U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHARLES D. McCOMB and DEPARTMENT OF THE ARMY, ANNISTON ARMY DEPOT, Anniston, Ala.

Docket No. 98-2145; Submitted on the Record;
Issued June 3, 1999

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation benefits effective March 29, 1998 on the grounds that he refused an offer of suitable work pursuant to section 8106(c) of the Federal Employees' Compensation Act.

The Board has duly reviewed the case record in the present appeal and finds that the Office properly terminated appellant's compensation benefits effective March 29, 1998 on the grounds that he refused an offer of suitable work pursuant to section 8106(c) of the Act.

It is well settled that once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.[1] As the Office in this case terminated appellant's compensation under 5 U.S.C. § 8106(c), the Office must establish that appellant refused an offer of suitable work.

Section 10.124(c)[2] of the Office's regulations 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 showing before a determination is made with respect to termination of entitlement to compensation.[3] To justify termination of compensation, the Office must show that the work offered was suitable and must inform appellant of the consequences of refusal to accept such employment.[4]

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[1] *Arthur C. Reck*, 47 ECAB 339 (1996); *Barbara R. Bryant*, 47 ECAB 715 (1996).

[2] 20 C.F.R. § 10.124(c).

[3] *Arthur C. Reck*, *supra* note 1.

[4] *Id.*

In the present case, the Office accepted that appellant sustained a left knee strain in the performance of duty on May 12, 1987 and subsequently accepted right knee chondromalacia as a consequential injury. In February 1997, based on a 1995 functional capacity evaluation, which indicated that appellant could not perform his prior work as a heavy equipment repairer, but could perform light physical work, the employing establishment identified a position of material handler as a possible suitable job for appellant. The employing establishment forwarded a copy of the position description, as well as the physical requirements of the job to appellant's attending physician, Dr. George Hill, a Board-certified orthopedic surgeon, for his review and approval. On April 10, 1997 after reviewing the physical requirements of the position, he approved the position and indicated the precise number of hours appellant could perform each of the identified tasks. With respect to the operation of a forklift, one of the requirements of the position, Dr. Hill noted that appellant could only operate forklifts with automatic transmission.

The employing establishment offered appellant the position of materials handler on April 23, 1997. The physical requirements of this position were within the restrictions imposed by Dr. Hill. Based on appellant's assertion that Dr. Hill had not actually released him for work, the Office requested clarification from him. In his response dated May 12, 1997, Dr. Hill again indicated that appellant could return to the position as described to him, with the exception of operating foot controls.

By way of response, on May 14, 1997, appellant submitted a letter from Dr. Joseph W. Forte, an internist and another of his treating physicians. In his letter dated May 9, 1997, Dr. Forte stated:

> "[D]ue to multiple medical problems, especially the mitral valve prolapse, degenerative joint disease of the knees, and GI problems, it is medically unwise for him to perform safely and effectively in his present job description. Therefore, I cannot release him to return to work at this time."

By letter dated September 13, 1997, the Office complied with its procedural requirements by advising appellant that the position of material handler was suitable, that the position was currently available, that appellant would have 30 days to accept the position or provide an explanation for refusing it, that it would consider any explanation provided by him prior to making a decision as to whether he was justified in refusing the offered position and that his wage-loss compensation would be terminated if he refused suitable work and did not provide a valid reason for doing so. The Office specifically noted that while Dr. Forte had not released appellant to work, he had provided no medical rationale to explain why appellant is physically disabled and unable to perform the position.

In response to the Office's letter, appellant submitted a note from Dr. Hill which indicated that appellant could not climb, stoop, or lift more than 25 pounds, could not walk more than two hours a day and must work on a padded area if the work area floors are concrete. In his accompanying letter dated October 9, 1997, appellant stated that because of the restrictions Dr. Hill had placed on him, he did not feel he could perform the duties of the job offered. Appellant noted that while Dr. Hill had restricted him from climbing, the job offered required him to climb up on a forklift. Appellant further stated that he did not feel that the job could be performed by walking only two hours a day.

By letter dated December 29, 1997, the Office advised appellant that the reasons he had provided for refusing the position had been found not to be valid. The Office explained that the Office rehabilitation counselor had been instructed to provide appellant with shoe inserts for walking and standing and to ensure that the work area was padded. The Office also noted that the employing establishment had indicated that appellant would not be required to operate a forklift as part of his duties, as someone else could operate the vehicle for him. Appellant was also informed that he had an additional 15 days to accept the position or his compensation benefits would be terminated.

By letter dated January 5, 1998, appellant responded to the Office's December 29, 1997 letter. Appellant stated that he had not refused the position, but had instead provided his reasons why he believed the position was not suitable. He stated that he wished to know what the duties of the position would be, who would be his rehabilitation counselor and, if he were to accept the position, whether he would be entitled to his schedule award payments.

By decision dated March 19, 1998, the Office terminated appellant's compensation on the grounds that he had refused suitable work.

The Board finds that the evidence of record establishes that appellant is capable of performing the duties of the material handler position which was offered to him by the employing establishment. Dr. Hill reported that appellant was able to return to light physical work and provided appellant's work restrictions. The position of material handler fits within these restrictions.

In rejecting the offer by the employing establishment, appellant initially relied upon a May 9, 1997 report from Dr. Forte. He indicated that he could not release appellant to work because of his mitral valve prolapse, degenerative joint disease of the knees and gastrointestinal problems. The probative value of this report is limited, in that Dr. Forte did not provide any supporting detail or rationale for his opinion. A medical conclusion without supporting rationale is of little probative value.[5] The Office informed appellant that Dr. Forte's May 9, 1997 report was insufficiently rationalized, but appellant did not submit any further medical evidence from him.

The weight of the medical evidence indicates that the position offered, as subsequently slightly modified through the efforts of the Office rehabilitation counselor in accordance with the concerns of Dr. Hill, is consistent with appellant's physical limitations. Therefore, the refusal of the job offer cannot be deemed reasonable or justified and the Office properly terminated appellant's compensation.

[5] *Jean Culliton*, 47 ECAB 728 (1996).

The March 19, 1998 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.
June 3, 1999

George E. Rivers
Member

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member