U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JUDITH A. BOYLE and U.S. POSTAL SERVICE,
POST OFFICE, Toledo, OH

*Docket No. 99-533; Submitted on the Record;*
*Issued November 23, 1999*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs met its burden to terminate appellant's compensation benefits on the grounds that she refused suitable work.

Appellant filed a claim on April 4, 1995 alleging that she developed back condition due to factors of her federal employment. The Office accepted appellant's claim for chronic myofascial strain of the right trapezius muscle, chronic myofasciitis with trigger point of the right trapezius, brachial plexus stretching injury, lumbosacral strain and chondromalacia of the right patella. Appellant stopped work on April 5, 1995.

The employing establishment offered appellant a position on June 25, 1997. The limited-job offer stated that the schedule was to be flexible and included mounted delivery, dismount delivery of apartment complexes, express mail delivery, sorting carrier delivery mail, basic filing of postal forms, answering telephones and assisting with customer inquiries. The physical requirements of the position were described in detail and the second opinion physician indicated that appellant could work within these requirements.

Appellant declined the position by letter dated August 4, 1997 and offered her reasons. She stated that her hours were to be fixed, not flexible as stated in the offer, that she could not perform the mounted delivery duties, that dismounted delivery of apartment complexes needed to be defined and clarified, and that the job offer did not specifically describe how mail was to be carried without a mailbag.

By letter dated September 4, 1997, the Office informed appellant that the position was suitable and allowed her 30 days to accept the position or offer her reasons for refusal. On October 7, 1997 the Office stated that the reasons offered by appellant on August 4, 1997 were not acceptable and allowed her an additional 15 days to accept the position.

In a letter dated October 18, 1997 addressed to the Office, appellant stated that she was enclosing a copy of the limited-job offer. She stated, "I, as well as my attorney and the carrier union, feel I have been forced into signing this document through the statements made by you in the contents of your letter." The employing establishment added a note indicating that this copy sent to them did not include a copy of the job offer.

In a report dated November 5, 1997, appellant's rehabilitation counselor noted that appellant reported accepting the limited-duty position under duress and mailing it to the Office.

The employing establishment submitted a letter dated November 14, 1997 and stated, "This letter is a follow up to your letter of October 7, 1997 to the above referenced employee regarding the refusal of a job offer." The employing establishment asked if the Office would be terminating compensation.

By decision dated November 26, 1997, the Office terminated appellant's compensation benefits finding that she refused an offer of suitable work. The Office issued a decision on November 26, 1997 which did not correspond to the facts of the case. Specifically, the Office did not properly describe the duties of the offered position, the dates of the letters advising appellant of the suitability of the position, nor the name of the physician indicating that appellant could perform the physical duties of the position. The Office stated, "As of this date, November 26, 1997, this Office has not received any response from the claimant accepting or refusing the suitable job offer."

In a letter dated December 20, 1997, the postmaster stated that appellant had not responded to a job offer from the Office.

Appellant requested reconsideration on December 27, 1997 and stated that she had signed and returned the job offer to the Office on October 18, 1997.

By decision dated January 26, 1998, the Office modified its November 26, 1997 decision, but concluded that appellant had refused suitable work. The Office corrected the factual errors. However, the Office stated on November 14, 1997 that the employing establishment had stated that appellant had refused the job offer.

Appellant requested reconsideration on July 3, 1998 and submitted additional evidence. This evidence included a copy of the limited-duty job offer accepted by her on October 18, 1997 and stating that appellant felt that she was being forced to sign the offer as written. Appellant also included a statement dated February 4, 1998 from Robert T. Newbold, a union official, noting that appellant had shown him a copy of the signed job offer on October 17, 1997 and that he had witnessed appellant placing the job offer and the October 18, 1997 letter in a stamped envelope addressed to the Office.

The Office denied modification of its January 26, 1998 decision on August 5, 1998. The Office found that appellant had not "genuinely accepted" the offered position.

The Board finds that the Office did not meet its burden of proof to terminate appellant's compensation benefits.

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 8106(c) of the Act[2] provides that a partially disabled employee who refuses or neglects to work after suitable work is offered to, procured by, or secured for the employee is not entitled to compensation. Section 10.124(c) of the applicable regulations[3] provides that an employee who refuses or neglects to work after suitable work has been offered or secure 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. 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]

The Office properly found that appellant's reasons for refusing the offered position were not acceptable. The medical evidence established that she was capable of performing the duties and traveling to the job. The Office properly informed appellant of the additional 15 days to accept the position on October 7, 1997. However, the record does not establish that appellant refused the position after receiving the Office's October 7, 1997 letter allowing an additional 15 days to accept the offered position.

Appellant's letter dated October 18, 1997 indicated that she was accepting the position with reservations. This letter was addressed to the Office and received through the employing establishment. The rehabilitation counselor submitted a report noting that appellant asserted that she had accepted the position. Furthermore, contrary to the Office's January 26, 1998 decision, the employing establishment did not state that appellant had refused the position in its November 14, 1997 letter. Rather, the employing establishment inquired what steps the Office was undertaking regarding appellant's refusal received prior to the October 7, 1997 15-day letter.

The evidence supporting appellant's July 1998 reconsideration request including the signed job offer and the letter from Mr. Newbold, the union official, indicate that appellant accepted the position and attempted to notify both the Office and the employing establishment. As there is no evidence that appellant refused the offered position or that she refused to report to work at a time set by the employing establishment, the Office failed to meet its burden of proof in establishing that appellant refused an offer of suitable work.

The decisions of the Office of Workers' Compensation Programs dated August 5 and January 26, 1998 are hereby reversed.

[1] *Mohamed Yunis,* 42 ECAB 325, 334 (1991).

[2] 5 U.S.C. § 8106(c)(2).

[3] 20 C.F.R. § 10.124(c).

[4] *Arthur C. Reck,* 47 ECAB 339 (1995).

Dated, Washington, D.C.
November 23, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member