

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARVIN L. WYATT and U.S. POSTAL SERVICE,
CRANWOOD POST OFFICE, Cleveland, OH

*Docket No. 97-2118; Submitted on the Record;
Issued August 19, 1999*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
BRADLEY T. KNOTT

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

The Board has carefully reviewed the case record and finds that the Office met its burden of proof in terminating appellant's compensation.

Once the Office accepts a claim it has the burden of proving that the employee's disability has ceased or lessened before it may terminate or modify compensation benefits.¹ Section 8106(c)(2) of the Federal Employees' Compensation Act² provides that the Office may terminate the compensation of a partially disabled employee who refuses or neglects to work after suitable work is offered to, procured by, or secured for the employee.³ The Board has recognized that section 8106(c) is a penalty provision that must be narrowly construed.⁴

The implementing regulation⁵ provides that an employee who refuses or neglects to work after suitable work has been offered or secured for the employee 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 entitlement to compensation is terminated.⁶ To

¹ *Karen L. Mayewski*, 45 ECAB 219, 221 (1993); *Betty F. Wade*, 37 ECAB 556, 565 (1986); *Ella M. Garner*, 36 ECAB 238, 241 (1984).

² 5 U.S.C. §§ 8101-8193; 5 U.S.C. § 8106(c)(2).

³ *Camillo R. DeArcangelis*, 42 ECAB 941, 943 (1991).

⁴ *Stephen R. Lubin*, 43 ECAB 564, 573 (1992).

⁵ 20 C.F.R. § 10.124(c).

⁶ *John E. Lemker*, 45 ECAB 258, 263 (1993).

justify termination, the Office must show that the work offered was suitable and that appellant was informed of the consequences of his refusal to accept such employment.⁷

Office procedures state that acceptable reasons for refusing an offered position include withdrawal of the offer or medical evidence of inability to do the work or travel to the job.⁸ Unacceptable reasons include relocation, lack of promotion potential, or job security.⁹ Thus, the Board has held that if an employee on the employing establishment's rolls moves from the area in which the employing establishment is located, such a move is an unacceptable reason for refusing an offer of suitable work.¹⁰ Similarly, personal desires to work certain hours or for a specific supervisor or in a particular location are unacceptable reasons for refusing suitable work.¹¹

In this case, appellant's notice of traumatic injury, filed on May 26, 1989, was accepted for a temporary aggravation of the anterior cruciate ligament in his left knee, based on the report of Dr. R. Denison Stewart, a Board-certified orthopedic surgeon, who explained that appellant reinjured his chronically unstable knee when a bulk mail carrier struck him on April 11, 1989.¹²

Appellant returned to limited duty on March 4, 1990, but filed notices of recurrence of disability on March 22, 1991 and July 15, 1992, which the Office accepted. The Office also accepted a July 29, 1996 recurrence of disability and authorized a stabilizing knee brace for appellant. She stopped work and did not return.

On February 17, 1997 Dr. Stewart approved a modified carrier position offered by the employing establishment as within appellant's physical restrictions. He had stated in a letter dated October 21, 1996, that appellant could no longer perform the duties of a mail carrier because of the continuing instability in his left knee.

On March 27, 1997 the Office informed appellant that the offered position had been found to be suitable and that he had 30 days to accept the job or provide reasons for refusing it. Appellant failed to respond and on May 5, 1997 the Office terminated appellant's compensation on the grounds that he had refused an offer of suitable work.

⁷ *Maggie L. Moore*, 42 ECAB 484, 487 (1991), *aff'd on recon.*, 43 ECAB 818 (1992).

⁸ *Patsy R. Tatum*, 44 ECAB 490, 495 (1993); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.5(a) (July 1996).

⁹ *Arthur C. Reck*, 47 ECAB 339, 343-44 (1996).

¹⁰ *Richard S. Gumper*, 43 ECAB 811, 816 (1992); *Arquelio Pacheco*, 40 ECAB 277, 279 (1988).

¹¹ *Ronald M. Jones*, 48 ECAB ____ (Docket No. 95-1374, issued July 24, 1997) (financial advantage to family); *Henry P. Gilmore*, 46 ECAB 709, 715 (1995) (desire to work outdoors); *Richard S. Gumper*, 43 ECAB 811, 816 (1995) (preference for "hands-on" law enforcement work).

¹² Appellant initially injured his knee on November 26, 1982 when he tore the anterior cruciate ligament after stepping in a hole to avoid a dog while delivering mail. Following an arthroscopic meniscectomy, appellant returned to work but sustained several recurrences of disability over the years, the last one on April 12, 1989. Appellant also received a schedule award for a 14 percent permanent impairment of his left lower extremity.

On May 13, 1997 appellant's representative requested reconsideration on the grounds that while appellant, a minister in his church, was physically capable of performing the job duties, the hours required -- 9:30 p.m. to 6:00 a.m. with Wednesday and Thursday nights off -- would "interfere with the practice of his religion." The representative added: "if the job offer could be modified to accommodate [appellant's] religious beliefs, it would then be acceptable."

On May 22, 1997 the Office denied appellant's request on the grounds that the evidence submitted in support of reconsideration was irrelevant and, therefore, insufficient to warrant merit review of its prior decision. The Office noted that religious reasons were not considered relevant on the issue of whether a job offer was suitable.

The Board finds that appellant's reasons for refusing the offered position are not justified. The offered position was medically suitable because appellant's long-time treating physician reviewed the duties of the modified carrier job and found appellant physically capable of performing the work despite his chronic knee problem. Further, appellant admitted that he was not refusing the job offer for medical reasons.

As the Office explained, acceptable reasons for refusing an offer of work found to be suitable are: (1) withdrawal of the offered position, (2) medical evidence establishing that appellant's condition has worsened to the point of preventing him from performing the duties of the offered position and (3) acceptance of other work that fairly and reasonably represents his wage-earning capacity. Appellant's proffered preference for a different work schedule for "religious reasons" does not justify his refusal of a valid job offer.¹³ His vague assertion on reconsideration about interference with the "practice of his religion" is insufficient to fall within any of the acceptable reasons for refusing an offered position.¹⁴

The Board also finds that the Office complied with its procedural requirements by providing notice to appellant that the offered position was found to be suitable and that the penalty for unjustified refusal of the offer was termination of compensation.¹⁵ Because appellant did not respond to the Office's March 27, 1997 letter and provide reasons for refusing the job

¹³ See *Frank Braxton McElroy*, 29 ECAB 806, 812 (1978) (finding that appellant's failure to file a timely claim for compensation was not excused by his religious beliefs that his hearing loss could be cured through prayer).

¹⁴ See *Robert Gray*, 39 ECAB 1239, 1244 (1988) (finding that the inability to fulfill religious responsibilities and obligations due to a conflict with scheduled work hours is not a compensable employment factor in an emotional condition claim).

¹⁵ See *C.W. Hopkins*, 47 ECAB 725, 727 (1996) (noting that once the Office advises a claimant that his or her reasons for refusing an offer of suitable work are unacceptable and that he or she has 15 days to accept the offered position, the claimant submits further reasons or supporting evidence at his or her own risk).

offer, the Office was not required to provide appellant with an additional 15 days to accept the suitable position.¹⁶

The May 22 and May 5, 1997 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.
August 19, 1999

David S. Gerson
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

¹⁶ See *Cheryl D. Hedblum*, 47 ECAB 215, 219 (1995) (finding that the Office properly terminated appellant's compensation for refusing an offer of suitable work after she failed to respond to the Office's notice providing appellant with 30 days to accept the position or explain her reasons for refusal); cf. *Tobey Rael*, 46 ECAB 231, 237 (1994) (finding that the Office denied appellant due process by failing to provide him with an additional opportunity to avoid the penalty of termination of compensation after he submitted medical justification for his refusal to return to suitable work in response to the Office's 30-day notice).