

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ELIZABETH L. GORDON and U.S. POSTAL SERVICE,
POST OFFICE, Macon, GA

*Docket No. 97-2851; Submitted on the Record;
Issued August 18, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation effective October 18, 1995 on the grounds that she had no disability due to her employment injury after that date; and (2) whether the Office properly rescinded its acceptance of appellant's claim for temporary aggravations of depression and stress disorder.

The Board finds that the Office did not meet its burden of proof to terminate appellant's compensation effective October 18, 1995 on the grounds that she had no disability due to her employment injury after that date.

Under the Federal Employees' Compensation Act,¹ when employment factors cause an aggravation of an underlying physical condition, the employee is entitled to compensation for the periods of disability related to the aggravation.² However, when the aggravation is temporary and leaves no permanent residuals, compensation is not payable for periods after the aggravation has ceased.³ Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.⁴ The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.⁵ The

¹ 5 U.S.C. §§ 8101-8193.

² *Richard T. DeVito*, 39 ECAB 668, 673 (1988); *Leroy R. Rupp*, 34 ECAB 427, 430 (1982).

³ *Ann E. Kernander*, 37 ECAB 305, 310 (1986); *James L. Hearn*, 29 ECAB 278, 287 (1978).

⁴ *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

⁵ *Id.*

Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁶

In the present case, appellant alleged that she sustained an emotional condition due to various conditions and incidents at work. By decision dated October 16, 1996, the Office accepted that appellant sustained temporary aggravations of depression and stress disorder. The Office authorized payment of compensation for the period December 30, 1994 to October 18, 1995. The Office accepted that appellant's medical condition was due to several factors which occurred in the performance of duty: on December 30, 1994 appellant was charged with delaying delivery of mail and failure to follow instructions; on January 18, 1995 appellant received a notice of removal due to previous charges, which was later reduced to a 14-day suspension; and on October 18, 1995 an arbitrator ruled in appellant's favor by finding that neither the notice of removal nor the suspension were proper. The Office did not accept several factors which were alleged as occurring in the performance of duty: on April 8, 1994 was involved in two vehicular accidents at work, for which she was disciplined; on October 24, 1995 appellant was involved in a confrontation with a supervisor, Matthew Hill, who accused her of delaying the mail; and on February 5, 1996 appellant received a notice of removal for threatening postal employees. By decision dated and finalized June 25, 1997, an Office hearing representative affirmed and modified the Office's October 16, 1996 decision. The Office hearing representative determined that appellant had "narrowed her claim" at the oral hearing held on April 17, 1997 by asserting that her condition was due to a noncompensable factor, the October 24, 1995 confrontation with Mr. Hill and rescinded the Office's acceptance of appellant's claim on the grounds that her condition was not due to an accepted employment factor.

The Board notes that, in its October 16, 1996 decision, the Office effectively terminated appellant's compensation effective October 18, 1995, but that it did not provide sufficient justification for this termination. The Office accepted that appellant sustained emotional conditions due to several accepted employment factors. The issue of whether appellant continued to have such conditions after October 18, 1995 is essentially a medical one and, as noted above, the Office bears the burden of presenting such evidence. The Board has reviewed the record and notes the Office did not present rationalized medical evidence showing that appellant's employment-related emotional condition had ceased by October 19, 1995. Moreover, the record contains medical reports, dated between December 1996 and April 1997, in which Dr. Amelia A. Alderman, an attending Board-certified psychiatrist, indicated that appellant continued to suffer from an employment-related emotional condition.⁷ For these reasons, the Office did not meet its burden of proof to terminate appellant's compensation effective October 18, 1995.

The Board further finds that the Office improperly rescinded its acceptance of appellant's claim for temporary aggravations of depression and stress disorder.

⁶ See *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁷ Although Dr. Alderman made note of appellant's confrontation with Mr. Hill in one of her reports, she did not provide an opinion that the condition caused by the accepted factors had ceased.

The Board has upheld the Office's authority to reopen a claim at any time on its own motion under section 8128(a) of the Act and, where supported by the evidence, set aside or modify a prior decision and issue a new decision.⁸ 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.⁹ It is well established that once the Office accepts a claim, it has the burden of justifying termination or modification of compensation.¹⁰ This holds true where, as here, the Office later decides that it has erroneously accepted a claim for compensation. To justify rescission of acceptance, the Office must establish that its prior acceptance was erroneous based on new or different evidence or through new legal argument and/or rationale.¹¹

The Board notes that the Office did not provide sufficient new evidence or argument in its June 25, 1997 decision, to justify the rescission of its acceptance of appellant's claim. Although the Office asserted that appellant "narrowed her claim" at the oral hearing held on April 17, 1997 by asserting that her condition was due to the October 24, 1995 confrontation with Mr. Hill, it should be noted that appellant merely continued to assert her belief in the compensability of this incident and did not clearly assert that the three accepted employment factors, described above, failed to play a role in the development of her condition. In its June 25, 1997 decision, the Office did not address the three employment factors which were accepted as causing appellant's emotional condition. As the Office did not addressed these factors at all, it has not provided sufficient justification for its rescission of appellant's claim for compensation.¹² The Board finds that this is reversible error.

⁸ *Eli Jacobs*, 32 ECAB 1147, 1151 (1981).

⁹ *Shelby J. Rycroft*, 44 ECAB 795, 802-03 (1993). Compare *Lorna R. Strong*, 45 ECAB 470, 479-80 (1994).

¹⁰ See *Frank J. Meta, Jr.*, 41 ECAB 115, 124 (1989); *Harold S. McGough*, 36 ECAB 332, 336 (1984).

¹¹ *Laura H. Hoexter*, 44 ECAB 987, 994 (1993); *Alphonso Walker*, 42 ECAB 129, 132-33 (1990); *petition for recon. denied*, 42 ECAB 659 (1991); *Beth A. Quimby*, 41 ECAB 683, 688 (1990); *Roseanna Brennan*, 41 ECAB 92, 95 (1989); *Daniel E. Phillips*, 40 ECAB 1111, 1118 (1989), *petition for recon. denied*, 41 ECAB 201 (1990).

¹² See *Lorna R. Strong*, 45 ECAB 470, 479-82 (1994).

The decisions of the Office of Workers' Compensation Programs dated and finalized June 25, 1997 and dated October 16, 1996 are reversed.

Dated, Washington, D.C.
August 18, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member