

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CONNIE G. KIDD and U.S. POSTAL SERVICE,
POST OFFICE, Houston, Tex.

*Docket No. 95-2606; Submitted on the Record;
Issued February 10, 1998*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective December 10, 1994 for her refusal of suitable work.

Under section 8106(c)(2) of the Federal Employees' Compensation Act, the Office may terminate the compensation of an employee who refuses or neglects to work after suitable work is offered to, procured by, or secured for the employee.¹ To justify termination of compensation, the Office must establish that the work offered was suitable.² An employee who refuses or neglects to work after suitable work has been offered has the burden of showing that such refusal to work was justified.³

The Board finds that the Office properly terminated appellant's compensation effective December 10, 1994 for her refusal of suitable work.

The position offered to appellant by the employing establishment on September 13, 1994 – modified distribution clerk – would have required appellant to “answer the telephone, provide information to customers, write second notices on certified mail, work mail that is being returned to sender, assist in lobby sweeps and perform other duties within the confines of medical limitations.” The employing establishment's offer also noted that appellant's limitations were: “Lifting up to 10 lbs. Limited to 2 hours daily, no reaching above the shoulder, intermittent bending/squatting/twisting/standing 4 hours daily, and intermittent climbing 2 hours daily.”

¹ 5 U.S.C. § 8106(c)(2) provides in pertinent part: “A partially disabled employee who ... (2) refuses or neglects to work after suitable work is offered to, procured by, or secured for him; is not entitled to compensation.”

² *David P. Camacho*, 40 ECAB 267 (1988).

³ 20 C.F.R. § 10.124.

The Office sent a copy of the employing establishment's description of the modified clerk position it was offering appellant to Dr. Donald C. Mann, a Board-certified neurologist, and in an October 28, 1993 report Dr. Mann stated, "The limited job duty assignment of giving information, writing notices and assisting in lobby sweeps are within her capability in my opinion and I believe that she could undertake these duties." In a report dated October 25, 1994, appellant's attending physician, Dr. Frank J. Myers, an osteopath, set forth work tolerance limitations of no lifting over 10 pounds and no frequent heavy use of the hands. These limitations would not preclude appellant's performance of the offered position.

The Office complied with its procedural requirements⁴ by advising appellant that the offered position was suitable, that the position was currently available, that she had 30 days to either accept the offered position or provide an adequate explanation of her reasons for refusing it, that it would consider any explanation provided by appellant before making a decision whether she was justified in refusing the offered position, and that her compensation would be terminated if she failed to accept the offered position and failed to justify doing so. The Office properly found that the reasons appellant proffered for refusing to accept the offered position were not acceptable. Since the question of whether she was physically capable of performing the position is a medical question, appellant's contention that she was unable to perform the duties of the offered position is of no probative value.⁵ An employee's move away from the area in which the employing establishment is located is an unacceptable reason for refusal to accept an offered position if the employee is still on the employing establishment's rolls,⁶ as appellant was in the present case.

The Office considered appellant's reasons for refusing the position offered by the employing establishment, and by letter dated October 31, 1994, advised appellant they had been found unacceptable and that she had 15 days to accept the employing establishment's offer or have her compensation terminated. Appellant did not accept the offered position, and the Office properly terminated her compensation by a decision dated November 17, 1994, later affirmed by an Office hearing representative in a decision dated April 20, 1995.

The decisions of the Office of Workers' Compensation Programs dated June 20, 1995 and November 17, 1994 are affirmed.

⁴ See *Maggie L. Moore*, 42 ECAB 484 (1991); *reaff'd on recon.*, 43 ECAB 818 (1992).

⁵ *Camillo R. DeArcangelis*, 42 ECAB 941 (1991).

⁶ *Fred L. Nelly*, 46 ECAB 142 (1994); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment and Determining Wage-Earning Capacity*, Chapter 2.813.8(g)(4) (June 1993) provides that unacceptable reasons for refusing an offered job would include a claimant's preference for the area in which he or she currently resides.

Dated, Washington, D.C.

Dated, Washington, D.C.
February 10, 1998

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member