U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JESUS P. NAVARRETTE and U.S. POSTAL SERVICE,
POST OFFICE, New York, NY

Docket No. 00-147; Submitted on the Record;
Issued August 22, 2000

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation as of July 27, 1999 on the grounds that he refused an offer of suitable work.

The Office accepted appellant's claim for a meniscus tear of the right knee and right knee arthroscopy.

In a report dated November 6, 1997, appellant's treating physician, Dr. Lester Lieberman, a Board-certified orthopedic surgeon, stated that on October 8, 1997 appellant had an operative arthroscopy for a tear of the lateral meniscus of the right knee, chondromalacia of the medial femoral condyle and lateral femoral condyle. He recommended that a magnetic resonance imaging (MRI) scan be obtained. In a progress report dated March 24, 1998, Dr. Lieberman stated that he had been treating appellant for a tear of the lateral meniscus of the right knee and lumbosacral sciatica. He stated that, due to his injuries on the job, appellant was unable to work and should remain out of work until further notice. In a progress report dated January 13, 1999, Dr. Lieberman reiterated that appellant was unable to work due to his work injuries. In a work restriction evaluation dated March 25, 1999, he indicated that appellant could not work eight hours and could tolerate only one hour of walking and standing and two hours of sitting. In a progress note dated August 12, 1999, Dr. Lieberman also opined that appellant was unable to work due to his work injuries.

In a report dated January 14, 1999, the second opinion physician, Dr. Howard M. Baruch, an orthopedic surgeon, considered appellant's history of injury, performed a physical examination and reviewed MRI scans of appellant's back and right knee. Dr. Baruch diagnosed low back strain and right knee status post arthroscopy. He stated that appellant was 80 percent disabled due to his right knee condition and that he could return to a light, sedentary job which did not require lifting more than 15 pounds or extensive use of the legs. In a report dated March 11, 1999, to clarify his January 14, 1999 report, Dr. Baruch stated that appellant had three

arthroscopic scars and an operative report demonstrating lateral meniscal tear, chondromalacia of the lateral femoral condyle and medial femoral condyle, and osteoarthritis. He stated that these were objective findings and reiterated that appellant could tolerate a sedentary job.

By letter dated June 4, 1999, the employing establishment offered appellant a position as a mailhandler which consisted of traying loose and bundled letters under five pounds and patching up damaged letters and flats. The offer stated that the assignment could be done in a sedentary position and appellant could walk, stand, squat, kneel and climb for two hours per day. Further, appellant could push and pull up to 10 pounds for up to 4 hours per day and would not be required to do heavy lifting greater than 15 pounds.

By letter dated June 8, 1999, the Office indicated that it found the job offered to appellant was suitable and gave appellant 30 days to accept the position or explain why he could not accept it.

By letter dated July 8, 1999, appellant declined the offer stating that he had difficulty walking, standing and sitting. He stated that he had two herniated discs and had a right and left sciatica with pain going down to his ankles and that pain, combined with his right knee pain and pressure, caused him great discomfort and fatigue.

By letter dated July 9, 1999, the Office informed appellant that it found the job offered to him was suitable but the reason appellant gave for not accepting the position was not acceptable. The Office advised that appellant had 15 days to accept the position or the Office would terminate his compensation benefits.

On the July 9, 1999 letter date stamped received by the Office September 7, 1999, appellant handwrote that he refused the offer because the arthroscopy surgery on his knee had not healed and he had "LTD gait and pain" and lumbosacral spine injury for which he had no treatment.

By decision dated July 27, 1999, the Office terminated appellant's compensation on the grounds that he had refused suitable work.

The Board finds that the Office properly terminated appellant's compensation based on his refusal to accept suitable employment.

Under section 8106 (2) of Federal Employees' Compensation Act,[1] the Office may terminate compensation of an employee who refuses or neglects to work after suitable work is offered to, procured by or secured for the employee.[2] Section 10.124(c) of the Office's regulations provides that an employee who refuses or neglects to work after suitable work has been offered or secured 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

[1] 5 U.S.C. §§ 8101-8193.

[2] *Henry W. Sheperd, III*, 48 ECAB 382 (1997); *Patrick A. Santucci*, 40 ECAB 151 (1988).

a determination is made with respect to termination of entitlement to compensation.[3] To justify termination, 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 Board has required that, if an employee presents reasons for refusing an offered position, the Office must inform the employee if it finds the reasons inadequate to justify the refusal of the offered position and afford appellant one final opportunity to accept the position.[5]

In the present case, in his reports dated November 6, 1997 through August 12, 1999, appellant's treating physician, Dr. Lieberman noted that he was treating appellant for tear of the lateral meniscus of the right knee and lumbar sacral sciatica and that appellant was unable to work due to his work injuries. In his report dated January 14, 1999, the second opinion physician, Dr. Baruch, considered appellant's history of injury, performed a physical examination and reviewed MRI scans of appellant's back and right knee. He diagnosed low back strain and right knee status post arthroscopy. Dr. Baruch stated that appellant was 80 percent disabled due to his right knee condition and that he could return to a light, sedentary job which did not require lifting more than 15 pounds or extensive use of the legs. In a report dated March 11, 1999, to clarify his January 14, 1999 report, Dr. Baruch stated that appellant had three arthroscopic scars and an operative report demonstrating lateral meniscal tear, chondromalacia of the lateral femoral condyle and medial femoral condyle and osteoarthritis. He stated that these were objective findings and reiterated that appellant could tolerate a sedentary job.

Because Dr. Baruch went into more detail in his January 14 and March 11, 1999 reports and provided a rationalized medical explanation as to why he believed appellant could perform sedentary work, his opinion is entitled to more weight than Dr. Leiberman's opinion whose reports are short and cursory and do not provide a rationalized opinion for his conclusion that appellant was unable to work.[6] Based on Dr. Baruch's physical restrictions that appellant could perform sedentary work, could not lift more than 15 pounds and could not use his legs extensively, the mailhandler job which was sedentary and did not require lifting more than 15 pounds was suitable for appellant. In his written responses to the Office's June 8 and July 9, 1999 letters informing him that the job was suitable, appellant stated that his right knee, sciatica and back pain prevented him from working. This was not sufficient reason for refusing to perform the job as appellant did not present medical evidence to support his reason.[7] Further, appellant's low back pain was not an accepted condition. Inasmuch as the evidence of record establishes that the job of mailhandler was within appellant's physical restrictions as described by Dr. Baruch and appellant did not provide sufficient reason to show that he was unable to perform the work, he has not established that the Office erroneously terminated his compensation benefits.

[3] 20 C.F.R. § 10.124(c); *see also Catherine G. Hammond*, 41 ECAB 375 (1990).

[4] *Karen L. Mayewski*, 45 ECAB 219 (1993).

[5] *Rosie E. Garner*, 48 ECAB 220 (1996); *Maggie L. Moore*, 42 ECAB 484 (1991), *reaff'd on recon.*, 43 ECAB 818 (1992).

[6] *See David M. Ibarra*, 48 ECAB 218, 219 (1996).

[7] *See Henry W. Shepherd*, *supra* note 2.

The decision of the Office of Workers' Compensation Program dated July 27, 1999 is hereby affirmed.

Dated, Washington, D.C.
August 22, 2000

David S. Gerson
Member

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member