

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RANDY P. DAVIS and U.S. POSTAL SERVICE,
POST OFFICE, Nashville, Tenn.

*Docket No. 96-1979; Submitted on the Record;
Issued September 28, 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 terminated compensation benefits based on appellant's refusal to accept suitable employment.

This case has previously been on appeal before the Board. In a decision dated April 26, 1993, the Board remanded the case to the Office to refer appellant to an appropriate medical specialist for a determination as to whether appellant was disabled as of September 10, 1988 from performing his light-duty position.¹ The facts of the case, as set forth in the April 26, 1993 decision are hereby incorporated by reference.

By decision dated October 5, 1993, the Office informed appellant that his compensation was being adjusted as the medical evidence showed that he was no longer totally disabled due to the effects of his accepted December 5, 1986 employment injury. The Office found appellant had the wage-earning capacity to perform the position of a cashier.

On October 9, 1993 appellant elected to receive Federal Employees' Compensation Act benefits in lieu of benefits provided by the Office of Personnel Management.

By letter dated October 7, 1994, the employing establishment offered appellant the position of modified part-time flexible clerk. The employing establishment noted that Dr. Robert E. Holladay, appellant's treating Board-certified orthopedic surgeon, reviewed the position requirements and approved the assignment. The position was located at appellant's date-of-injury duty station in Nashville, Tennessee. The employing establishment indicated that it would be willing to pay appellant's relocation expenses.

In a letter dated October 26, 1994, appellant requested an extension of time to respond and noted that he now resided in the state of Louisiana. Appellant also indicated that a

¹ Docket No. 92-1723.

relocation back to Nashville, Tennessee would cause his family severe hardship as he was responsible for the care of his elderly parents and had other family obligations.

In a letter dated May 16, 1995, the Office advised appellant that the modified part-time flexible clerk position was found to be suitable. Appellant was advised of the provisions of 5 U.S.C. § 8106(c) and given thirty days to either accept the position or provide reasons for refusing the position.

In a letter dated May 31, 1995, appellant stated his objections to the offered position. Appellant indicated that he could not relocate because he had to care for sick and elderly parents and that the Office had already issued a formal decision modifying his compensation.

In a letter dated June 10, 1995, appellant requested reconsideration of the Office's October 5, 1993 wage-earning capacity determination.

By decision dated July 13, 1995, the Office terminated appellant's compensation for wage loss on the grounds that he had refused an offer of suitable work. The Office addressed the reasons given by appellant for his refusal to accept the offered position and found that his refusal was not justified. In a separate letter, the Office advised appellant that the attached decision superseded the 1993 wage-earning capacity determination.

Appellant requested a written review of the record by an Office hearing representative.

In a decision dated October 10, 1995, the hearing representative affirmed the July 13, 1995 Office decision. The hearing representative noted that appellant had not submitted medical evidence to establish his contention that a medical condition of a family member contraindicated his return to work in Tennessee.

In a letter dated November 1, 1995, appellant requested reconsideration of his claim and submitted a note from Dr. Deborah A. Lehrich. Dr. Lehrich requested that appellant be allowed to assist his mother "with her medical care needs in anyway he can."

In a decision dated May 20, 1996, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was insufficient to warrant review of the prior decision.

The Board finds that the Office properly terminated benefits under 5 U.S.C. § 8106(c).

Section 8106(c) of the Federal Employees' Compensation Act provides: "A partially disabled employee who -- (1) refuses to seek suitable work; or (2) refuses or neglects to work after suitable work is offered to, procured by, or secured for him; is not entitled to compensation."² Section 10.124(c) of the Office's regulations provides that an employee who refuses or neglects to work after suitable work has been offered or secured has the burden of showing that such refusal or failure to work was reasonable or justified, and shall be provided with the opportunity to make such a showing before a determination is made with respect to

² 5 U.S.C. § 8106(c).

termination of entitlement to compensation.³ To justify termination of compensation, the Office must show that the work offered was suitable⁴ and must inform appellant of the consequences of refusal to accept such employment.⁵

In the present case, the employing establishment offered appellant the position of modified part-time flexible clerk. The position was reviewed by and approved by appellant's attending physician. The Office advised appellant by letter dated October 7, 1995, that it found the position to be suitable and that the employing establishment would pay his relocation expenses from Louisiana to Tennessee. Appellant responded stating that he could not relocate because it would cause his family severe hardship as he was responsible for the care of his parents and he had other family obligations. By letter dated May 16, 1995, the Office notified appellant of the provisions of 5 U.S.C. § 8106(c), and allowed 30 days to either accept the position or provide reasons for refusing the position. Appellant stated that he could not accept the position due to his being responsible for the care of his parents and noted the Office had already issued a decision modifying his compensation in 1993. The Board finds no procedural deficiencies with the termination pursuant to 5 U.S.C. § 8106(c) in this case.⁶

A description of the offered position was sent to an attending physician, Dr. Halladay, who indicated that the offered position was within appellant's physical restrictions. Appellant has not argued, nor submitted supporting evidence, that he is medically or vocationally unable to perform the duties of the modified-clerk position.

The offered position would require appellant to relocate from Louisiana to Nashville, Tennessee. Appellant has argued that the relocation would cause his family severe hardship as he is responsible for the care of his parents. The Office's procedure manual indicates that for claimants no longer on the employing establishment's rolls, an acceptable reason for refusing a suitable job offer includes: "The claimant has moved, and a medical condition (either preexisting or subsequent to the injury) of the claimant or a family member contraindicates return to the area

³ 20 C.F.R. § 10.124(c); *see also Catherine G. Hammond*, 41 ECAB 375 (1990).

⁴ *See Carl W. Putzier*, 37 ECAB 691 (1986); *Herbert R. Oldham*, 35 ECAB 339 (1983).

⁵ *See Maggie L. Moore*, 42 ECAB 484 (1991), *reaff'd on recon.*, 43 ECAB 818 (1992); *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment and Determining Wage-Earning Capacity*, Chapter 2.813.11(c) (December 1991)

⁶ *See Maggie L. Moore*, *supra* note 5.

of residence at the time of injury.”⁷ The medical conditions of appellant’s parents could, therefore, justify a refusal to accept a job offer.⁸ In this case, however, appellant has not submitted any medical evidence documenting that a medical condition regarding his parents exists which contraindicated his return to Tennessee. The only evidence appellant has submitted is a note from Dr. Lehrich dated March 29, 1996. Dr. Lehrich makes no mention of any medical condition of appellant’s mother which would preclude appellant from relocating. The note simply states that appellant should be allowed to “assist” his mother with her medical care. The Board finds that appellant has not submitted a probative medical report to establish that his relocation to Nashville is medically contraindicated. Appellant has not raised an acceptable reason for refusing the offered position.

Appellant also asserted that as the Office had already reduced his compensation it could not reduce his compensation again. This reason is not considered sufficient to justify a refusal of suitable work. Accordingly, the Board finds that appellant has not provided an acceptable reason for refusal of a suitable position and the Office properly terminated his compensation benefits pursuant to 5 U.S.C. § 8106(c).

The Board further finds that the Office properly refused to reopen appellant’s claim for merit review.

The Office has issued regulations regarding its review of decisions under section 8128(a) of the Act. 20 C.F.R. § 10.138(b)(1) states in relevant part:

“The claimant may obtain review of the merits of the claim by --

- (i) Showing that the Office erroneously applied or interpreted a point of law, or
- (ii) Advancing a point of law or a fact not previously considered by the Office, or
- (iii) Submitting relevant and pertinent evidence not previously considered by the Office.”

Section 10.138(b)(2) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in paragraphs (b)(1)(i) through (iii) of this section will be denied by the Office without review of the merits of the claim.⁹

In the present case, appellant has not submitted any evidence in support of his claim that relocating to Nashville would be contraindicated based on the medical condition of his mother. Appellant’s remaining arguments regarding the termination of his benefits are without merit. Since appellant has not met the requirements of section 10.138(b)(1), the Office properly denied the request for reconsideration without review of the merits of the claim.

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.5(b)(3) (December 1993).

⁸ Section 814.5(b)(3) is applicable to claimants that have been “separated by formal personnel action” from the employing establishment. *Id.*, Chapter 2.814.5(b). The record indicates that appellant had been separated from employment by formal personnel action.

The decisions of the Office of Workers' Compensation Programs dated May 20, 1996 and October 10, 1995 are affirmed.

Dated, Washington, D.C.
September 28, 1998

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member