

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of C.W. HOPKINS and DEPARTMENT OF THE NAVY,
MARINE CORPS SUPPLY CENTER, Albany, Ga.

*Docket No. 97-586; Submitted on the Record;
Issued December 22, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation on January 3, 1994 on the basis that he refused an offer of suitable work.

This case has previously been on appeal before the Board on two occasions. On the more recent appeal, the Board, by decision and order dated August 23, 1996, found that the Office properly found that appellant was physically capable of performing the position offered by the employing establishment, and that the Office also properly found that the reasons appellant tendered for refusing the offer were unacceptable, as they did not show that he was not physically, educationally, or vocationally capable of performing the duties of the offered position. The Board, however, further found that the Office acted improperly in not considering a report dated December 23, 1993 from Dr. Harry N. Dorsey, a Board-certified internist who was appellant's attending physician. This report was submitted after the Office found appellant's reason for refusing the offer unacceptable but before the end of the 15-day period allotted to appellant to accept or refuse the offer. The Board remanded the case to the Office for consideration of this medical report, to be followed by an appropriate decision.¹

By decision dated October 7, 1996, the Office terminated appellant's right to compensation effective January 3, 1994 on the basis that he refused an offer of suitable work. The Office considered Dr. Dorsey's December 23, 1993 medical report and found it was insufficient to support appellant's alleged continued total disability.

The Board finds that the Office properly terminated appellant's compensation on January 3, 1994 on the basis that he refused an offer of suitable work.

¹ Docket No. 94-1025.

In its prior decision and order, the Board found that the position offered to appellant was suitable and that his reasons for refusing it were unacceptable. The Board now finds that the December 23, 1993 report from Dr. Dorsey is not sufficient to show that appellant was unable to perform the offered position.² This report states that appellant presented “with exacerbation of chronic low back pain. I do not feel he can return to work at this time.” This report does not contain any findings on examination, and amounts only to a repetition of appellant’s complaint that he hurts too much to work. This does not constitute a basis of payment of compensation.³ As pointed out in the Board’s decision on the prior appeal, appellant submits belated evidence at his own risk, and the Office can reject the belated evidence or reasons as unacceptable and terminate compensation concurrently.

The decision of the Office of Workers’ Compensation Programs dated October 7, 1996 is affirmed.

Dated, Washington, D.C.
December 22, 1998

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member

² Appellant submitted new medical evidence on appeal, but these reports cannot be considered by the Board, as 20 C.F.R. § 501.2(c) states that the Board’s “review of a case shall be limited to the evidence in the case record which was before the Office at the time of its final decision.”

³ *John L. Clark*, 32 ECAB 1618 (1981).