

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RAYFIELD HILL and U.S. POSTAL SERVICE,
POST OFFICE, Cleveland, OH

*Docket No. 00-1945; Submitted on the Record;
Issued February 20, 2002*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly determined that appellant had not established a recurrence of disability commencing February 3, 1998.

The Office accepted that appellant sustained bilateral shoulder impingement and partial tear of the right rotator cuff. Appellant, a letter carrier, returned to work at four hours per day in a light-duty position and then stopped working after having right shoulder surgery on January 7, 1998.

On February 2, 1998 appellant briefly returned to work in a light-duty position for two or three hours, and then stopped working. He returned to work at four hours per day in a light-duty position on March 9, 1998.

By decision dated March 27, 1998, the Office found that appellant had not established a recurrence of total disability as of February 3, 1998, or a partial disability as of March 9, 1998. In a decision dated December 31, 1998, an Office hearing representative affirmed the prior decision. By decision dated March 9, 2000, the Office denied modification.

The Board finds that appellant remained entitled to compensation as of February 3, 1998.

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 was no longer related to the employment.¹

In this case, the Office placed the burden of proof on appellant with respect to compensation as of February 3, 1998, based on his brief return to work on February 2, 1998.

¹ *Patricia A. Keller*, 45 ECAB 278 (1993).

The Board has held, however, that the burden of proof does not shift to appellant under the circumstances presented in this case.² The attending physician, Dr. Mark Shickendantz, an orthopedic surgeon, had reviewed a light-duty job offer and on January 30, 1998 indicated that he believed appellant could perform the position. Appellant worked for two to three hours at the position. In a February 19, 1998 report, Dr. Shickendantz noted that appellant reported shoulder pain while working, and the physician recommended that appellant be off work until March 9, 1998, after which he could return to work four hours per day.

In *Migut*³ the claimant had returned to light-duty work for two days, and her physician noted that she was unable to handle the position. The Board found that such a minimal return to work did not shift the burden of proof to appellant; it remained the Office's burden of proof to show that appellant's disability had ended or was no longer employment related. In this case, appellant returned to work for two or three hours on February 2, 1998, and his physician indicated that due to his shoulder condition he should remain off work until March 9, 1998.

The Board finds that the burden of proof remained with the Office in this case. The Office did not identify any medical evidence establishing that appellant's disability had ended by February 2, 1998 or was no longer employment related as of that date. Accordingly, appellant remained entitled to continuing compensation after February 2, 1998.

The decision of the Office of Workers' Compensation Programs dated March 9, 2000 is reversed.

Dated, Washington, DC
February 20, 2002

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

² See *Carl C. Graci*, 50 ECAB 557 (1999); *Janice F. Migut*, 50 ECAB 166 (1998).

³ *Id.*