U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TESSIE M. WELLS and DEPARTMENT OF VETERANS AFFAIRS, MEDICAL CENTER, Poplar Bluff, MO

Docket No. 99-639; Submitted on the Record;
Issued August 25, 1999

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective May 25, 1997 on the grounds that she refused an offer of suitable work.

The Board finds that the Office properly terminated appellant's compensation effective May 25, 1997 on the grounds that she refused an offer of suitable work.

Section 8106(c)(2) of the Federal Employees' Compensation Act provides in pertinent part, "A partially disabled employee who ... (2) refuses or neglects to work after suitable work is offered ... is not entitled to compensation."[1] However, to justify such termination, the Office must show that the work offered was suitable.[2] An employee who refuses or neglects to work after suitable work has been offered to her has the burden of showing that such refusal to work was justified.[3]

On June 7, 1995 appellant, then a 51-year-old pharmacy technician, sustained a cervical strain and left reflex sympathetic dystrophy. The Office authorized a left sympathectomy and a left arthroscopic manual shoulder manipulation and paid compensation for periods of disability. By decision dated May 13, 1997, the Office terminated appellant's compensation effective May 13, 1997 on the grounds that she refused an offer of suitable work. By decision dated and finalized April 13, 1998 and decision dated July 15, 1998, the Office denied modification of its May 13, 1997 decision.[4]

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[1] 5 U.S.C. § 8106(c)(2).

[2] *David P. Camacho*, 40 ECAB 267, 275 (1988); *Harry B. Topping, Jr.*, 33 ECAB 341, 345 (1981).

[3] 20 C.F.R. § 10.124; *see Catherine G. Hammond*, 41 ECAB 375, 385 (1990).

[4] The record also contains a September 17, 1998 decision in which the Office denied appellant's request for a

The evidence of record shows that appellant is capable of performing the program support clerk position offered by the employing establishment and determined to be suitable by the Office in March 1997. The position involved the performance of various clerical duties which could be performed with one hand and did not require lifting more than five pounds. The position allowed appellant to work on a part-time basis until she was cleared by her physician to work on a full-time basis. The evidence of record reveals that appellant is vocationally and educationally capable of performing the position.

In determining that appellant is physically capable of performing the program support clerk position, the Office properly relied on the opinion of Dr. Edwin Dunteman, appellant's attending anesthesiologist. On March 11, 1997 Dr. Dunteman reviewed the description of the program support clerk position offered by the employing establishment and determined that appellant was able to perform the position.

The Board notes that, therefore, the Office has established that the program support clerk position offered by the employing establishment is suitable. As noted above, once the Office has established that a particular position is suitable, an employee who refuses or neglects to work after suitable work has been offered to her has the burden of showing that such refusal to work was justified. Appellant refused the program support clerk position on March 20, 1997. The Board has carefully reviewed the evidence and argument submitted by appellant in support of her refusal of the program support clerk position and notes that it is not sufficient to justify her refusal of the position. Appellant submitted an April 1, 1998 report in which Dr. Dunteman indicated that she exhibited a progression of her causalgia symptoms when he examined her on that date. Regarding appellant's ability to work, he stated, "I am not optimistic that even half days would be tolerable" and recommended that a physiatrist provide more specific restrictions. In addition to the fact that Dr. Dunteman provided a vague opinion on appellant's ability to work in April 1998, he did not provide any opinion on appellant's ability to perform the program support clerk position at the time it was offered in March 1997.

For these reasons, the Office properly terminated appellant's compensation effective May 25, 1997 on the grounds that she refused an offer of suitable work.[5]

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second hearing before an Office hearing representative. Appellant did not request an appeal of this decision and the matter is not currently before the Board.

[5] The Board notes that the Office complied with its procedural requirements prior to terminating appellant's compensation, including providing her with an opportunity to accept the file clerk position after informing her that her reasons for initially refusing the position were not valid; *see generally Maggie L. Moore*, 42 ECAB 484 (1991), *reaff'd on recon.*, 43 ECAB 818 (1992).

The decisions of the Office of Workers' Compensation Programs dated April 13 and July 15, 1998 are affirmed.[6]

Dated, Washington, D.C.
August 25, 1999

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

[6] Appellant submitted additional evidence after the Office's July 15, 1998 decision, but the Board cannot consider such evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c).