

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

D.D., Appellant)
and) Docket No. 11-808
U.S. POSTAL SERVICE, POST OFFICE,) Issued: November 17, 2011
Arlington, VA, Employer)

)

Appearances:
John Eiler Goodwin, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

**ORDER GRANTING REMAND AND
CANCELING ORAL ARGUMENT**

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge

On February 11, 2011 appellant, through his representative, filed a timely request for review of a November 16, 2010 decision of the Office of Workers' Compensation Programs (OWCP). By that decision, OWCP terminated appellant's compensation benefits and any entitlement to a schedule award on the grounds that he refused an offer of suitable work, pursuant to 5 U.S.C. § 8106(c)(2). Appellant requested oral argument which was scheduled to be held before the Board on November 22, 2011.

The Director of OWCP filed a motion on October 27, 2011, requesting the Board set aside OWCP's November 16, 2010 decision, cancel oral argument and remand the case for further specified development. In this regard, the Director noted that the position of sales services and distribution associate (modified) included duties that were beyond appellant's physical restrictions and that the employing establishment promised that appellant would not be required to perform those duties or that he would be permitted to request assistance to perform these duties. The Director, citing to Board precedent, pointed out that a general offer of light duty, such as this one, that the employing establishment says is available and complies with an attending physician's work restrictions does not satisfy OWCP's burden of proof.¹ Further, the

¹ See Bertha L. Buckner, 31 ECAB 1434 (1980).

Director pointed out that to satisfy its burden of proof, OWCP must obtain a detailed light-duty job description from the employing establishment so that it can make a reasoned determination with respect to the job offer.² The Director concluded that OWCP did not have a detailed light-duty job description from the employing establishment. After noting that an appellant's physical ability to perform the offered position is primarily a medical question, the Director pointed out that OWCP relied on the report of a second opinion physician to terminate compensation benefits instead of reviewing the report of the impartial medical specialist. The Director concluded that such reliance was improper. On remand the Director stated that OWCP will pay appellant appropriate compensation benefits following receipt of a signed Form CA1032 or CA-7 verifying any earnings or other benefits appellant received following the termination of his compensation benefits. The Director stated that, if necessary, OWCP will issue a *de novo* decision on appellant's claim for continuing benefits.

The Clerk of the Board served appellant and his attorney with a copy of the Director's motion to remand and cancel oral argument. The attorney replied that he and appellant concurred in the Director's motion.

The Board has duly considered the matter and concludes that, as the Director has acknowledged that OWCP improperly terminated appellant's compensation benefits on the grounds that he refused an offer of suitable work resulting from an improper job offer, and as upon return of the case record OWCP will reinstate appellant's compensation benefits and issue a *de novo* decision, if necessary, the Director's motion to remand and cancel oral argument should be granted. Accordingly,

² See *Leroy W. Bailey*, 16 ECAB 251 (1964).

IT IS HEREBY ORDERED THAT the November 16, 2010 decision of the Office of Workers' Compensation Programs is set aside; the case is remanded for further proceedings consistent with this order of the Board. Oral argument scheduled for November 22, 2011 is canceled.

Issued: November 17, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board