

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ONNIE PICKENS and U.S. POSTAL SERVICE,
NORTHTOWN STATION, Chicago, Ill.

*Docket No. 97-1637; Submitted on the Record;
Issued May 14, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation for refusal to accept suitable employment.

On August 30, 1988 appellant, then a 44-year-old letter carrier, was lifting flats to place in her carrier bag when she felt a sharp pain in her back. She stopped working on September 20, 1988 and returned to light-duty work on October 20, 1988. Appellant stopped work again on February 27, 1989 and did not return to work thereafter. The Office accepted appellant's claim for a bulging L4-5 disc and paid temporary total disability compensation for the period September 24 through October 19, 1988 and the period after February 27, 1989.

In a May 14, 1993 letter, the employing establishment offered appellant a position as a modified clerk. The employing establishment indicated that the duties of the position included answering the telephone, providing information to the public, maintaining information such as books and manuals, maintaining the mailing list and filing correspondence. The physical requirements of the position were described as lifting less than 5 pounds, occasional standing and sitting for 40 to 50 minutes an hour. It indicated that she would be scheduled to work eight hours a day, five days a week. In an August 23, 1994 letter, the Office informed appellant that it found that the position offered to her by the employing establishment was suitable. The Office warned appellant that if she refused the employment or failed to report for work when scheduled without reasonable cause, her compensation benefits would be terminated. In a February 24, 1995 letter, the employing establishment informed appellant that the job offer made in the May 14, 1993 letter remained open and available to her.¹ She was requested to report on March 4, 1995. In a March 1, 1995 response, appellant refused the job on the grounds that her physician, Dr. Marian Sassetti, a Board-certified family practitioner, indicated that she could work only two to four hours a day.

¹ Appellant subsequently argued that she had not received the May 13, 1993 nor the August 23, 1994 letters. In view of the Board's disposition in this case, it will not address appellant's arguments on this point.

In a March 9, 1995 decision, the Office terminated appellant's compensation effective April 2, 1995 on the grounds that she refused suitable employment. In a February 6, 1996, decision an Office hearing representative affirmed the Office's March 9, 1995 decision. In merit decisions dated July 30, 1996 and January 22, 1997, the Office denied appellant's request for modification of the Office's prior decisions.

The Board finds that the Office improperly terminated appellant's compensation for refusal to accept suitable work.

Section 8106(c)(2) of the Federal Employees' Compensation Act states: "a partially disabled employee who: (1) refused to seek suitable work; or (2) refuses or neglects to work after suitable work is offered is not entitled to compensation."² An employee who refuses or neglects to work after suitable work has been offered to him has the burden of showing that such refusal to work was justified.³

The Office, in its August 23, 1994 letter, advised appellant that her compensation would be terminated if she refused the offered employment without reasonable cause. Subsequently the employing establishment indicated that the position offered previously remained open. Appellant responded that she was refusing the position on the advice of her physician. Under the Office's procedures, the Office should evaluate appellant's response and inform her whether it found her reasons for refusing the employment to be reasonable. If it should find that her reasons for refusing the position are unacceptable, the Office must then give appellant another 15 days to accept the position or face termination of compensation.⁴ However, in this case the Office terminated appellant's compensation in a March 9, 1995 decision without consideration of appellant's stated reason for refusing the position, without any finding of whether appellant's reason for refusing the position was acceptable and, if not, without giving appellant a final opportunity to accept the position. Because the Office failed to comply with its procedures, the Board will set aside the Office's termination in this case.

² 5 U.S.C. § 8106(c)(2).

³ 20 C.F.R. § 10.124.

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.5(d) (December 1993).

The decisions of the Office of Workers' Compensation Programs dated January 22, 1997 and July 30, 1996 are hereby reversed.

Dated, Washington, D.C.
May 14, 1999

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member