

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JEWELL A. RAGSDALE and U.S. POSTAL SERVICE,  
POST OFFICE, Beaumont, Tex.

*Docket No. 98-2554; Submitted on the Record;  
Issued June 8, 1999*

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DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

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

On September 12, 1995 appellant, then a 34-year-old-year window clerk, was grabbed by the arm and robbed while walking to the bank to make a deposit on behalf of the employing establishment. She was diagnosed and treated for post-traumatic stress and depression by Dr. Edward P. Gripon, a Board-certified psychiatrist.<sup>1</sup> On October 10, 1996 the Office accepted appellant's claim for post-traumatic stress disorder and depression. Appellant received compensation for total disability from October 30, 1995 until October 15, 1997, when the Office terminated her wage-loss benefits.

The Office sent appellant for a second opinion evaluation to be performed by Dr. Karl F. Mortel, a Board-certified clinical neuropsychologist, on May 9, 1997. Dr. Mortel was provided a copy of the medical record and a statement of accepted facts. In an undated report, he noted that appellant had preexisting depressive psychiatric symptoms which were exacerbated by the robbery. After making behavioral observations, physical and objective findings, Dr. Mortel diagnosed post-traumatic stress disorder related to the robbery, noting that appellant was unable to leave the home unaccompanied because she was afraid of strangers. According to Dr. Mortel, appellant was unable to work outside of the home for at least nine months to one year. He recommended more aggressive therapy and stated that "[a]s her therapy and treatment progress, work will be an option, but her hours will have to be phased in gradually over an extended period of time."

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<sup>1</sup> Because the assailant was identified by the police as having Hepatitis B, appellant received treatment for Hepatitis B exposure.

In a work capacity evaluation form dated May 14, 1997, Dr. Mortel noted that appellant was unable to work in her usual workplace, that she was afraid of strangers and could not work in a public situation, and that she would have difficulty performing high volume or stressful work. He noted that appellant could only maintain her concentration for brief periods of time but that she could organize and complete tasks at home if her supervisor was trusted. Dr. Mortel concluded that appellant was functionally homebound. He listed the date of maximum medical improvement as “[not available].”

By letter dated May 21, 1997, the Office requested that Dr. Gripon review Dr. Mortel’s report and provide an opinion as to when appellant could begin the process of a gradual return to work.

In a July 21, 1997 report, Dr. Gripon advised that when he last treated appellant on July 16, 1997 she had shown some slow but gradual progress. Dr. Gripon agreed with Dr. Mortel that appellant needed more intensive psychotherapy and he planned to increase her visits from once to twice a month. The doctor specifically stated that “[a]t this time, I feel [appellant] could begin some limited work and certainly would, in my opinion, benefit from a gradual return to the workplace.”<sup>2</sup>

Based on the reports of Drs. Mortel and Gripon, the employing establishment began an effort to seek reemployment for appellant. The employing establishment determined that the position of a limited-duty clerk was in agreement with the physicians’ restrictions because appellant would be working only four hours a day and only authorized persons would be allowed to enter her work area by means of an access code.

A description of the limited-duty clerk position was provided to Dr. Gripon, and the doctor returned a form with a box check marked to indicate that the position was suitable for appellant.

The employing establishment offered appellant the position of limited-duty clerk but she returned the job offer form, stating that she wanted to discuss the job with her doctor first.

By letter dated September 11, 1997, the Office found the position of limited-duty clerk to be suitable and advised appellant that she had 30 days to either accept the position or provide an explanation of the reasons for refusing the offer of suitable employment.

On September 12, 1997 appellant declined the job offer and expressed her desire to work at home as that was the only location she found permissible to work.

By letter dated September 17, 1997, the Office advised appellant that her reasons for refusing the offer of suitable employment were found to be unacceptable. Appellant was notified that she had 15 days to accept the offer of suitable employment or risk termination of her compensation benefits.

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<sup>2</sup> In a work capacity evaluation form dated July 20, 1997, Dr. Gripon noted restrictions and again stated that “a gradual return to work in a structured setting would be most likely to succeed.”

By letter dated September 23, 1997, appellant informed the Office that the job site to which the employing establishment had assigned her was not secure as it had no alarm system and was located directly behind an area accessible to the public.

In a decision dated October 15, 1997, the Office terminated appellant's compensation on the grounds that appellant refused an offer of suitable job employment.

By letter dated November 6, 1997, which was received by the Office on November 10, 1997, appellant requested a review of the written record and submitted a November 5, 1997 report from Dr. Gripon.<sup>3</sup>

In a November 5, 1997 report, Dr. Gripon diagnosed post-traumatic stress disorder and depression with associated anxiety. According to Dr. Gripon, appellant experienced significant stress symptoms, including intrusive thoughts, recurrent nightmares when she is in any situation or environment reminiscent of the area or circumstances of her original injury. Dr. Gripon specifically noted that he "had attempted to have her undergo a trial of work and that this so markedly increased her symptoms, that she was unable to even attend work at this stage." He opined that appellant continued to be emotionally impaired and that her overall prognosis for a return to work was guarded. Dr. Gripon concluded that appellant was fragile and had a long way to go before she was able to return to work. Treatment notes dating from September through November 1997 indicate that appellant presented with complaints of insomnia and symptoms of anxiety and depression related to her anticipated return to the workplace.

Several facsimiles were later sent to the Office. By facsimile transmission dated May 20, 1998, Dr. Gripon advised the Office that appellant was being treated for depression and that she was taking medication.

By facsimile transmission dated June 1, 1998, the Office received a letter from appellant threatening suicide and hospital admission records dated June 1, 1998 which pertained to a psychiatric evaluation of appellant at the Columbia Behavioral Health Center for suicidal behavior.

By facsimile transmission dated June 11 and June 15, 1998, the Office received a June 5, 1998 report from Dr. Gripon which advised that appellant had been hospitalized for a marked increase in symptoms related to her post-traumatic stress disorder.<sup>4</sup>

In a decision dated July 14, 1998 and finalized on July 15, 1998, an Office hearing representative affirmed the Office's October 15, 1997 decision terminating appellant's compensation on the grounds that she refused an offer of suitable employment.

The Board concludes that the Office improperly terminated appellant's compensation on the grounds that she refused an offer of suitable employment.

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<sup>3</sup> Appellant also submitted a letter from her mother.

<sup>4</sup> The record at pages 280 and 281 pertain to a different claimant.

Once the Office accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.<sup>5</sup> After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.<sup>6</sup>

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.<sup>7</sup> To justify termination of compensation, the Office must establish that the work offered was suitable.<sup>8</sup>

In the instant case, the Office determined that the position of a limited-duty clerk was suitable employment for appellant. Dr. Gripon, appellant's treating physician, likewise approved the job position as suitable. Despite appellant's allegations that she would not be secure in her workplace, the Office found that appellant's reasons for refusing the offer of suitable work were unacceptable. Thereafter, appellant requested a review of the written record and submitted a November 5, 1997 report from Dr. Gripon. The Office also received by facsimile transmission hospitalization records dated June 1, 1998 and additional reports from Dr. Gripon dated May 20 and June 5, 1998. In affirming the termination of appellant's compensation, however, the Office hearing representative discussed only Dr. Gripon's November 5, 1997 report in relation to the prior evidence of record. The Office specifically rejected Dr. Gripon's opinion, that appellant was unable to return to work due to a marked increase in her post-traumatic symptoms, as being not sufficiently reasoned.

The Board finds that the Office erred by not considering all of the medical evidence prior to terminating appellant's compensation for refusal to accept suitable work. Because the Board's jurisdiction of a case is limited to reviewing that evidence which was before the Office at the time of its final decision,<sup>9</sup> it is necessary that the Office review all evidence submitted by a claimant and received by the Office prior to issuance of its final decision.<sup>10</sup> As the Board's decisions are final as to the subject matter appealed,<sup>11</sup> it is crucial that all evidence relevant to the subject matter of the claim which was properly submitted to the Office prior to the time of issuance of its final decision be addressed by the Office. This is particularly important in this appeal as section 8106(c) is a penalty provision which, as recognized by the Board, may serve as

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<sup>5</sup> *Harold S. McGough*, 36 ECAB 332 (1984).

<sup>6</sup> *Jason C. Armstrong*, 40 ECAB 907 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979).

<sup>7</sup> 5 U.S.C. § 8106(c)(2).

<sup>8</sup> *David P. Camacho*, 40 ECAB 267 (1988).

<sup>9</sup> See 20 C.F.R. § 501.2(c).

<sup>10</sup> See *William A. Couch*, 41 ECAB 548 (1990).

<sup>11</sup> See 20 C.F.R. § 501.6(c).

a bar to the continued receipt of monetary compensation benefits.<sup>12</sup> As such, the facts in evidence in this case are liberally construed in favor of the employee to effectuate the purposes of the Act and not in derogation of the employee's rights.<sup>13</sup>

The Board finds that the report of Dr. Mortel dated May 14, 1997 that appellant was functionally homebound conflicts with the opinion of Dr. Gripon that the job position of limited-duty clerk at the employing establishment was suitable. Considering the subsequent reports of Dr. Gripon dated May 20, June 1 and 5, 1998, the Boards finds that the Office did not meet its burden of proving appellant refused suitable employment.

The decisions of the Office of Workers' Compensation dated Programs July 14, 1998 and October 15, 1997 are reversed.

Dated, Washington, D.C.  
June 8, 1999

George E. Rivers  
Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>12</sup> See *Stephen R. Lubin*, 43 ECAB 564 (1992).

<sup>13</sup> See *Erlin J. Belue*, 13 ECAB 88 (1961).