

U.S. Department of Labor
Office of Workers' Compensation Programs

DECISION OF THE HEARING REPRESENTATIVE

In the matter of the claim for compensation under Title 5,
U.S. Code 8101 et seq. of _____, claimant; employed by
the _____ in _____ Case No: _____

Merit consideration of the case file was completed in
Washington, D.C. Based on this review, the
decision of the district office is vacated for the reason(s)
set forth below.

The claimant, born _____ is employed as a _____
maintenance worker by the _____ at _____
_____ He sustained a
traumatic injury in the performance of duty on _____
when he injured his back lifting a bag of trash. Timely
notice of injury and claim were given, and the case was
accepted for a lumbosacral strain. Later, the acceptance
was expanded to include a herniated disc.

The claimant ceased work on _____ and did not return.
He was paid continuation of pay for 45 days, then began
receiving compensation for total disability

The claimant continued on compensation through the end of
2003 and into early 2004. At that time, he underwent a
functional capacity evaluation, and it was determined that
work within his physical limitations could be offered. It
is noted that the claimant had been referred for
neurological examination by his attending orthopedist. Dr.
_____, a neurologist, examined the claimant on _____
She indicates in her report that the physical
examination was bereft of any objective findings, and that
she could not explain the claimant's symptoms. She notes
that x-rays were negative, as were electrodiagnostic
studies. The MRI of the lumbar spine showed no evidence of
any impingement.

Dr. _____ saw the claimant again on _____ Again, her
examination of him was essentially negative, and she
indicated she could not explain his pain and symptoms based

on clinical findings.

In the meantime, a limited duty offer was tendered to the claimant by his employing agency. The Office advised the claimant by letter that the job was suitable, and that he had 30 days to accept the job or explain his reasons for refusal. He was apprised of the penalty provisions of the Act for refusing suitable employment.

The claimant was referred for a second opinion evaluation by Dr. Dr. indicates in his report that all of the claimant's symptoms were non-anatomic in nature. The doctor further stated the claimant was suffering from no residuals related to his injury.

The claimant's employing agency advised the Office the claimant had not accepted the job and returned to work. A decision was issued terminating monetary compensation. The claimant disagreed and requested a hearing before a representative of the Office of Workers' Compensation Programs.

I find that the Office did not follow prescribed procedure in this case. Chapter 2-0814 of the Procedure Manual sets forth the actions to be taken by the Office when an acceptable offer of employment has been made. The manual states that if a claimant responds to the initial suitability letter, and the response and reasons for refusing the offered job is not deemed justified, the Office must so advise the claimant and allow an additional 15 days to accept the job or face termination of benefits. The notice should also advise the claimant that no further reason for refusing the offered employment would be considered.

In the instant case, the claimant sent a letter dated explaining why he could not take the offered position. The record indicates this letter was received in the case file, or one week before the final decision terminating monetary compensation was issued. That being the case, the Office should have drafted a letter advising the claimant that his reasons for refusal were unsuitable, and that he had 15 days to accept the job or face termination of monetary compensation.

It is noted that the Office did send a second letter to the claimant, advising him that his letter had not been received prior to the decision. This is simply false; as noted, the claimant's

letter arrived a week before the termination order was issued.

Normally, upon return of the case to the district office the first step would be to determine whether or not the offered position remained available prior to advising the claimant that he had 15 days to accept the job or face termination of his benefits. However, the medical evidence in this case - namely, the reports from Dr. and Dr. - clearly indicate that this claimant is no longer suffering from any residuals of his injury. The proper course of action in this case will be to issue a decision terminating all benefits on the basis that the claimant has recovered from his injury.

Based on the findings as set forth in this decision, the decision is hereby set aside. The case is REMANDED to the Office for further action as outlined above and issuance of a de novo decision.

DATED: MAY 1965
WASHINGTON, D.C.



Hearing Representative
For
Director, Office of Workers'
Compensation Programs