

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of ROBERT K. SCHULZ and U.S. POSTAL SERVICE,  
POST OFFICE, Lancaster, PA

*Docket No. 00-1095; Submitted on the Record;  
Issued March 7, 2001*

---

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's entitlement to wage-loss compensation on the grounds that he refused an offer of suitable work.

The Office accepted that on June 9, 1983 appellant, then a 33-year-old letter carrier, sustained an employment-related back injury in the performance of duty. Appellant stopped work on that date and did not return. On January 30, 1984 appellant officially resigned from the employing establishment and subsequently relocated to Washington State. The Office accepted appellant's claim for herniated nucleus pulposus at L5-S1 and later expanded its acceptance to include depression.

On January 31, 1995 the Office arranged for appellant to be seen by Dr. Charles S. Dresher, a Board-certified orthopedic surgeon, to determine whether appellant continued to suffer from disabling residuals of his accepted back condition. The Office supplied the physician with a statement of accepted facts and copies of the relevant evidence of record and asked that he respond to a number of questions.

In a report dated February 21, 1995, Dr. Dresher concluded that, while appellant continued to suffer from back pain, he found no positive physical findings which would tie appellant's back complaints to disc disease in the lumbar spine. Dr. Dresher noted that appellant had not yet returned to his preinjury status and that it was probable that he never would. He opined that he believed appellant was severely impaired, but that he felt that appellant's emotional condition, rather than his back condition, was the major component of his disability. Dr. Dresher stated that, from a physical standpoint, appellant could perform light to moderate work which did not include repeated stooping or bending or lifting more than 25 pounds.

On January 13, 1997 the Office referred appellant, together with a statement of accepted facts, copies of the relevant evidence of record and a list of questions, to Dr. Charles G. Bellville,

a Board-certified psychiatrist, to determine whether appellant continued to suffer from disabling residuals of his employment-related depression.<sup>1</sup>

In a report dated January 31, 1997, Dr. Bellville diagnosed chronic dysthymia. He concluded that there was no psychiatric reason why appellant could not be vocationally rehabilitated and that appellant was not totally or partially disabled from working on a psychiatric basis alone. Dr. Bellville completed a work capacity evaluation on which he noted that appellant's depression prevented him from performing a high volume of work and from adapting to stressful work situations, such as meetings, deadlines, shifting priorities and changes in routine.

On June 4, 1997 the Office began vocational rehabilitation with a goal of returning appellant to a position with the employing establishment. On June 26, 1997 the employing establishment prepared a job offer for a position as a modified letter carrier in Lancaster, Pennsylvania, which specifically referenced the physical and emotional limitations set by Drs. Dresher and Bellville.

On July 9, 1997 appellant underwent a fitness-for-duty examination by Dr. Thornton, an employing establishment contract physician. On a form report dated July 9, 1997, Dr. Thornton noted appellant's diagnoses of chronic back pain and depression, and checked a box indicating that appellant was at "high risk" for incurring job-related injury or illness within the next six months and was not medically qualified to perform the essential functions of the position.

By letter dated December 17, 1997, the employing establishment offered appellant a modified letter carrier position at the Lancaster, Pennsylvania carrier annex. The duties of the position included receiving express packages weighing 25 pounds or less from the mail clerk, loading them into a vehicle and then delivering the packages to the correct addresses. The position specifically stated that it would not involve high volume work or stressful work conditions such as meetings, deadlines, shifting priorities of changes in routine.

On January 8, 1998 the Office advised appellant that the full-time modified letter carrier position had been found to be suitable to his capabilities and allowed appellant 30 days to accept the position or provide an explanation for his refusal. Finally, the Office informed appellant that if he failed to accept the offered position and failed to demonstrate that the failure was justified, his entitlement to further compensation would be jeopardized.

While the job offer was pending, the Office forwarded the position description and the relevant medical evidence of record to an Office medical adviser for review and comment. In a report dated February 2, 1998, the Office medical adviser confirmed that the position was within appellant's physical and psychological capabilities.

By letter received February 17, 1998, appellant declined the job offer, stating that he did not feel the employing establishment had his best interests at heart. He questioned why the employing establishment did not make any attempt to retrain or rehire him before so much time

---

<sup>1</sup> The Office first referred appellant for a psychiatric evaluation on March 27, 1996; however, due to a series of miscommunications and missed appointments, appellant was not evaluated until January 31, 1997.

had passed. Appellant added that, logistically, he could not ask his family to move from Washington back to Pennsylvania simply to satisfy the employing establishment. Appellant asked that alternative vocational rehabilitation be pursued. By telephone call dated February 17, 1998, appellant further stressed that he would incur great financial hardship were he required to move his family back to Pennsylvania.

By letter dated March 10, 1998, the Office informed appellant that his reasons for failing to accept the position were not acceptable, that the position remained available and that he had 15 days to accept the position or his compensation benefits would be terminated. Appellant did not respond.

In a decision dated April 3, 1998, the Office terminated appellant's entitlement to wage-loss compensation benefits, finding that he refused an offer of suitable work. Appellant requested an oral hearing and submitted additional evidence in support of his claim. In a decision dated December 4, 1998, an Office hearing representative reversed the Office's termination of benefits. The Office hearing representative specifically found that, because the Office failed to inform appellant that his relocation expenses would be reimbursed, appellant's refusal of the offered position on the grounds that relocation would cause financial hardship constituted a valid reason for refusal.

By letter dated January 7, 1999, the employing establishment reissued its modified carrier position offer to appellant and clearly informed him that relocation expenses related to the acceptance of the job offer would be paid by the Office.

On January 11, 1999 the Office advised appellant that the full-time modified letter carrier position had been found to be suitable to his capabilities and allowed appellant 30 days to accept the position or provide an explanation for his refusal. The Office again informed appellant that relocation expenses would be paid by the Office and that, if he failed to accept the offered position or demonstrate that the failure was justified, his entitlement to further compensation would be terminated. Appellant did not respond.

After determining that the position was still available, in a decision dated February 12, 1999, the Office terminated appellant's entitlement to wage-loss compensation benefits, finding that he refused an offer of suitable work. Appellant requested an oral hearing and submitted additional evidence in support of his claim. In a decision dated November 3, 1999, after reviewing all the additional evidence and arguments, an Office hearing representative affirmed the Office's termination of benefits.

By letter received December 22, 1999, appellant requested reconsideration of the Office's decision and submitted additional evidence in support of his request. In a decision dated December 29, 1999, the Office found that the additional arguments and evidence submitted by appellant were insufficient to warrant modification of the prior decision.

The Board finds that the Office properly terminated appellant's compensation on the grounds that he refused an offer of suitable work.

Once the Office accepts a claim it has the burden of justifying termination or modification of compensation benefits.<sup>2</sup> This includes cases in which the Office terminates compensation under section 8106(c)(2) of the Federal Employees' Compensation Act for refusal to accept suitable work.<sup>3</sup>

Section 8106(c)(2)<sup>4</sup> of the Act 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 10.517<sup>5</sup> 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 a determination is made with respect to termination of entitlement to compensation.<sup>6</sup> To justify termination, the Office must show that the work offered was suitable,<sup>7</sup> and must inform appellant of the consequences of refusal to accept such employment.<sup>8</sup> According to Office procedures, certain explanations for refusing an offer of suitable work are considered acceptable.<sup>9</sup>

In this case, the employing establishment offered appellant reemployment in a modified-duty position, eight hours per day, based on the reports of Drs. Dresher and Bellville and the recommendation of the Office medical adviser. On January 11, 1999 the Office complied with the procedural requirements by advising appellant that the offered position was suitable, that the job remained open and available and that his failure to accept the offer, without justification, would result in the termination of his compensation for wage loss.

Appellant did not respond to the Office's January 11, 1999 letter and the Office, by decision dated February 12, 1999, terminated his wage-loss compensation benefits.

Subsequently, at an oral hearing held at appellant's request, appellant asserted that, while he thought he could perform some type of job eight hours a day, he could not go to Pennsylvania in accordance with the latest job offer as he had just had surgery to remove a large cancerous growth from his leg. Appellant submitted additional medical evidence in support of his refusal of the offered position.

---

<sup>2</sup> *Barbara R. Bryant*, 47 ECAB 715 (1996); *Arthur C. Reck*, 47 ECAB 339 (1996).

<sup>3</sup> *Id.*

<sup>4</sup> 5 U.S.C. § 8106(c)(2).

<sup>5</sup> 20 C.F.R. § 10.517.

<sup>6</sup> *Maggie L. Moore*, 42 ECAB 484, 488 (1991); *reaff'd on recon.*, 43 ECAB 818 (1992).

<sup>7</sup> *See Carl W. Putzier*, 37 ECAB 691 (1986); *Herbert R. Oldham*, 35 ECAB 339 (1983).

<sup>8</sup> *See Maggie L. Moore*, *supra* note 6. *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.5(d)(1).

<sup>9</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.5(a)(1)-(5).

In a report dated April 13, 1999, Dr. Monica Goei, appellant's internist, noted appellant's history of chronic back problems and stated that diagnostic testing revealed evidence of spinal stenosis and some degenerative changes and mild disc protrusion at L4-5. In addition, Dr. Goei confirmed that appellant had recently had a cancerous growth excised from his thigh. With respect to whether appellant could perform the position of modified letter carrier, Dr. Goei stated:

"[Appellant] feels that his back pain is debilitating and limiting his activities. His weight also adds additional stress on his back. At this time, a job that requires walking and carrying parcels, even several to ten pounds, may indeed cause worsening exacerbation of his back pain."

In a follow-up letter dated August 11, 1999, Dr. Goei stated that appellant's condition remained unchanged with respect to the previously discussed issues, but that he had recently experienced chest pain and tests indicated he may have some ischemia or coronary artery disease. She did not further comment on appellant's ability to perform the position of modified letter carrier.

Appellant also submitted the results of a recent magnetic resonance imaging (MRI) scan showing disc protrusion and spinal stenosis at L4-5, an October 27, 1998 pathology report confirming the removal of a cancerous tumor from his thigh, and a progress note documenting the care and treatment of his thigh condition and chronic back pain.

After considering all of the additional evidence and arguments, on November 3, 1999 an Office hearing representative affirmed the Office's February 12, 1999 termination of appellant's compensation benefits.

The Board finds that the Office properly determined that appellant had rejected an offer of suitable employment and met its burden of proof in terminating his monetary compensation benefits.<sup>10</sup> The evidence of record establishes that appellant neither accepted the job offer nor provided reasons for his refusal. Appellant did not demonstrate or submit any evidence that the modified letter carrier position was outside his physical limitations as noted by Drs. Dresher and Bellville.

While appellant's treating physician indicated that the duties of the position "may cause a worsening exacerbation" of appellant's back pain, this opinion is speculative and, therefore, insufficient to outweigh the opinions of Drs. Dresher and Bellville.<sup>11</sup> In addition, the opinion of Dr. Thornton, the employing establishment contract physician, that appellant is not fit for duty, is of no probative value as it is expressed only by check mark, without accompanying rationale.<sup>12</sup> Therefore, the Office properly terminated appellant's compensation benefits based upon his refusal of an offer of suitable employment.

---

<sup>10</sup> See *Karen L. Mayewski*, 45 ECAB 219 (1993); *Steven R. Lubin*, 43 ECAB 564 (1992).

<sup>11</sup> Medical opinions which are speculative or equivocal in character have little probative value. *Linda I. Sprague*, 48 ECAB 386 (1997); *Jennifer L. Sharp*, 48 ECAB 209 (1996).

<sup>12</sup> See *Alberta S. Williamson*, 47 ECAB 569 (1996); *Lester Covington*, 47 ECAB 539 (1996).

Following termination of his benefits appellant requested reconsideration, asserting that Drs. Drescher and Bellville had not reviewed the results of the diagnostic tests of record, such as the MRI and computerized tomography (CT) scans or x-rays and that, therefore, their reports were of diminished probative value. Appellant stated that, although moving his family would cause financial hardship, he did not decline the position on this basis. Rather, he could not face the future with the increased pain and suffering he believed he would incur as a result of performing the duties of the modified letter carrier position. Appellant added that his recent cancer surgery had left him unable to put any weight on his right leg or get in and out of a vehicle, and that he no longer even had the mobility and coordination to dress himself.

In further support of his request for reconsideration, appellant submitted a November 24, 1999 report from Dr. Goei, who noted that, in addition to her previously diagnosed back and heart conditions, appellant had also recently been diagnosed with severe obstructive sleep apnea. Dr. Goei explained that sleep apnea could cause day time sleepiness and that, therefore, appellant should not drive alone. She concluded that, because of these medical problems and morbid obesity, “prolonged standing, lifting or carrying packages can worsen his symptoms” and “can significantly worsen his pain and medical conditions.”

Appellant also submitted a November 19, 1999 report from Dr. Amy Aronsky, an osteopath and appellant’s treating physician for his sleep apnea condition. Dr. Aronsky stated that appellant’s sleep apnea problem was in the process of being diagnosed and was not yet being treated. She further opined that appellant’s sleep apnea would make him excessively tired during the day and that, therefore, he would be at great risk to drive an automobile. Dr. Aronsky concluded that appellant had had the disorder for many years but that it had never been treated.

The Board finds that the additional arguments and evidence submitted are insufficient to establish that the Office erred in terminating appellant’s wage-loss compensation on the grounds that he refused suitable work. Contrary to appellant’s arguments, while Dr. Drescher did not review the results of MRIs or CT scans, he did obtain x-rays of appellant’s lumbar spine and performed a complete physical examination before stating that appellant could perform modified duty, eight hours a day. Appellant asserted that he would suffer greatly increased pain if he attempted to perform the duties of the modified position. However, whether an employee has the physical ability to perform a modified position offered by the employing establishment is primarily a medical question that must be resolved by medical evidence.<sup>13</sup> While appellant did submit additional medical reports from Drs. Goei and Aronsky, neither physician addressed the relevant issue -- was appellant capable of performing the duties of the offered position in January 1999 when the position was offered. Therefore, their reports are insufficient to warrant modification of the Office’s prior decision.

As the medical evidence indicates that the position offered to appellant on January 7, 1999 was consistent with appellant’s physical limitations, appellant’s refusal of the job offer cannot be deemed reasonable or justified, and the Office properly terminated appellant’s entitlement to wage-loss compensation.

---

<sup>13</sup> *H. Adrian Osborne*, 48 ECAB 556 (1997).

The decisions of the Office of Workers' Compensation Programs dated December 29 and November 3, 1999 are hereby affirmed.

Dated, Washington, DC  
March 7, 2001

Michael J. Walsh  
Chairman

David S. Gerson  
Member

Priscilla Anne Schwab  
Alternate Member