

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ORLAN J. JACOBS and U.S. POSTAL SERVICE,
POST OFFICE, Sheldon, IA

*Docket No. 99-1599; Submitted on the Record;
Issued October 11, 2000*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
VALERIE D. EVANS-HARRELL

The issue is whether appellant's disability related to his April 19, 1994 employment injury ended by May 6, 1994.

This case has previously been on appeal before the Board. By decision and order dated December 10, 1998, the Board found that appellant sustained an injury in the performance of duty on April 19, 1994 as alleged. The Board remanded the case to the Office of Workers' Compensation Programs for a determination of the extent of disability attributable to his April 19, 1994 employment injury.¹

By decision dated February 17, 1999, the Office found that appellant sustained a sacroiliac strain on April 19, 1994. The Office found that the medical evidence established that appellant was totally disabled as a result of his April 19, 1994 injury from April 20 to May 6, 1994.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. 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.²

The Board finds that the Office did not meet its burden of proof to terminate appellant's compensation until July 19, 1994.³

¹ Docket No. 97-34.

² *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

³ At the time of his April 19, 1994 injury, appellant was working four hours per day and the Office was paying

In finding that appellant's total disability ended by May 6, 1994, the Office relied on the two reports from appellant's attending physician, Dr. Gerald J. McGowan. In a report dated May 16, 1994, Dr. McGowan stated:

"As you know I did return him to work about 10 days ago which he did not tolerate stating that his legs started to shake and he could n[o]t sit and he could n[o]t stand. In talking with him today, he states that his lawyer told him that he should get total disability from this. I think there is an element of anxiety exacerbating the pain. I do note, however, that he has a hypersensitive reaction to pain. Also note that he has a stocking glove-type response to my sensory testing of the right lower extremity. In my judgment, he is trying to tell me that the injury is bad and is accentuating his subjective responses, so I do n[o]t underestimate his injury."

In a report dated July 19, 1994, Dr. McGowan stated:

"[Appellant] came to this office for evaluation following a back injury working for the [employing establishment]. He was hospitalized and given basically conservative, supportive measures. He improved, was allowed to go home and asked to return to work. He worked less than a day on his return, stated he could n[o]t work; and I have not been able to get him to even consider returning to work since that time.

"He and his wife tell me that he was off work for two years and he needs to be off work; that there is no way he can work and that he needs to go on permanent disability. I cannot document this disability and I have asked that he be seen by more qualified physicians to find out what the disability is so he can be given the type of treatment that he deserves."

The Board finds that the reports quoted above do not establish that appellant's disability ceased by May 6, 1994. Although Dr. McGowan stated in his May 16, 1994 report that he had returned appellant to work 10 days ago, this statement is contradicted by a note from Dr. McGowan received by the employing establishment on May 4, 1994 stated that arrangements had been made for an electromyogram on May 10, 1994 and that appellant was to engage in "no work until that time." A release to return to work is also contrary to notes from Dr. McGowan dated May 4, 11 and 25, 1994, all of which answer "no" to the question "return to work?" In addition, the leave analysis submitted by the employing establishment does not indicate that appellant returned to work on May 6, 1994 or at any time following his April 19, 1994 employment injury.

However, the July 19, 1994 report from Dr. McGowan establishes that appellant's disability ceased by that date. He stated he could no longer document disability related to the accepted injury. This report establishes that appellant's total disability related to his April 19,

him loss of wage-earning capacity, which has continued.

1994 employment injury ended by July 19, 1994. For this reason, the Board will modify Office's February 17, 1999 decision to reflect appellant's compensation to July 19, 1994.

The decision of the Office of Workers' Compensation Programs dated February 17, 1999 is affirmed, as modified.

Dated, Washington, DC
October 11, 2000

David S. Gerson
Member

Michael E. Groom
Alternate Member

Valerie D. Evans-Harrell
Alternate Member