

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES C. BURY and U.S. POSTAL SERVICE,
GENERAL MAIL FACILITY, Brooklyn, NY

*Docket No. 01-1399; Submitted on the Record;
Issued February 8, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs properly determined that appellant did not sustain a recurrence of disability commencing August 12, 1998.

In the present case, the Office accepted that appellant sustained a lumbosacral sprain and left inguinal hernia in the performance of duty on August 1, 1996. On September 4, 1998 appellant filed a notice of recurrence of disability commencing August 12, 1998. By letter dated December 4, 1998, the Office accepted a recurrence of disability commencing August 12, 1998 and an aggravation of cervical and lumbar sprain. The Office advised appellant to submit CA-7 or CA-8 forms if any time was lost from work and to submit medical bills for payment.

By decision dated November 17, 1999, the Office denied appellant's claim for a recurrence of disability as of August 12, 1998, on the grounds that the medical evidence was insufficient to establish the claimed recurrence of disability. The Office did not acknowledge that the claim had previously been accepted. In a decision dated January 19, 2001, the Office acknowledged its prior acceptance but denied modification.

The Board finds that the Office failed to address the relevant issues and the case must be remanded for a proper decision.

The Office's regulations provide that in determining entitlement to benefits it will "apply the law, regulations and its procedures" to the facts of the case; the Office also will apply decisions of the Board and administrative decisions of the Office set forth in the Federal Employees' Compensation Acts Program Memoranda.¹ Moreover, a decision of the Office "shall contain findings of fact and a statement of reasons."²

¹ 20 C.F.R. § 10.125(b).

² 20 C.F.R. § 10.126.

It is clear from the record that the Office accepted aggravations of cervical and lumbar sprains and a recurrence commencing August 12, 1998. Once the Office accepts the claim, it has the burden of proof to rescind acceptance.³ The standards for rescinding acceptance have been developed through numerous Board decisions.

The January 19, 2001 Office decision notes only that appellant's congressional representative had been advised in March 1999 that the acceptance was "premature" and further development was needed. Neither the November 17, 1999 nor the January 19, 2001 Office decisions identify the proper issue (rescission), or discuss the appropriate standards and relevant authority.

Appellant is entitled to an Office decision that properly identifies and adequately addresses the issues presented. Accordingly, the Office has not met its burden in rescinding acceptance of appellant's claim.

The decision of the Office of Workers' Compensation Programs dated January 19, 2001 is reversed.

Dated, Washington, DC
February 8, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

³ See, e.g., *Martha L. Cook*, 47 ECAB 226 (1995).