

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BARBARA B. SHIELDS and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS AFFAIRS MEDICAL CENTER, Tuscaloosa, AL

*Docket No. 99-2502; Submitted on the Record;
Issued August 1, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation benefits on the grounds that she refused an offer of suitable work.

On April 15, 1976 appellant, then a 38-year-old laundry worker, sustained a low back strain and herniated lumbar disc in the performance of duty.

In a letter dated October 5, 1998, Dr. H. Chester Boston, appellant's attending Board-certified orthopedic surgeon, provided a copy of a functional capacity evaluation report dated October 1, 1998. He noted that most of the activities performed by appellant in the evaluation were described as "self-limited" which indicated that she was not fully cooperative in the testing. Dr. Boston stated, "I see no reason to believe that [appellant] could not participate in some form of light sedentary work activity."

By letter dated December 2, 1998, the employing establishment provided Dr. Boston with a copy of the job description for the position of information receptionist, which the employing establishment felt was consistent with Dr. Boston's recommendation of light sedentary work activity and noted that the position was for four hours of work per day with the possibility of increased hours at a later date. The employing establishment asked Dr. Boston to review the position description and advise as to whether the position was suitable for appellant's work capabilities.

By letter dated December 2, 1998, the employing establishment provided appellant with a copy of the information receptionist position description which included the physical requirements for the position.

By letter dated December 7, 1998, Dr. Boston stated that he had reviewed the job description for the position of information receptionist and he stated “I believe that this is within her physical capabilities.”

On December 17, 1998 appellant rejected the job offer of information receptionist.

By letter dated March 29, 1999, the employing establishment advised appellant that it was again offering the position of information receptionist and advised that she needed to notify the employing establishment by April 19, 1999 as to whether she would accept the job offer.

On April 8, 1999 appellant rejected the information receptionist job offer and wrote “I am not able to work due to my back and pain in chest and I do n[o]t rest at night because my left leg hurts me so bad and most nights it is [four] and [five] in the morning before I go to sleep so I am unable to work.”

By letter dated April 14, 1999, the Office advised appellant that it had found the position of information receptionist offered by the employing establishment to be suitable to her work capabilities and that her reason for refusing the position, that she was physically unable to perform the duties of the offered position, was not acceptable as Dr. Boston had approved the position as medically suitable for appellant. She was advised that she had 30 days from the date of the letter to either accept the position or provide an explanation for her refusal to accept the position.

By letter dated April 26, 1999, appellant stated her disagreement with Dr. Boston’s opinion that she was able to perform the position. She stated that her back and left leg hurt so much that she could not sleep and she also had chest pains.

By letter dated June 4, 1999, the Office advised appellant that her reasons for refusing the offered position were found to be unacceptable and that she had 15 days from the date of the letter to accept the offered position without penalty.

By decision dated July 23, 1999, the Office terminated appellant’s compensation benefits effective August 14, 1999.

The Board finds that the Office properly terminated appellant’s compensation benefits effective August 14, 1999 on the grounds that she refused an offer of suitable work.

Once the Office accepts a claim it has the burden of proving that the disability has ceased or lessened before it may terminate or modify compensation benefits.¹

Under section 8106(c)(2) of the Federal Employees’ Compensation Act² the Office may terminate the compensation of a partially disabled employee who refuses or neglects to work

¹ *Bettye F. Wade*, 37 ECAB 556, 565 (1986); *Ella M. Garner*, 36 ECAB 239, 241 (1984).

² 5 U.S.C. § 8106(c)(2).

after suitable work is offered to, procured by or secured for the employee.³ Sections 10.516 and 10.517, part 20 of the code of federal regulations⁴ provide 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.⁵ To justify termination, the Office must show that the work offered was suitable⁶ and must inform appellant of the consequences of refusal to accept such employment.⁷

In the present case, the Office has properly exercised its authority granted under the Act and the implementing federal regulations. The record demonstrates that following the Office's acceptance of appellant's claim it paid appropriate benefits and medical expenses. On March 29, 1999 the employing establishment offered appellant a position as an information receptionist. On December 7, 1998 Dr. Boston, appellant's attending Board-certified orthopedic surgeon, had reviewed the position description of information receptionist and reported that the position was within appellant's physical capabilities. On April 14, 1999 the Office complied with the procedural requirements by advising appellant of the suitability of the position offered, that the job remained open and that her failure to accept the offer, without justification, would result in the termination of her compensation. The Office provided appellant 30 days within which to either accept the position offered or submit her reasons for refusal. By letter dated April 26, 1999, appellant refused the job offer and stated that she was not able to perform the position because her back and left leg hurt. On June 4, 1999 the Office informed appellant that her reasons for rejecting the job offer were not acceptable as Dr. Boston had opined that the position was within her physical capabilities and offered her an additional 15 days to accept the job offer without penalty. Appellant did not accept the job offer. Thereafter, on July 23, 1999, the Office terminated appellant's compensation benefits effective August 14, 1999.

The Board finds that the Office properly determined that appellant rejected an offer of suitable employment and met its burden of proof in terminating appellant's compensation benefits effective August 14, 1999.⁸ The evidence of record establishes that, despite providing appellant with an opportunity to accept the position following notification of the Office's suitability determination, the penalty for refusing to accept an offer of suitable employment and the insufficiency of appellant's reasons for rejecting the job offer, appellant did not accept the

³ *Camillo R. DeArcangelis*, 42 ECAB 941, 943 (1991).

⁴ 20 C.F.R. §§ 10.516, .517 (1999).

⁵ *Camillo R. DeArcangelis*, *supra* note 3.

⁶ *See Carl W. Putzier*, 37 ECAB 691, 700 (1986); *Herbert R. Oldham*, 35 ECAB 339, 346 (1983).

⁷ *See Maggie L. Moore*, 42 ECAB 484, 487-89 (1991), *reaff'd on recon.*, 43 ECAB 818 (1992); *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.4(c) (December 1993).

⁸ *See Stephen R. Lubin*, 43 ECAB 564 (1992).

job offer. Appellant did not attempt to demonstrate, nor did she submit any evidence, that the position was outside her physical limitations as determined by her attending physician.

Appellant failed to introduce any argument or any medical evidence establishing that she was not physically capable of performing the duties of the information receptionist position as offered. Therefore, the Office properly terminated appellant's compensation for refusing an offer of suitable work.

The July 23, 1999 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC

Dated, Washington, D.C.
August 1, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member