

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

H.P., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Los Angeles, CA, Employer**

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**Docket No. 10-1481
Issued: April 5, 2011**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:

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

On May 7, 2010 appellant filed an appeal of an April 15, 2010 merit decision of the Office of Workers' Compensation Programs. The appeal was docketed as No. 10-1481.

On a prior appeal, the Board had set aside a November 8, 2007 Office decision for refusal of suitable work pursuant to 5 U.S.C. § 8106(c).¹ The Board found that, while the Office properly terminated compensation effective September 12, 2006 based on the evidence of record at that time, appellant had submitted evidence regarding a psychiatric condition prior to September 12, 2006. The case was remanded for further development on the issue of whether such condition disabled appellant for the offered job.

On remand the Office requested that appellant submit additional medical evidence. In a brief report dated March 4, 2010, Dr. Bradley Warren, a psychiatrist, stated that appellant had been hospitalized from August 29 to September 1, 2006 for post-traumatic stress disorder with psychosis. He stated that appellant was "capable of managing his funds and personal affairs and was judged to be so when he was released from the hospital."

¹ Docket No. 08-2036 (issued May 15, 2009).

In the April 15, 2010 Office decision, the Office made a finding that the evidence from Dr. Warren “did not suggest that it disabled [appellant] from working subsequent to his release from the hospital on [September 1, 2006],” but Dr. Warren did not offer any opinion on disability for the offered position. He stated only that appellant was capable of managing his funds and personal affairs. Whether an employee has the physical or psychological ability to perform an offered position is primarily a medical question that must be resolved by the medical evidence. In evaluating the suitability of a particular position, the Office must consider preexisting and subsequently acquired medical conditions.²

The Office should have provided Dr. Warren with a relevant factual background regarding the offered position and sought a supplemental opinion. The medical issue presented is whether appellant had a psychiatric condition as of September 12, 2006 that would have disabled him for the offered position. The case will be remanded to the Office for additional development and a proper determination as to the relevant medical issue.

IT IS HEREBY ORDERED THAT the decision of the Office of Workers’ Compensation Programs dated April 15, 2010 is set aside and the case remanded for further action consistent with this order of the Board.

Issued: April 5, 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

² *Gayle Harris*, 52 ECAB 319, 321 (2001); *Martha A. McConnell*, 50 ECAB 129, 132 (1998); *S.G.*, Docket No. 08-1992 (issued September 22, 2009).