

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT DIAZ and U.S. POSTAL SERVICE,
POST OFFICE, Long Beach, CA

*Docket No. 99-1965; Submitted on the Record;
Issued April 14, 2000*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

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

On February 14, 1997 appellant then a 21-year-old mailhandler, sustained burns on his wrist and forearms and also developed carpal tunnel syndrome in the performance of duty.

By letter dated June 5, 1997, the Office advised appellant that he had been placed on the periodic compensation rolls to receive compensation benefits for temporary total disability.

On September 30, 1997 appellant underwent surgery on his left hand. Right hand surgery was performed on November 26, 1997.

By letter dated April 1, 1998, Dr. Andre M.V. Chaves, appellant's attending Board-certified surgeon specializing in hand surgery, provided findings on examination and stated that appellant was able to return to full-duty work on April 6, 1998.

By letter dated May 4, 1998, the Office advised appellant that it proposed to terminate his compensation benefits because Dr. Chaves had stated that appellant was able to return to full duty on April 6, 1998.

In a disability certificate dated May 19, 1998, Dr. Chaves indicated that appellant could perform full duty.

In a report dated May 22, 1998, received by the Office on June 9, 1998, Dr. Chaves related that appellant complained of an increase in symptoms of paresthesia and numbness in both upper extremities. He stated:

“[Appellant] was clearly told the surgery performed, in order to relieve the pressure from the median nerve so that he could regain neurological function, has

worked reasonably well and the most specific reason why he has failed to recover fully is his own delay in receiving specific surgical treatment for this condition. The delay ... has specifically affected his ultimate result.”

Dr. Chaves stated that he would recommend a repeat nerve conduction study to determine the degree of persistent neurological involvement in the upper extremities and that any additional treatment would be related to abnormalities identified through the testing.

By decision June 26, 1998, the Office terminated appellant’s compensation benefits.

By letter dated July 15, 1998, appellant requested an oral hearing before an Office hearing representative.

In a report dated June 15, 1998, received by the Office on September 11, 1998, Dr. Chaves provided findings on examination and stated that appellant was able to return to work as a mailhandler and did not require vocational rehabilitation. However, he indicated that, due to the February 14, 1997 employment injury, appellant had permanent work restrictions which precluded performing activities requiring impact and continuous vibratory tool handling and lifting more than 50 pounds.

On January 25, 1999 a hearing was held before an Office hearing representative at which time appellant testified.

The record shows that on February 3, 1999, the employing establishment provided the Office hearing representative with information regarding the physical requirements of appellant’s mailhandler position. The job description included a lifting requirement of 70 pounds and indicated that a mailhandler might lift such weight intermittently for up to 7½ hours a day.

By decision dated March 29, 1999, the Office hearing representative affirmed the Office’s June 26, 1998 decision.¹

The Board finds that the Office did not meet its burden of proof in terminating appellant’s compensation benefits.

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

¹ The Board notes that this case record contains evidence which was submitted subsequent to the Office’s March 29, 1999 decision. The Board has no jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).

² *See Alfonso G. Montoya*, 44 ECAB 193, 198 (1992); *Gail D. Painton*, 41 ECAB 492, 498 (1990).

In this case, although Dr. Chaves, appellant's attending physician, stated in reports dated April 1 and May 19, 1998 that appellant could return to full duty, he also stated in his May 22, 1998 report that appellant complained of an increase in symptoms of paresthesia and numbness in both upper extremities and indicated that appellant had not fully recovered following his surgery. He stated that he would recommend a repeat nerve conduction study to determine the degree of persistent neurological involvement in appellant's upper extremities. As the May 22, 1998 report of Dr. Chaves indicated that appellant might have persistent neurological problems due to his employment injury for which further testing was recommended, the Office did not meet its burden, in its June 26, 1998 decision, in terminating his compensation benefits.

Additionally, subsequent to the June 26, 1998 Office decision, appellant submitted a report dated June 15, 1998 in which Dr. Chaves provided findings on examination and indicated that, due to the February 14, 1997 employment injury, appellant had permanent work restrictions which included no lifting of more than 50 pounds. The record shows that, on February 3, 1999, the employing establishment provided the Office hearing representative with a description of appellant's job which included a lifting requirement of 70 pounds. Because appellant's job required lifting of up to 70 pounds and his attending physician stated that he should not lift over 50 pounds, appellant was disabled for his regular job.³

The March 29, 1999 and June 26, 1998 decisions of the Office of Workers' Compensation Programs are reversed.

Dated, Washington, D.C.
April 14, 2000

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

³ See *Patricia A. Keller*, 45 ECAB 278, 286 (1993).