

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of WINTON A. MILLER and U.S. POSTAL SERVICE,  
POST OFFICE, Wilmington, DE

*Docket No. 99-2559; Submitted on the Record;  
Issued June 19, 2001*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits.

The Board has issued two prior decisions in this case. By decision dated April 20, 1993, the Board remanded appellant's claim for physical and psychiatric injury to the Office for further development of the medical evidence to determine the causal relationship between appellant's current conditions and his accepted employment injuries.<sup>1</sup> By decision dated August 26, 1998, the Board found that the Office had not met its burden of proof to terminate appellant's compensation benefits on the grounds that he refused an offer of suitable work.<sup>2</sup> The Board noted that the position offered by the employing establishment did not comply with the restrictions provided by either appellant's attending physician, Dr. Pierre L. BeRoy, a Board-certified neurosurgeon or Dr. Norman Eckbold, a Board-certified orthopedic surgeon and Office referral physician. The facts and circumstances of the case as set out in the prior decisions are adopted herein by reference.

The Office terminated appellant's compensation benefits for refusing an offer of suitable work by decision dated October 11, 1995. He requested reconsideration on November 11, 1995. On January 3, 1996 the Office found a conflict of medical opinion evidence and referred appellant for an impartial medical examination by Dr. Leonard Klinghoffer, a Board-certified orthopedic surgeon, who submitted a report dated January 29, 1996. By decision dated March 19, 1996, the Office declined to reopen appellant's claim for consideration of the merits on the grounds that his request for reconsideration did not warrant review.<sup>3</sup>

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<sup>1</sup> Docket No. 92-877 (issued April 20, 1993).

<sup>2</sup> Docket No. 96-1560 (issued August 26, 1998).

<sup>3</sup> There is no indication that the Office reviewed the January 29, 1996 report in its March 19, 1996 nonmerit decision.

Following the Board's August 26, 1998 decision, the Office terminated appellant's compensation benefits by decision dated April 1, 1999 finding that Dr. Klinghoffer's report established that appellant was no longer disabled and that this report was entitled to the weight of the medical evidence. He requested reconsideration of this decision on May 4, 1999 and submitted additional medical evidence. By decision dated May 13, 1999, the Office denied modification of its April 1, 1999 decision.

The Board finds that the Office failed to meet its burden of proof to terminate appellant's compensation benefits.

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.<sup>4</sup> 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.<sup>5</sup> Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.<sup>6</sup> To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which would require further medical treatment.<sup>7</sup>

In this case, the Board found on August 26, 1998 that the Office failed to meet its burden of proof to terminate appellant's compensation benefits in its October 11, 1995 decision. Therefore, the Office was required to reinstate appellant's compensation benefits beginning October 11, 1995. Following the Board's 1998 decision, the Office terminated appellant's compensation benefits on April 1, 1999, not because he refused an offer of suitable work as previously found, but because the medical evidence from 1996 established that he was no longer disabled due to his accepted employment injuries. The record before the Board does not contain any indication that a pretermination notice was sent to appellant.

The Office's procedures provide that notice is required prior to termination in all cases where benefits are being paid on the periodic rolls.<sup>8</sup> In the present case, appellant should have been reinstated on the periodic rolls and should have received compensation retroactively from the date of termination. He does not fall within one of the exceptions to pretermination notice as he did not die, did not return to work, was not convicted of defrauding the government and did not forfeit his compensation benefits.<sup>9</sup>

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<sup>4</sup> *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

<sup>5</sup> *Id.*

<sup>6</sup> *Furman G. Peake*, 41 ECAB 361, 364 (1990).

<sup>7</sup> *Id.*

<sup>8</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.6(a) (March 1997).

<sup>9</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.6(c) (March 1997).

The Board further notes that appellant did not receive notice of any further development of the medical or factual evidence in his case following the Board's reversal of the Office's October 11, 1995 termination. The Office relied on a referral to an impartial medical specialist which took place in 1996, prior to the Board's reversal.

The Board accordingly finds that under the Office's procedures a pretermination notice should have been sent to appellant advising him that the Office proposed to terminate his compensation benefits and allowing appellant an opportunity to respond prior to termination of his compensation benefits. Furthermore, as appellant had no indication in any form that the Office was again considering termination of his compensation benefits prior to the April 1, 1999 decision, the Board finds that it violates due process and elementary fairness to terminate appellant's compensation benefits.<sup>10</sup>

As there is no evidence that the Office provided notice and an opportunity to respond prior to termination of compensation benefits, the termination was improper in this case.

The decisions of Office of Workers' Compensation Programs dated May 13 and April 1, 1999 are hereby reversed.

Dated, Washington, DC  
June 19, 2001

Michael J. Walsh  
Chairman

David S. Gerson  
Member

Bradley T. Knott  
Alternate Member

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<sup>10</sup> Compare *Maggie L. Moore*, 42 ECAB 484 (1991), *reaff'd on recon.*, 43 ECAB 818, 824 (1992).