

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PATRICIA M. FINCH and U.S. POSTAL SERVICE,
POST OFFICE, Buffalo, NY

*Docket No. 98-2307; Submitted on the Record;
Issued November 5, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, 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 she refused an offer of suitable work.

On February 1, 1996 appellant, then a 38-year-old letter carrier, sustained an injury to her left leg when she fell while in the performance of duty. Her claim was accepted by the Office for a left hip contusion and trochanter strain and she continued work on limited duty. Arthroscopic surgery was performed on appellant's left hip on August 7, 1997. Appellant received appropriate compensation for her disability from work.¹

On January 15, 1998 appellant was referred for examination by Dr. E. Robert Wilson, a Board-certified orthopedic surgeon. In a January 26, 1998 report, Dr. Wilson reviewed appellant's history of injury and medical treatment. He reviewed a July 5, 1996 magnetic resonance imaging (MRI) scan of the hips, which was reported as normal, March 12, 1997 x-rays of the left hip, which showed no abnormalities and a repeat MRI on May 1, 1997 of the left hip, which revealed no abnormalities. Dr. Wilson noted that appellant was diagnosed as having left hip pain of undetermined etiology prior to arthroscopic surgery, which made findings of a chondral flap defect down the anterior and anteriolateral acetabulum, fraying of the anterior labrum and anterior synovitis. Appellant was found totally disabled following surgery and placed on physical therapy. Dr. Wilson stated that examination reported his findings on range of motion of the left hip and opined that appellant could return to work if allowed to alternate between sitting and standing at 15 minute intervals and not required to walk more than 20 minutes at one time. He also recommended a 20-pound lifting restriction. He completed a work

¹ On August 9, 1997 appellant filed an emotional condition claim for depression. The claim was denied by the Office in a March 31, 1998 decision. Appellant has not sought review of the Office's March 31, 1998 decision in the present appeal; therefore, the decision is not properly before the Board on this appeal. *See* 20 C.F.R. § 501.2(c).

restriction evaluation, finding appellant would return to work for eight hours a day subject to specified limitations.

On February 10, 1998 the employing establishment offered appellant limited-duty work in conformance with Dr. Wilson's physical limitations as a modified city carrier. Appellant's duties were described as answering telephones at the carrier desk, making computer input and other sedentary duties as assigned by her supervisor. The assigned schedule was listed as 11:00 a.m. to 7:30 p.m. commencing February 28, 1998.

By letter dated February 13, 1998, the Office notified appellant that it had reviewed the limited-duty job offer and found it suitable with her physical limitations and located within her commuting area. Appellant was advised that the job remained available and that she had 30 days to accept the position or provide an explanation for her refusal of the job offer. Appellant was advised of the penalty provision of 5 U.S.C. § 8106(c).

On February 25, 1997 appellant signed the limited-duty job offer, noting that she would accept the position "when hours are changed." By letter dated March 2, 1998, the employing establishment forwarded appellant's declination of the limited-duty offer to the Office. It was noted that appellant preferred working the hours of 7:00 a.m. to 3:30 p.m., but that the shift assignment was made based on when appellant was needed and on her seniority.²

On March 24, 1998 the Office advised appellant that it had reviewed her comments concerning the job offer and that it was found suitable to her physical limitations and restrictions. Appellant was advised that her stated preference for an earlier shift was an insufficient reason to reject the job offer and notified that she had 15 days in which to report to work when scheduled or her compensation would be terminated. Appellant was advised that she would retain her right to continued medical care. She did not respond.

By decision dated April 20, 1998, the Office terminated appellant's compensation benefits effective April 25, 1998 finding that she refused an offer of suitable work. The Office found that the weight of medical opinion as to appellant's physical limitations was represented by the report of Dr. Wilson. The Office noted that Dr. Zysman and Dr. Grant were not specialists in the relevant field of orthopedic surgery and had not provided any medical rationale for supporting appellant's preference for an earlier work shift.³

The Board finds that the Office properly terminated appellant's compensation benefits based on her refusal of an offer of suitable work.

Under section 8106(c)(2) of the Federal Employees' Compensation Act,⁴ the Office may terminate the compensation of a partially disabled employee who refuses or neglects to work

² Appellant submitted a February 24, 1998 note from Dr. Thomas N. Grant, a clinical psychologist, noting appellant's preference of working 7:00 a.m. to 3:00 p.m. as fatigue built up during the day. A note from Dr. Jules Zysman, a family practitioner, recommended a 7:00 a.m. to 3:00 p.m. shift as her time of "maximal functioning."

³ The record contains evidence that appellant worked part time at a family-owned hair styling business.

⁴ 5 U.S.C. § 8106(c)(2).

after suitable work is offered to, procured by or secured for the employee.⁵ Section 10.124(c) of the Office's implementing federal 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.⁶ 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.⁷

The record establishes that following the Office's acceptance of appellant's claim for a left hip injury, she received appropriate compensation benefits for disability from work and medical expenses. On January 26, 1998 appellant was examined by Dr. Wilson, a Board-certified orthopedic surgeon. He provided a comprehensive medical report in which he reviewed appellant's history of injury and medical treatment and found that she could return to full-time limited-duty work subject to physical limitations he specified. The employing establishment prepared a limited-duty job offer conforming with Dr. Wilson's findings which the Office reviewed and found suitable to appellant's physical limitations. The Office complied with its procedural requirements by advising appellant on February 13, 1998 of the suitability of the offered position, that the job remained open and that her refusal to accept the job offer, without justification, could result in the termination of compensation benefits. Appellant was provided 30 days in which to accept or reject the job offer or submit her reasons for refusal. The record establishes that appellant did not accept the job offer, stating a personal preference to work a 7:00 a.m. to 3:30 p.m. work shift instead of the duty shift specified as 11:00 a.m. to 7:30 p.m. By letter dated March 24, 1998, the Office advised appellant that her reasons for rejecting the job offer were not justified as the weight of medical evidence did not establish that an earlier work schedule was necessitated for medical purposes.⁸ Appellant was advised that she thereafter had 15 days to accept the position or her compensation would be terminated. She did not return to work. On April 20, 1998 the Office terminated appellant's compensation benefits effective April 25, 1998.

The Board finds that the Office properly determined that appellant rejected an offer of suitable employment and met its burden of proof in terminating her monetary compensation benefits under section 8106(c)(2). The evidence establishes that despite providing appellant with notice that her stated reason for refusing the job offer was not acceptable and an opportunity to return to work, appellant failed to accept the job offer of limited duty. The weight of the medical evidence, as represented by the report of Dr. Wilson, establishes that the position is medically suitable and that she could return to work full time subject to the limitations he defined. While

⁵ *Camillo R. DeArcangelis*, 42 ECAB 941 (1991).

⁶ 20 C.F.R. § 10.124(c).

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

⁸ *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.5(c) (July 1996) which notes that unacceptable reasons for refusal of a suitable job offer include the employee's dislike of the position offered or the work hours scheduled.

appellant contends that an earlier shift was necessary for medical reasons, the reports submitted from her family practitioner and clinical psychologist do not contain rationale explaining the need of a shift commencing at 7:00 a.m. instead of 11:00 a.m. Nor do the physicians address appellant's need for such a restriction in light of her acknowledgment that she commenced working part time in a family business. Therefore, the Office properly terminated appellant's compensation for refusing an offer of suitable work.

The April 20, 1998 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.
November 5, 1999

George E. Rivers
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member