U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DONALD L. REYNOLDS and VETERAN'S ADMINISTRATION, VA MEDICAL CENTER, Springfield, MA

*Docket No. 00-2682; Submitted on the Record;*
*Issued August 17, 2001*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS, MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation on the basis that appellant abandoned suitable work.

On April 17, 1998 appellant, then a 40-year-old pharmacy technician, filed a claim for an occupational disease alleging that repeated exposure to pills and pill dust in the employing establishment pharmacy caused him to suffer from a severe allergic reaction on March 31, 1998. The Office accepted the claim for urticaria and angioedema. Appellant no longer worked as a pharmacy technician effective April 16, 1998.

On May 28, 1998 appellant began a permanent limited-duty position with the employing establishment as a timekeeper in nursing services. The employing establishment later informed the Office in letters dated December 31, 1998 and June 8, 1999 of the details of the timekeeper position and that appellant had resigned the modified position on August 7, 1998 in order to pursue his bachelor's degree. He thereafter submitted a letter to the Office dated September 3, 1999, in which he indicated that he had resigned because he was unqualified for the position. Appellant asserted that when he was diagnosed with the accepted conditions, he was informed that he would receive new training in order to work outside of the medical field; however, he was never retrained. He then stated that he took the initiative to go back to school and finish his degree so that he could earn a living.

By letter dated January 5, 2000, the Office advised appellant that his reason for abandoning his position was unacceptable. In finding his reason unacceptable, the Office provided appellant with the opportunity to justify his abandonment of work prior to the termination of his compensation benefits and implementation of 5 U.S.C. § 8106(c).

In a letter dated January 18, 2000, appellant responded that he could not continue to work for the employing establishment because he continued to suffer from a chemical and allergic sensitivity to irritants to which he was exposed in the modified position. He stated that it was

not until he had submitted his resignation that he learned that he had suffered from an allergic reaction to his chair, the dust particles in the air, carpet fibers, certain cleaners and the fumes from the printer across the hall.

Appellant submitted a medical report from Dr. Barry Elson, an attending physician, dated January 26, 2000, who indicated that appellant had to leave his work environment because of his chemical sensitivities to items such as synthetic chairs and glues.

On February 7, 2000 the Office requested that appellant arrange for the submission of medical evidence from Dr. Elson which provided an explanation as to why his recommendation that appellant leave his light-duty position in August 1998 was not given until January 2000. The Office further requested a current diagnosis with regard to allergic conditions sustained while working at the employing establishment, those unrelated to work and a description of a work environment for which appellant was capable of working.

Dr. Elson thereafter submitted a report dated February 18, 2000 in which he stated that appellant informed him that there was a delay in the recommendation for him to leave his light-duty position because appellant was given misinformation by the personnel office at work. He further stated that appellant would submit additional information regarding this concern. Dr. Elson then reported that, while working in the original position, appellant sustained asthma/reactive airway dysfunction syndrome, urticaria and angioedema and that except for mild preexisting spring hay fever, he was unaware of any allergic conditions that appellant sustained unrelated to work. Dr. Elson concluded that appellant should be capable of working in any outdoor environment free of chemical fumes.

In a letter dated February 25, 2000 to the Office, appellant stated that he left his light-duty position because he was not given the opportunity to withdraw his resignation, however, while working in the position, he experienced a red itchy rash and respiratory problems. Appellant further stated that he had not indicated these health problems in his resignation because at the time, he was still undergoing extensive testing to determine the cause of his symptoms. He stated that test results had since been obtained which indicated that he had difficulties with closed environments and synthetic fibers.

In a letter dated March 17, 2000, the Office reviewed the evidence submitted by appellant regarding his reasons for resigning the modified position and the medical reports by Dr. Elson. The Office determined that Dr. Elson did not address whether appellant was medically unable to perform the light-duty position and that appellant's reasons for refusing work were unacceptable. The Office afforded appellant an additional 21 days to submit factual and medical evidence to support his refusal to work and an opportunity to accept the light-duty position. The Office had previously determined on January 5 and March 16, 2000 that the position was still available.

Appellant thereafter submitted medical reports already of record and information regarding a previous disability claim. He did not accept the offer made by the Office.

By decision dated August 11, 2000, the Office terminated appellant's monetary compensation benefits on the grounds that appellant resigned from the modified position for

unjustifiable reasons and, thus, abandoned suitable work under 5 U.S.C. § 8106. The Office advised appellant that he remained entitled to medical benefits for his work-related injuries.

The Board finds that the Office properly terminated appellant's compensation on the basis that he abandoned suitable work.

Section 8106(c)(2) of the Federal Employees' Compensation Act provides in pertinent part, "a partially disabled employee who refuses or neglects to work after suitable work is offered is not entitled to compensation."[1] However, to justify such termination, the Office must show that the work offered was suitable.[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]

In this case, appellant began work in the permanent light-duty position as a timekeeper in nursing services on May 28, 1998, after he suffered a severe allergic reaction while working as a pharmacy technician in the employing establishment pharmacy. Appellant later resigned his light-duty position for the expressed reason of being unqualified for the new position and desiring to finish college. Following his resignation, the Office advised the employing establishment to submit information regarding the light-duty position, including a job description, the physical duties and a description of appellant's physical work environment to determine the extent of appellant's entitlement to benefits. The Office subsequently made a determination of suitability, provided appellant with three separate opportunities to show that his refusal or failure to work was justified and afforded appellant an opportunity to accept the position before making a final determination regarding termination of benefits.

The application of section 8106(c) was first raised by the Office in its January 5, 2000 letter to appellant. The Office advised him that the limited-duty position offered by the employing establishment had been determined by the Office to be suitable and that appellant's compensation benefits could be terminated under 5 U.S.C. § 8106(c)(2) if he refused or neglected to work after suitable work was offered. The Office indicated that resigning the position for educational purposes or because appellant felt that he was unqualified for the position was no indication that he was incapable of performing the job. Appellant was afforded 30 days to provide an explanation of the reasons for abandoning his position or the Office advised that it would commence termination procedures.

The Office thereafter informed appellant by letter dated February 7, 2000 that it reviewed again appellant's arguments for resigning and Dr. Elson's medical report dated January 26, 2000 and determined that the evidence was insufficient to determine that he was medically unable to perform the light-duty position. The Office outlined specific questions for Dr. Elson regarding appellant's current condition and ability to work and provided appellant with an additional 30 days with which to arrange for the submission of medical evidence supporting his disability.

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[1] 5 U.S.C. § 8106(c)(2).

[2] *David P. Camacho*, 40 ECAB 267, 275 (1988); *Harry P. Topping, Jr*., 33 ECAB 341, 345 (1981).

[3] *See Carl N. Curts*, 45 ECAB 374 (1994); 20 C.F.R. § 10.517(a).

In a letter dated March 17, 2000, the Office further considered appellant's arguments and another medical report by Dr. Elson dated February 18, 2000 and advised him that the evidence did not establish that appellant was medically unable to perform his duties. The Office determined again that the offered position was suitable and gave appellant an additional 21 days with which to submit factual and medical evidence to support his refusal of the light-duty job or accept the job offer or it advised that a final decision would be issued. On August 11, 2000 the Office terminated benefits.

The Board notes that it was appropriate for the Office to invoke the penalty provision of section 8106(c) in the present case and that the Office properly applied such provision. The record contains sufficient evidence to meet the Office's burden to show that the light-duty position to which appellant returned was suitable. Reports of record submitted by appellant's treating physician during appellant's employment in the light-duty position indicate that appellant was medically capable of working the light-duty position. In his June 9, 1998 report, Dr. Elson noted that appellant's accepted condition, which caused his severe allergic reaction required readjustment of job placement to avoid exacerbation and that appellant had not had any further episodes of urticaria, angioedema or bronchospasm. He further stated that appellant was not expected to be clinically symptomatic if he avoided exposure of the pharmacy environment. In a June 19, 1998 report, Dr. Elson noted that in the original position, appellant had experienced allergic sensitivities to pharmaceutical ingredients, distinct from "chemical sensitivities" generally due to widely distributed environmental exposures. He reported that appellant had had only occasional slight rashes since returning to work in his different office and recommended that appellant continue to avoid any further exposures of the types which had caused allergic reactions in the past.

When Dr. Elson stated in his January 26, 2000 report that appellant had chemical sensitivities to items such as synthetic chairs and glues he did not confirm his opinion with any objective test findings or specifically indicate that appellant was medically incapable of performing the duties of the timekeeper position. He noted while appellant was working in the modified position that appellant was not found to have chemical sensitivities and he did not submit any medical evidence to indicate that appellant had subsequently developed this distinct medical condition, which would prevent him from performing the light-duty position.

Given that the Office has shown that the light-duty position to which appellant returned was suitable, the burden shifts to appellant to show that his neglect to work in that position was justified.[4] At the time of his work stoppage on August 7, 1998, appellant indicated that he was resigning his position because he desired to finish his degree. He then informed the Office in a September 3, 1999 letter that he was unqualified for the position and had not received retraining. These stated reasons for resigning, however, do not justify appellant's neglecting to work in his light-duty position in that they do not constitute acceptable reasons for neglecting to work in a suitable position.[5] After the Office indicated in the January 5, 2000 letter that it proposed to

[4] 20 C.F.R. § 10.517(a).

[5] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.5c (December 1993); *Carl N. Curts*, 45 ECAB 374 (1994).

terminate his compensation, appellant asserted that residuals of his employment-related condition caused him to suffer from chemical sensitivities to agents in his new work environment, which prevented him from performing his light-duty position. However, as noted above, appellant did not submit any reliable evidence to establish that there was a medical basis for his work stoppage. For these reasons, appellant has not justified or established good cause for his neglect to work in a suitable position.

The decision of the Office of Workers' Compensation Programs dated August 11, 2000 is affirmed.

Dated, Washington, DC
August 17, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member