

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TERRIE LEE and U.S. POSTAL SERVICE,
CENTRAL FACILITY, Chicago, IL

*Docket No.00-158; Submitted on the Record;
Issued November 21, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
PRISCILLA ANNE SCHWAB

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation; and (2) whether the Office properly denied appellant's request for an oral hearing.

On February 27, 1998 appellant, then a 39-year-old mailhandler, sustained bilateral tendinitis of the hands and wrists, right shoulder tendinitis with C7 radiculopathy and a herniated disc at C6-7 in the performance of duty.

In a disability certificate dated October 16, 1998, Dr. Michael R. Treister, appellant's attending Board-certified orthopedic surgeon, indicated that appellant was able to return to limited duty on that date.

By letter dated February 4, 1999, the Office asked Dr. Treister if appellant was able to return to work in her mailhandler position and provided him with a description of the physical requirements of the position.

In notes dated January 28, 1999, Dr. Treister indicated that appellant could return to work without restrictions. He discharged appellant from his care but indicated that she could return in the future if symptoms so required.

By letter dated February 9, 1999, the Office advised appellant that it proposed to terminate her compensation on the grounds that the evidence of record established that she was no longer disabled due to her February 27, 1998 employment injury.

In a report dated February 15, 1999, Dr. Treister stated his opinion that appellant could perform the duties of a mailhandler.

By decision dated March 15, 1999, the Office terminated appellant's compensation on the grounds that the medical evidence of record established that she no longer had any residuals from her February 27, 1998 employment injury.

By letter dated June 15, 1999, appellant requested an oral hearing before an Office hearing representative.

In a report dated April 29, 1999, Dr. Treister related that appellant had returned to him on that date complaining of weakness and pain in both upper extremities, particularly with any type of moderate to heavy use, swelling of her hands, triggering of her right index finger and numbness along the ulnar margins of both forearms at night. He provided findings on examination and stated that he did not see any objective evidence of carpal tunnel syndrome although tests performed in his office in the past had shown such a finding. Dr. Treister stated:

“[Appellant] would best be served by doing work that does not involve repetitive movements; however, I did opine previously in my report of February 15, 1999 that she was able to handle the job requirement[s] of a mailhandler.”

By decision dated August 12, 1999, the Office denied appellant's request for an oral hearing.

Appellant filed her appeal with the Board on August 30, 1999. However, the Office issued a decision dated October 15, 1999, denying appellant's request for reconsideration of its March 15, 1999 decision. The Board finds that the Office did not have the authority to issue its October 15, 1999 decision because an appeal on the same issue was pending before the Board.

The Board and the Office may not simultaneously have jurisdiction over the same issue in the same case.¹ The issue on appeal before the Board is the same issue addressed in the Office decision dated March 15, 1999, the termination of appellant's compensation. The Board notes that the October 15, 1999 decision denying appellant's request for reconsideration of the March 15, 1999 decision is null and void.

The Board further finds that the Office met its burden of proof in terminating appellant's compensation.

It is well established that 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 is no longer related to the employment.²

By letter dated February 4, 1999, the Office asked Dr. Treister, appellant's attending Board-certified orthopedic surgeon, if appellant was able to return to work in her mailhandler

¹ *Russell E. Lerman*, 43 ECAB 770 (1992); *Douglas E. Billings*, 41 ECAB 880 (1990).

² *See Alfonso G. Montoya*, 44 ECAB 193 (1992); *Gail D. Painton*, 41 ECAB 492 (1990).

position and provided him with a description of the physical requirements of the position. In notes dated January 28, 1999, he indicated that appellant could return to work without restrictions. Dr. Treister discharged appellant from his care. In a report dated February 15, 1999, he again stated that appellant could perform the duties of a mailhandler. As Dr. Treister reviewed appellant's job description and indicated in his January 28, 1999 notes and February 15, 1999 report that she was able to perform her regular duties, the Board finds that the Office met its burden of proof, in its March 15, 1999 decision, in terminating appellant's compensation.

The Board further finds that the Office did not abuse its discretion in denying appellant's request for an oral hearing.

Section 8124(b)(1) of the Federal Employees' Compensation Act provides that, before review under section 8128(a), a claimant for compensation who is not satisfied with a decision of the Secretary is entitled to a hearing on her claim on a request made within 30 days after the date of issuance of the decision before a representative of the Secretary.³ As section 8124(b)(1) is unequivocal in setting forth the time limitation for requesting a hearing, a claimant is not entitled to a hearing as a matter of right unless the request is made within the requisite 30 days.⁴ As appellant's request for a hearing was dated June 15, 1999, more than 30 days after the Office's March 15, 1999 decision, appellant was not entitled to a hearing as a matter of right.

The Office then exercised its discretion by stating that it had considered the issue involved and had determined that it could be resolved by submitting additional medical evidence to establish that appellant's work-related disability had not ceased.

The Board has held that as the only limitation on the Office's authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deduction from established facts.⁵ In this case, the evidence of record does not indicate that the Office committed any act in connection with its denial of appellant's hearing request which could be found to be an abuse of discretion.

³ See 5 U.S.C. § 8124(b)(1).

⁴ See *Charles J. Prudencio*, 41 ECAB 499 (1990).

⁵ *Daniel J. Perea*, 42 ECAB 214 (1990).

The decisions of the Office of Workers' Compensation Programs dated August 12 and March 15, 1999 are hereby affirmed.

Dated, Washington, DC
November 21, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Priscilla Anne Schwab
Alternate Member