

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 David Miner, claimant; employed by the National Park Service in Luray, Virginia. Case No: 25-2030439.

Merit consideration of the case file was completed in Washington, D.C. Based on this review, the July 26, 2004 decision of the district office is vacated for the reason(s) set forth below.

The claimant, born October 28, 1950, is employed as a maintenance worker by the National Park Service at Shenandoah National Park in Luray, Virginia. He sustained a traumatic injury in the performance of duty on May 9, 2005, 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 May 16, 2003 and did not return. He was paid continuation of pay for 45 days, then began receiving compensation for total disability June 29, 2003.

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. Kimberly Salata, a neurologist, examined the claimant on May 26, 2004. 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. Salata saw the claimant again on July 14. 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 June 22, 2004, 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 June 30, 2004 for a second opinion evaluation by Dr. Steven S. Hughes. Dr. Hughes 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 May 9, 2003 injury.

The claimant's employing agency advised the Office the claimant had not accepted the job and returned to work. A decision was issued July 26, 2004, 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 July 16, 2004, explaining why he could not take the offered position. The record indicates this letter was received in the case file July 19, 2004, 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 August 2, 2004, advising him that his July 16 letter had not been received prior to the July 26, 2004 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. Salata and Dr. Hughes - clearly indicate that this claimant is no longer suffering from any residuals of his May 9, 2003 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 July 26, 2004 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:
WASHINGTON, D.C.

MAY - 2005



Warren Landis
Hearing Representative
For
Director, Office of Workers'
Compensation Programs