-duty assignment as an address management specialist, a sedentary clerical position, scheduled to begin December 14, 2002 and end April 11, 2003, at which time he was to return to the modified letter carrier position. Appellant stopped work on August 23, 2003. On September 15, 2003 he advised the Office that he did not wish to return to his modified-duty position.

On February 21, 2006 appellant filed a claim for a recurrence of disability on August 23, 2003, stating that the employing establishment had withdrawn the address management specialist position. On August 25, 2006 the Office accepted appellant's claim for a recurrence of disability on August 23, 2003 on the basis that his position had been terminated by the employing establishment on that date. It paid wage-loss compensation benefits from August 23, 2003 to April 30, 2005. On February 28 and August 30, 2006 the employing establishment advised the Office that the modified-duty position had not been withdrawn and the job was still available to appellant.

On March 19, 2007 the Office issued to appellant a proposed notice to rescind its acceptance of his claim for a recurrence of disability beginning August 23, 2003. It noted that, when the employing establishment withdrew the temporary-duty assignment, the address management specialist position, appellant was to have returned to the modified-duty position he accepted on April 14, 2001.

On May 8, 2007 the Office made final the rescission of its August 25, 2006 acceptance of appellant's claim for a recurrence of disability on August 22, 2003. It noted that appellant was due to return to the modified letter position he accepted on April 14, 2001 at the completion of his temporary-duty assignment. Because the modified position was not withdrawn, he did not sustain a recurrence of disability on August 23, 2003 when his temporary position ended.

On June 6, 2007 appellant requested an oral hearing that was held on November 27, 2007. By decision dated June 26, 2008, an Office hearing representative affirmed the May 8, 2007 decision.¹

LEGAL PRECEDENT

Section 8128 of the Federal Employees' Compensation Act provides that the Secretary of Labor may review an award for or against payment of compensation on his or her own motion or on application.² The Board has upheld the Office's authority to reopen a claim at any time on its own motion under section 8128 of the Act and, where supported by the evidence, set aside or

¹ The Board notes that, in the issues statement at the beginning of the June 26, 2008 decision, the hearing representative indicated that there was, in addition to the rescission issue, an issue of whether appellant refused an offer of suitable work. However, suitable work was not an issue because appellant accepted the position in question and also because there is no Office decision regarding suitable work.

² 5 U.S.C. § 8128.

modify a prior decision and issue a new decision.³ 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.⁴ It is well established that once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. This holds true where, as here, the Office later decides that it erroneously accepted a claim. In establishing that its prior acceptance was erroneous, the Office is required to provide a clear explanation of the rationale for rescission.⁵

ANALYSIS

On March 19, 2007 the Office advised appellant that it proposed to rescind the acceptance of his claim for a recurrence of disability on August 23, 2003 because he was to have returned to the modified-duty position he accepted on April 14, 2001 after the end of his temporary detail. It learned from the employing establishment that the modified job was still available when appellant stopped work on August 23, 2003. On May 8, 2007 the Office made final the rescission of its August 25, 2006 acceptance of his claim for a recurrence of disability on August 22, 2003. It noted that, following the temporary-duty assignment, appellant did not return to the modified letter carrier position he accepted on April 14, 2001. Because the modified position was not withdrawn, he did not sustain a recurrence of disability on August 23, 2003.

The Office's rationale for the rescission of its acceptance of appellant's August 23, 2003 claim for a recurrence of disability was that the acceptance was erroneously based on appellant's assertion that he was disabled because his job as an address management specialist was terminated. However, it subsequently established that the modified letter carrier position appellant had accepted on April 14, 2001 had never been withdrawn. Appellant knew that the address management specialist was only temporary and that he would be returning to the modified position at the end of that assignment. Because the modified position was available at the time appellant stopped work on August 23, 2003, he did not sustain a recurrence of disability.

In rescinding acceptance of the claim, the Office provided a clear explanation of its rationale for the rescission. It based its decision on evidence clarifying that the modified position accepted by appellant was never withdrawn and the position that was terminated was a temporary position. The acceptance of appellant's claim for a recurrence of disability on August 23, 2003 was based on the misunderstanding that the temporary address management specialist position was the only position available for appellant at the employing establishment. The Office later learned from the employing establishment that the modified position was never withdrawn. The Board finds that the Office met its burden of proof in rescinding its acceptance of appellant's claim for an August 23, 2003 recurrence of disability.

³ V.C., 59 ECAB ____ (Docket No. 07-642, issued October 18, 2007); *Shelby J. Rycroft*, 44 ECAB 795, 803 (1993); see *Eli Jacobs*, 32 ECAB 1147, 1151 (1981).

⁴ V.C., *supra* note 3; *Kevin J. McGrath*, 42 ECAB 109, 120 (1990).

⁵ V.C., *supra* note 3; *John W. Graves*, 52 ECAB 160, 161 (2000).

CONCLUSION

The Board finds that the Office met its burden of proof in rescinding its acceptance of appellant's claim for an August 23, 2003 recurrence of disability.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 26, 2008 be affirmed.

Issued: May 11, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board