

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TERESA MARIA ANJOS and U.S. POSTAL SERVICE,
MAIN POST OFFICE, Butler, N.J.

*Docket No. 97-412; Submitted on the Record;
Issued October 21, 1998*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation on the grounds that she refused an offer of suitable work.

The Board has carefully reviewed the case record and finds that the Office met its burden of proof in terminating appellant's compensation.

Once the Office accepts a claim it has the burden of proving that the employee's disability has ceased or lessened before it may terminate or modify compensation benefits.¹ Section 8106(c)(2) of the Federal Employees' Compensation Act² provides that the Office may terminate the compensation of a partially disabled employee who refuses or neglects to work after suitable work is offered to, procured by, or secured for the employee.³ The Board has recognized that section 8106(c) is a penalty provision that must be narrowly construed.⁴

The implementing regulation⁵ provides 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 a showing before entitlement to compensation is terminated.⁶ To

¹ *Karen L. Mayewski*, 45 ECAB 219, 221 (1993); *Betty F. Wade*, 37 ECAB 556, 565 (1986); *Ella M. Garner*, 36 ECAB 238, 241 (1984).

² 5 U.S.C. §§ 8101-8193 (1974); 5 U.S.C. § 8106(c)(2).

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

⁴ *Stephen R. Lubin*, 43 ECAB 564, 573 (1992).

⁵ 20 C.F.R. § 10.124(c).

⁶ *John E. Lemker*, 45 ECAB 258, 263 (1993).

justify termination, the Office must show that the work offered was suitable and that appellant was informed of the consequences of his refusal to accept such employment.⁷

Office procedures state that acceptable reasons for refusing an offered position include withdrawal of the offer or medical evidence of inability to do the work or travel to the job.⁸ Unacceptable reasons include relocation for personal desire or financial gain, lack of promotion potential or job security.⁹ Thus, the Board has held that if an employee on the employing establishment's rolls moves from the area in which the employing establishment is located, such a move is an unacceptable reason for refusing an offer of suitable work.¹⁰

In this case, appellant's notice of occupational disease, filed on February 13, 1992, was accepted by the Office for adjustment disorder, brief depressive reaction, based on her personal statements and the reports of Dr. Gary Peter Muccino, Board-certified in family practice, and Dr. Gary Tuckman, a licensed clinical psychologist.

Appellant returned to work on April 20, 1992 but left on July 3, 1993 when she "called in sick with a sore throat and never came back," according to her supervisor, Jean M. Delgado.

On March 16, 1994 appellant filed a notice of recurrence of disability, claiming that after she returned to work in 1992 Ms. Delgado continued to harass her to the point where her physician recommended that she move away from the area. Appellant explained that she tried to transfer to a post office in Florida where she had relocated but Ms. Delgado blocked her request. The Office accepted appellant's claim for adjustment disorder, brief depressive reaction, and paid appropriate compensation.

On February 8, 1995 the employing establishment offered appellant a letter carrier position, noting that appellant's physician, Dr. Ernest Cohen, a Board-certified psychiatrist, had indicated that appellant could return to full duty in a different environment and that her former supervisor, Ms. Delgado, had voluntarily transferred from the Butler office.

On February 27, 1995 appellant refused the job offer on the grounds that another supervisor who had harassed her was still at the Butler office and that her son had adjusted well to the move to Florida so there was "no reason" for her to return. On March 17, 1995 the Office informed appellant that she had 30 days to accept the job offer or explain why she had refused it. The Office warned appellant of the consequences of refusing a suitable job offer without adequate justification.

⁷ *Maggie L. Moore*, 42 ECAB 484, 487 (1991), *aff'd on recon.*, 43 ECAB 818 (1992).

⁸ *C.W. Hopkins*, 47 ECAB ____ (Docket No. 94-1025, issued August 23, 1996); *see Patsy R. Tatum*, 44 ECAB 490, 495 (1993); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.5 (May 1996).

⁹ *Arthur C. Reck*, 47 ECAB ____ (Docket No. 94-1072, issued February 1, 1996).

¹⁰ *Richard S. Gumper*, 43 ECAB 811, 816 (1992); *Arquelio Pacheco*, 40 ECAB 277, 280 (1988).

Following appellant's responses dated April 7 and May 2, 1995, and a telephone call, the Office wrote a memorandum to the file on May 30, 1995. The Office noted that appellant's main objection to the job offer in New Jersey was that the postmaster and a supervisor named Donald Coombs would be prejudiced against her as they had caused problems that resulted in appellant filing her claims. The second objection was that all the problems she had at work also affected her young son and that if she were forced to move back to New Jersey his previous psychological trauma would manifest itself again.

On September 19, 1995 the Office conducted a telephone conference between appellant, the postmaster, and a senior claims examiner. On September 20, 1995 the Office informed appellant that her reasons for refusal of the job were not justified and that she had until October 4, 1995 to accept the offer or lose her compensation. On November 6, 1995 the Office terminated compensation, effective March 4, 1995, on the grounds that appellant had refused an offer of suitable work.

Appellant requested an oral hearing, which was held on May 8, 1996. On August 6, 1996 the hearing representative affirmed the termination on the grounds that appellant had refused an offer of suitable work.

The Board finds that the Office properly complied with the procedural requirements of advising appellant of the suitability of the job offered and the sanctions for refusing the job. The Office informed appellant that the job was available and provided her with the opportunity either to accept the position or explain her refusal. After reviewing her explanation, the Office provided appellant with an additional 15 days to accept the job.

Appellant offered three reasons for refusing the job. First, she stated that while Ms. Delgado had transferred from the Butler office, Mr. Coombs, who had been a supervisor in training when she filed her initial claim, had been promoted to Ms. Delgado's position. Appellant explained that he had participated in the harassment and degrading treatment that resulted in both her work injuries and thus the environment would be no different. Appellant also named the postmaster as the cause of her problem because he did nothing to help her.

The record reveals that while Mr. Coombs was initially named in appellant's statement regarding her work injury in 1992 as making a derogatory comment on her work performance, he is mentioned only once in appellant's statement describing her recurrence of disability. Appellant stated that when she called in sick on July 3, 1993 Mr. Coombs hung up on her. Appellant testified at the hearing that Mr. Coombs made "jokes" or indirect comments about her work and "would just basically humiliate me ... putting me down all together in his own words," but could remember no specific incidents.

The Board finds that the evidence does not establish that either Mr. Coombs or the postmaster caused or contributed to any compensable work injury following appellant's return to work in April 1992. In support of her recurrence of disability, appellant provided a lengthy statement regarding her ongoing disputes with Ms. Delgado. While she used the plural

“supervisors” in this statement, she referred to Mr. Coombs only by stating that he had hung up on her. There is no evidence that Mr. Coombs acted abusively during the call.¹¹

Although Mr. Coombs was named in the May 27, 1993 disciplinary letter to appellant, there is no evidence that he acted abusively in observing her deviation from her assigned mail delivery route and reporting the incident to Ms. Delgado.¹² Similarly, there is no evidence that the postmaster erred or acted abusively in dealing with appellant.

Appellant’s vague assertions that she was harassed by Mr. Coombs many times and her fear that she would be harassed if she returned to the Butler office are insufficient to justify her refusal of the offered position.¹³ Rather, the record shows that although Mr. Coombs was implicated in the initial emotional injury sustained by appellant, she returned to work successfully for more than one year with Mr. Coombs as her immediate supervisor.¹⁴

Appellant also stated that she did not want to leave Florida because she and her son had become accustomed to the area and he would suffer psychologically if she had to move back to the Butler office. Appellant’s unsubstantiated belief that her son would have emotional problems is not relevant to the issue of appellant’s fitness to perform the duties of the offered position. Dr. Cohen cleared appellant for full-time work “in a different environment” in November 1994, and the record shows that Ms. Delgado, the source of appellant’s accepted emotional injuries, had transferred from the Butler office. Thus, the work environment is different.

Finally, appellant’s personal preference to live in Florida does not justify her refusal of the job offer.¹⁵ Appellant was still carried on the rolls of the employing establishment in Butler at the time the job offer was made; thus, that agency was responsible for her compensation benefits, even though she had relocated to Florida in August 1993 because she was “destitute” and friends there offered to help her. As the employing establishment in Butler was paying

¹¹ See *Raul Campbell*, 45 ECAB 869, 877 (1994) (finding that appellant failed to substantiate any compensable factors of employment or allegations of error or abuse on the part of the employing establishment).

¹² See *Helen Casillas*, 46 ECAB 1044, 1052 (1995) (finding that evaluation of appellant’s performance and observation of her mail route deliveries do not give rise to a compensable disability absent a finding of error or abuse in these administrative matters).

¹³ Fear of future injury is not compensable under the Act. *Mary A. Geary*, 43 ECAB 300, 309 (1991); see *Pat Lazzara*, 31 ECAB 1169, 1174 (1980) (finding that appellant’s fear of a recurrence of disability upon return to work is not a basis for comprehension).

¹⁴ Appellant explained that Mr. Coombs was her “204B” supervisor, who oversaw her day-to-day work but had no disciplinary authority. That was held by Ms. Delgado. When she left the Butler office, Mr. Coombs was promoted.

¹⁵ See *Lawrence T. Pisapio*, 47 ECAB ____ (Docket No. 95-25, issued April 15, 1996) (finding that because appellant remained on the employing establishment’s rolls in California, his refusal of suitable work because he lived in Massachusetts was unacceptable and therefore his compensation was properly terminated); cf. *Carl N. Curtis*, 45 ECAB 374, 381 (1994) (noting that if an employee has left the employing establishment’s rolls, a move or relocation from its area may give rise to an acceptable reason for refusing a position offered by the employing establishment under some circumstances).

compensation on appellant's subsequent recurrence of disability claim and appellant had not resigned from that agency, it was required to find a suitable position for her, which it did in February 1995. The fact that appellant had left the area because of financial straits and had relocated satisfactorily in Florida is irrelevant to the issue of refusal of suitable work.¹⁶ Thus, the Board finds that appellant was not justified in refusing the February 1995 job offer.¹⁷

The November 6 and August 6, 1995 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.
October 21, 1998

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

¹⁶ See *Fred L. Nelly*, 46 ECAB 142, 147 (1994) (finding that appellant's reasons for refusing suitable work -- that he now lived 1,200 miles from the employing establishment in Ohio, that he did not wish to return to a cold climate, that his daughter's physicians were located in his new home, that he was purchasing property there, and that it would be a hardship to return to Ohio -- were found to be unacceptable; appellant had been on the employing establishment's rolls for about eight years before suitable work was offered).

¹⁷ See *Henry W. Shepherd, III*, 48 ECAB ____ (finding that appellant's compensation was properly terminated after the Office found his reasons for refusing suitable work unacceptable).