

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KAMAL MUHAMMAD and U.S. POSTAL SERVICE,
POST OFFICE, Nashville, TN

*Docket No. 98-818; Submitted on the Record;
Issued July 11, 2000*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective January 2, 1996; and (2) whether the Office properly refused to reopen appellant's claim for merit review under 5 U.S.C. § 8128(a).

The Office accepted that appellant sustained a soft tissue injury to the spine on June 2, 1993, when he was involved in a motor vehicle accident in the performance of duty¹ and a low back strain while bending over at work on August 16, 1994. Appellant returned to a light-duty position on October 5, 1994 and continued to claim intermittent periods of disability. By letter dated November 28, 1995, the Office advised appellant that it proposed to terminate his compensation on the grounds that his employment-related disability had ceased.

In a decision dated January 2, 1996, the Office terminated appellant's compensation for wage-loss benefits.² In a decision dated August 28, 1996, the Office determined that appellant's request for reconsideration was insufficient to warrant merit review of the claim.

By decision dated June 9, 1997, the Office reviewed the case on its merits and denied modification of its January 2, 1996 decision. In a decision dated September 16, 1997, the Office determined that appellant's request for reconsideration was insufficient to warrant merit review of the claim.

¹ By decision dated July 22, 1994, the Office determined that appellant had no continuing disability from this injury after July 1, 1994.

² The Office stated in an April 22, 1996 letter to appellant's representative that the January 2, 1996 decision had also terminated medical benefits. The January 2, 1996 decision does not, however, specifically terminate authorization for medical benefits, but instead refers to the lack of a continuing disability. Appellant remains entitled to appropriate medical benefits until the Office properly terminates medical benefits in a final decision.

The Board has reviewed the record and finds that the Office properly terminated compensation for wage-loss effective January 2, 1996.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to his employment, the Office may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.³

In the present case, the Office referred appellant, along with medical records and a statement of accepted facts, to Dr. L. Laughlin, an orthopedic surgeon. The Office requested that he provide an opinion with respect to any objective employment-related disability. In a report dated September 13, 1995, Dr. Laughlin provided a history and results on examination. He indicated that previous diagnostic studies were not remarkable and concluded, "I must confess [appellant] has many complaints, no objective physical findings. He is wearing a corset, which I think is more than necessary other than for his pot belly. [Appellant] has in my opinion reached MMI [maximum medical improvement] from a back strain. He has no permanent work restrictions." Dr. Laughlin therefore indicates that appellant has no continuing disability causally related to his August 16, 1994 employment injury.

The Board finds that this report represents the weight of the medical evidence with respect to a continuing employment-related disability. Appellant did not submit probative medical evidence supporting a continuing employment-related disability. The record contains, for example, an attending physician's supplemental report (Form CA-20a) dated August 18, 1995 from a neurosurgeon,⁴ diagnosing a lumbar sprain and lumbar radiculopathy and checking a box "yes" that the conditions were causally related to an August 16, 1994 employment injury. The checking of a box "yes" in a form report, without additional explanation or rationale, is of little probative value.⁵ Although appellant had an opportunity prior to January 2, 1996 to submit probative medical evidence supporting a continuing disability causally related to his federal employment, he did not do so in this case. Accordingly, the Board finds that the Office properly terminated compensation for wage loss effective January 2, 1996.

Following the January 2, 1996 decision, appellant submitted additional medical evidence. It is well established that after termination or modification of benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant. In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that he had an employment-related disability which continued after termination of compensation benefits.⁶

³ *Patricia A. Keller*, 45 ECAB 278 (1993).

⁴ The signature is illegible.

⁵ *See Barbara J. Williams*, 40 ECAB 649, 656 (1989).

⁶ *Talmadge Miller*, 47 ECAB 673, 679 (1996); *see also George Servetas*, 43 ECAB 424 (1992).

In this case, appellant did not submit probative medical evidence establishing an employment disability for the light-duty job after January 2, 1996. The record contains deposition testimony dated August 18, 1995 from Dr. James P. Anderson, a neurologist. He opined that appellant had a five percent permanent impairment as a result of the June 1993 motor vehicle accident. The Board notes that, with respect to the June 2, 1993 employment injury, appellant has the burden to establish any period of disability causally related to this injury.⁷ Dr. Anderson does not provide a reasoned opinion as to disability for the light-duty position. In reports dated October 18 and November 15, 1995, Dr. David W. Gaw, an orthopedic surgeon, indicated that appellant had work restrictions, but did not discuss causal relationship with employment. In a report dated October 30, 1996, Dr. Winston Griner, a family practitioner, stated that appellant reported low back pain after a motor vehicle accident three years earlier. He does not provide a reasoned medical opinion establishing a period of disability after January 2, 1996 causally related to the employment injury. Appellant also submitted a November 1, 1996 report from Dr. Rosemary Jeffries, a psychologist, stating that appellant had changes in mood and attitude that were triggered by job-related stressors. To the extent that appellant is claiming an emotional condition as a consequential injury from his accepted employment injuries, Dr. Jeffries does not provide a complete report containing a reasoned opinion on causal relationship between a diagnosed emotional condition and the employment injuries, nor did she discuss disability for work.

In the absence of probative medical evidence, the Board finds that appellant has not established an employment-related disability after January 2, 1996.

The Board further finds that the Office properly denied appellant's request for reconsideration without merit review of the claim.

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,⁸ the Office's regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a point of law; or (2) advancing a point of law or fact not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.⁹ Section 10.138(b)(2) states that any application for review that does not meet at least one of the requirements listed in section 10.138(b)(1) will be denied by the Office without review of the merits of the claim.¹⁰

In this case, appellant did not submit any additional medical evidence with his request for reconsideration. The July 21, 1997 reconsideration request argues that the medical evidence is sufficient and also cites an U.S. Supreme Court decision involving the Longshoremen and

⁷ As noted earlier, the Office determined by decision dated July 22, 1994 that disability had ceased as of July 1, 1994.

⁸ 5 U.S.C. § 8128(a).

⁹ 20 C.F.R. § 10.138(b)(1).

¹⁰ 20 C.F.R. § 10.138(b)(2); *see also Norman W. Hanson*, 45 ECAB 430 (1994).

Harbor Workers' Compensation Act (LHWCA).¹¹ The provisions of the LHWCA are not at issue in this case; the underlying issue here is a medical issue with respect to appellant's entitlement to compensation for wage loss under the Act after January 2, 1996. Appellant did not advance a relevant point of law or fact not previously considered, nor submitted new and relevant medical evidence. Accordingly, the Board finds that the Office properly denied merit review in this case.

The decisions of the Office of Workers' Compensation Programs dated September 16 and June 9, 1997 are affirmed.

Dated, Washington, D.C.
July 11, 2000

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

¹¹ The decision is *Metropolitan Stevedore Co. v. Rambo*, 521 U.S. 121 (1997); the court found that under 33 U.S.C. § 908 nominal compensation is proper when there is a significant possibility that a worker's wage-earning capacity will fall below his preinjury capacity sometime in the future, even if it has not diminished his present wage-earning capacity.