U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RICHARD CARVALE and DEPARTMENT OF THE NAVY, NAVY AIR WARFARE CENTER, Trenton, N.J.

Docket No. 96-2508; Submitted on the Record;
Issued December 22, 1998

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS, MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly rejected appellant's claim for compensation benefits on the grounds that he refused an offer of suitable work.

On August 5, 1985 appellant, then a 36-year-old aircraft engineering mechanic, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that he injured his lower back when he twisted his back trying to enter a 6W test cell using the safety hatch on August 1, 1985. The Office accepted the claim for acute lumbosacral sprain. Appellant returned to light-duty work on February 4, 1986, stopped work on April 23, 1986 and was placed on the periodic rolls for temporary total disability effective August 2, 1986.

In a work restriction evaluation dated May 1, 1994, Dr. Edward Laub, appellant's treating Board-certified internist, indicated that appellant could work 2 hours per day with a lifting restriction of 10 pounds, no repetitive grasping, 3 hours sitting, 2 hours walking and 2 hours standing. In a note dated May 11, 1994, Dr. Laub stated that appellant "can work four to eight hours [per] day in a modified program based on his ability to tolerate this."

Dr. Laub reviewed a job analysis and approved the physical limitations noted for the position of modified general clerk on May 8, 1994.

By letter dated June 14, 1994, the employing establishment offered appellant the position of mail and file clerk in Trenton, New Jersey.[1] Appellant was advised that the work will initially be four hours per day eventually increasing to eight hours per day six weeks from the start date. Appellant was advised that the limitations would include intermittent sitting of 3 hours per day,

[1] The employing establishment mailed this job offer to appellant's residence in Florida. The record reveals that appellant moved to Florida from New Jersey on or about May 5, 1994. His bank account and attending physician are located in New Jersey.

intermittent walking of 3 hours per day and lifting under 10 pounds. The position description noted that the work was primarily sedentary with "occasional periods of standing, walking, bending or carrying of light objects." Appellant was advised that he had 15 days to accept or decline the position.

On July 6, 1994 the Office advised appellant that he had been offered a position within his physical limitations and within his commuting area in New Jersey with the employing establishment which the Office found suitable. The Office advised appellant that he had 30 days from the date of this letter to either accept the position or provide an explanation for refusing it.

By letter dated June 27, 1994, appellant indicate that he would be willing to accept a position within his physical capabilities in the Florida area, where he recently relocated.

By letter dated June 18, 1994, appellant stated that he no longer resided in New Jersey and had not lived there since January 1994. He again stated that he would accept a position within the commuting area of his current residence in Florida.

By decision dated March 8, 1995, the Office terminated appellant's compensation benefits on the grounds that he refused an offer of suitable work.

In a letter dated March 20, 1995, appellant requested a hearing before a hearing representative. A hearing was held on May 6, 1996 at which appellant was represented by counsel and testified. At the hearing, appellant testified that it would cause him a financial hardship to relocate to New Jersey at the present time. Appellant also testified that the employing establishment never indicated to him that it would pay his relocation expenses back to New Jersey. He acknowledged, however, that he had never been terminated from the employing establishment and had remained on their rolls as an employee.

By decision dated July 12, 1996, the hearing representative affirmed the Office's decision to terminate appellant's compensation benefits on the basis that he refused suitable work.

The Board finds that the Office properly rejected appellant's claim for compensation benefits on the grounds that appellant refused an offer of suitable employment.

Section 8106(c) of the Federal Employees' Compensation Act states: "a partially disabled employee who: (1) refused to seek suitable work; or (2) refuses or neglects to work after suitable work is offered is not entitled to compensation."[2] An employee who refuses or neglects to work after suitable work has been offered to him has the burden of showing that such refusal to work was justified.[3] Section 8106(c)(2) may be invoked if the employee is shown to have abandoned a suitable job without good reason and subsequently to have claimed benefits.[4]

[2] 5 U.S.C. § 8106(c)(2).

[3] 20 C.F.R. § 10.124.

[4] FECA Bulletin No. 83-51 (issued October 24, 1983).

In this case, the employing establishment offered appellant the position of mail and file clerk in Trenton, New Jersey. Appellant's treating physician, Dr. Laub, reviewed a job analysis and approved the physical limitations noted for the position of modified general clerk prior to the offer by the employing establishment. Appellant rejected the offer saying he would be willing to accept the position if it was in Florida, but he was not willing to pay to move back to New Jersey to accept the position.

Appellant's reasons for refusing the job offer turn on the fact that he prefers to reside in Florida. An offer of employment is not suitable if the position is not available within the employee's commuting area.[5] However, an employee's move away from the area in which the employing establishment is located is an unacceptable reason for his refusal to accept an offered position if the employee is still on the employing establishment's rolls.[6] The Office therefore properly rejected appellant's claim for wage loss.

The decisions of the Office of Workers' Compensation Programs dated July 12, 1996 and March 8, 1995 are hereby affirmed.

Dated, Washington, D.C.
December 22, 1998

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

[5] *Glenn L. Sinclair*, 36 ECAB 664, 669 (1985).

[6] *Arquelio Pacheco*, 40 ECAB 277, 279 (1988); *see also Richard S. Gumper*, 43 ECAB 811 (1992).