

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of IVY A. ULRICH and U.S. POSTAL SERVICE,
POST OFFICE, Miami, FL

*Docket No. 98-1456; Submitted on the Record;
Issued November 5, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits effective September 2, 1997; and (2) whether the Office abused its discretion by refusing to reopen appellant's claim for consideration of the merits on January 14, 1998.

The Board has duly reviewed the case on appeal and finds that the Office failed to meet its burden of proof to terminate appellant's compensation benefits.

On June 30, 1995 appellant, then a 47-year-old clerk, filed a claim alleging that she developed pain in her abdomen while in the performance of duty. The Office accepted appellant's claim for inguinal hernia and lumbosacral strain on September 20, 1995. The Office terminated appellant's compensation benefits by decision dated March 28, 1995. The Office's Branch of Hearings and Review set aside the March 28, 1995 decision and remanded the case for further development of the medical evidence by decision dated July 19, 1996. The Office proposed to terminate appellant's compensation benefits by letter dated July 31, 1997 finding that she was no longer disabled due to her accepted employment injuries. The Office terminated appellant's compensation benefits effective September 2, 1997. Appellant requested reconsideration on October 29, 1997 and by decision dated January 14, 1998, the Office declined to reopen appellant's claim for consideration of the merits.

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.¹ 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.² Furthermore, the right to medical

¹ *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

² *Id.*

benefits for an accepted condition is not limited to the period of entitlement for disability.³ To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.⁴

Appellant's date-of-injury position required that she lift and carry up to 50 pounds continuously and from 60 to 70 pounds intermittently. Appellant was required to stand for four to six hours a day and twist for two to four hours a day.

In this case, appellant's attending physician, Dr. Kenneth R. Hodor, an osteopath, indicated on October 7, 1996 that appellant could work only four hours with restrictions.

The Office referred appellant for a second opinion evaluation with Dr. Pedro F. Bermann, an orthopedic surgeon. In a report dated March 31, 1997, Dr. Bermann noted appellant's history of injury, medical history and performed a physical examination as well as reviewed x-rays. He stated that appellant had no objective findings and no impairment due to her accepted conditions of inguinal hernia and low back strain. He recommended that appellant increase her activities to 8 hours a day within a week to 10 days. Dr. Bermann provided restrictions of lifting 20 to 30 pounds intermittently, avoiding continuous bending. He further recommended rehabilitation conditioning.

In a report dated July 24, 1997, Dr. Bermann stated appellant could return to work eight hours day. He recommended a chair with back support and a lumbar corset. Dr. Bermann stated that appellant's weight restriction was 30 pounds on a constant basis and 50 to 60 pounds intermittently.

Although Dr. Bermann stated that appellant had no impairment due to her accepted conditions, he continued to indicate that she was disabled from her date-of-injury position by providing her with work restrictions, lifting only 30 pounds continuously and only up to 60 pounds intermittently, which would prevent her from performing the duties of the date-of-injury position. As there is no medical evidence in the record clearly stating that appellant can perform the duties of her date-of-injury position which require continuous lifting of 50 pounds and intermittent lifting of up to 70 pounds, the Office has failed to establish that appellant is no longer disabled due to her accepted employment injuries and failed to meet its burden of proof to terminate appellant's compensation benefits.⁵

³ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁴ *Id.*

⁵ Due to the disposition of the issue, it is not necessary for the Board to consider whether the Office abused its discretion by refusing to reopen appellant's claim for consideration of the merits on January 14, 1998.

The decision of the Office of Workers' Compensation Programs dated September 2, 1997 is hereby reversed.

Dated, Washington, D.C.
November 5, 1999

George E. Rivers
Member

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member