

**United States Department of Labor
Employees' Compensation Appeals Board**

SHIRLEY J. HIGGS, Appellant

and

**DEPARTMENT OF LABOR, OFFICE OF
WORKERS' COMPENSATION PROGRAMS,
Dallas, TX, Employer**

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**Docket No. 03-1592
Issued: August 13, 2004**

Appearances:
Shirley J. Higgs, pro se
Office of the Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On June 11, 2003 appellant filed a timely appeal from an Office of Workers' Compensation Programs' decision dated June 5, 2003, terminating compensation. Under 20 C.F.R §§ 501.2(c), 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether the Office met its burden to terminate appellant's compensation benefits.

FACTUAL HISTORY

This is the second appeal before the Board. Appellant, a 40-year-old claims examiner, filed a claim for benefits on September 14, 2000 alleging that she developed bilateral carpal tunnel syndrome as a result of repetitive employment duties. The Office accepted appellant's

claim for bilateral carpal tunnel syndrome¹ and paid appropriate compensation.² Appellant was off work from March 6 to April 24, 2001, when she was released to return to work for four hours per day with restrictions. On May 7, 2001 she was released to return to work for eight hours per day with restrictions on keying for no more than four hours per day. She was paid partial disability compensation from April 24 through May 28, 2001. By decision dated May 29, 2001, the Office suspended her compensation under 5 U.S.C. §§ 8104(a) and 8113 based on her refusal to cooperate with rehabilitation efforts. The Office denied reconsideration in a July 13, 2001 decision.

In an August 2, 2002 decision,³ the Board reversed the Office's decisions. The Board found that the Office improperly suspended appellant's compensation, stating that the Office had failed to recognize that section 8113 allowed it to reduce, not suspend, future benefits based on what would probably have been the wage-earning capacity when there has been a failure to undergo vocational rehabilitation without good cause. Appellant's entitlement to disability compensation was restored. Appellant was paid appropriate compensation for LWOP for intermittent periods of disability by the Office. She was placed on the periodic rolls in September 2002.

In a report dated January 27, 2003, Dr. Olayinka Ogunro, a Board-certified orthopedic surgeon and appellant's treating physician, noted that appellant had been off work recently due to a resurgence of her accepted bilateral carpal tunnel syndrome. Dr. Ogunro advised that appellant was at maximum medical improvement and opined that she could be released to return to work. He reiterated his previous restriction of keying at a computer for no longer than four hours per day and stated that, as appellant had informed him that her work as a claims examiner could not be performed without extensive keying, she was still on disability.

In a notice of proposed termination dated May 2, 2003, the Office stated that Dr. Ogunro's report had released appellant to return to work with the restriction of no keying exceeding four hours per day. The Office found that, based on a review of the date-of-injury position description of claims examiner and an undated Form CA-17 duty status report, Dr. Ogunro's report constituted a release to her date-of-injury position as claims examiner, with the restriction of no more than four hours keying per day. The Office stated that appellant had 30 days to respond to the proposed termination with additional evidence or legal argument.

In a letter dated May 20, 2003, appellant contested the proposed termination of compensation and submitted a May 12, 2003 report from Dr. Ogunro, who stated that appellant was unable to return to work at that time and that she was restricted from lifting more than 4 pounds for 15 minutes per hour, with no pushing or pulling more than 5 pounds for more than 15 minutes per hour. In this updated report, Dr. Ogunro restricted appellant from repetitive wrist and hand motions including keying, typing, writing and clicking a mouse. Unlike his

¹ The Office stated in its November 17, 2000 acceptance letter, that she had not submitted evidence sufficient to establish a relationship between her alleged neck, bilateral elbow and bilateral leg conditions and factors of her employment.

² Appellant filed a Form CA-7 claim for leave without pay (LWOP) on March 6, 2001.

³ Docket No. 02-127 (issued August 2, 2002).

January 27, 2003 report, he did not indicate that appellant could engage in these activities for any length of time. He also restricted appellant from stuffing envelopes or grasping for more than 30 minutes in an hour, with a 10-minute break each hour. Dr. Ogunro stated that these restrictions were permanent.

By decision dated June 5, 2003, the Office terminated appellant's compensation benefits. In addition, the Office rejected appellant's request to expand her claim to accept conditions based on neck pain, bilateral elbow pain and numbness in both legs.

LEGAL PRECEDENT

Once the Office accepts a claim it has the burden of proving that the disability has ceased or lessened to order to justify termination or modification of compensation benefits.⁴ 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.⁵ The Office did not meet its burden in the present case.

ANALYSIS

The Board finds that the Office improperly terminated appellant's compensation based on the opinion of Dr. Ogunro. The Office relied on Dr. Ogunro's January 27, 2003 report, which reiterated appellant's work restriction of no keying exceeding four hours. The Office stated that this restriction was not in conflict with the date-of-injury position description of appellant's regular job as a claims examiner. Although the job description for claims examiner contains a requirement for using a computer, it does not specify a time period for computer usage.

Subsequent to the May 2, 2003 notice of proposed termination, appellant submitted an additional report from Dr. Ogunro dated May 12, 2003 in which the physician restricted appellant from repetitive wrist and hand motions including keying, typing, writing and clicking a mouse, expanding of the restrictions specified in his January 27, 2003 report. Appellant therefore submitted medical evidence indicating that she had greater physical restrictions than those originally specified by Dr. Ogunro. The evidence in the record does not establish that the duties entailed by the claims examiner position were within her physical capacities. Therefore, the Office erroneously found in its June 5, 2003 termination decision that appellant was capable of performing a position whose duties exceeded her physical restrictions.⁶ The Board therefore finds that the Office's finding that appellant could return to her date-of-injury position was improper, as it was not based on an accurate interpretation of the evidence.

⁴ *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

⁵ *Id.*

⁶ Further, even if the four-hour limitation in Dr. Ogunro's January 27, 2003 report is accepted, as the Office states, the Office has provided no evidence that the claims examiner position will not require appellant to perform keying or computer work for more than four hours.

Accordingly, the Board finds that the Office did not meet its burden of proof in this case to terminate appellant's compensation benefits.⁷

CONCLUSION

Under the circumstances above, the Board finds that the Office has failed to meet its burden to terminate compensation benefits.

ORDER

IT IS HEREBY ORDERED THAT the June 5, 2003 decision of the Office of Workers' Compensation Programs is reversed.

Issued: August 13, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

⁷ The Board notes that appellant contests the Office's finding in its June 5, 2003 termination decision, that there was no basis to expand its acceptance to the additional conditions for which she has requested compensation. As the Office noted, the Office refused acceptance of these conditions in its November 17, 2000 letter and has never accepted the additional conditions referenced by appellant. Appellant may choose to file a separate claim based on these conditions pursuant to 20 C.F.R. § 10.101.