U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WINTON A. MILLER and U.S. POSTAL SERVICE,
POST OFFICE, Wilmington, Del.

Docket No. 96-1560; Submitted on the Record;
Issued August 26, 1998

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits on the grounds that he refused an offer of suitable work; and (2) whether the Office abused its discretion by refusing to reopen appellant's claim for consideration of the merits on March 19, 1996.

The Board has duly reviewed the case on appeal and finds that the Office did not meet its burden of proof to terminate appellant's compensation benefits.

This case has previously been on appeal before the Board. By decision dated April 20, 1993, the Board remanded appellant's claim for physical and psychiatric injury to the Office for further development of the medical evidence to determine the causal relationship between appellant's current conditions and his accepted employment injuries.[1] The facts and circumstances of the case as set out in the Board's prior decision are adopted herein by reference.

Following additional development of appellant's claim, the Office accepted that he sustained a recurrence of total disability beginning October 4, 1988 and that he developed an adjustment disorder as a result of his work injuries, but that this condition resolved within six months of each incident with no disability. Appellant returned to full duty without restriction on October 13, 1989. Appellant filed a notice of recurrence of disability on September 28, 1994 alleging on May 6, 1994 he sustained a recurrence of disability causally related to his accepted employment injury. The Office accepted this claim on October 28, 1994. The employing establishment offered appellant a limited-duty job on June 8, 1995. The Office found this position suitable on July 25, 1995 and allowed appellant 30 days to accept the position. Appellant refused the position and by decision dated October 11, 1995 the Office terminated appellant's compensation finding he failed to accept an offer of suitable work. Appellant

[1] Docket No. 92-877 (issued April 20, 1993).

requested reconsideration on November 1, 1995, and by decision dated March 19, 1996 the Office refused to reopen appellant's claim for consideration of the merits.

It is well settled that once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.[2] As the Office in this case terminated appellant's compensation under 5 U.S.C. § 8106(c), the Office must establish that appellant refused an offer of suitable work. Section 8106(c) of the Federal Employees' Compensation Act[3] 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 10.124(c) of the applicable regulations[4] provides that an employee who refuses or neglects to work after suitable work has been offered or secure 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. To justify termination of compensation, the Office must show that the work offered was suitable and must inform appellant of the consequences of refusal to accept such employment.[5]

In this case, the employing establishment offered appellant a light-duty position on June 8, 1995. This position entailed repairing torn mail and operating a typewriter-like machine. The physical requirements included sitting up to six hours a day, walking up to two hours a day, standing up to two hours a day, and twisting up to three hours a day. The position description indicated that appellant should lift up to 20 pounds. Appellant's attending physician, Dr. Pierre L. LeRoy, a Board-certified neurosurgeon, reviewed the position on July 7, 1995 and found that appellant could perform the limited-duty job with modifications. He indicated that appellant could perform the position on a trial basis for four to six hours a day, that appellant could perform no repetitive twisting and limited repetitive movement with the right upper extremity including reaching, and fine motor skills.

The Office referred appellant for a second opinion evaluation with Dr. Norman Eckbold, a Board-certified orthopedic surgeon. In a report dated July 7, 1995, he found that appellant was not totally disabled and completed a work restriction evaluation. Dr. Eckbold indicated that appellant could work eight hours a day with restrictions on bending, squatting, climbing, kneeling and crawling. He indicated that appellant could lift 10 pounds occasionally and limited appellant's standing, sitting, walking and driving.

The employing establishment completed a letter on September 29, 1995 noting the restrictions provided by Dr. LeRoy and indicating that the position was still available. By letter dated July 25, 1995, the Office stated that the position offered was suitable six hours a day. The

[2] *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

[3] 5 U.S.C. § 8106(c)(2).

[4] 20 C.F.R. § 10.124(c).

[5] *Arthur C. Reck*, 47 ECAB ___ (Docket No. 94-1072, issued December 4, 1995).

Office allowed appellant 30 days to accept the job or offer his reasons for refusal and explained the penalty provision of section 8106(c)(2).

Appellant submitted a form report from Dr. LeRoy dated August 24, 1995 indicating that appellant was temporarily totally disabled due to a right shoulder condition not accepted by the Office.

By decision dated October 11, 1995, the Office found that appellant had not responded and terminated his compensation benefits for refusal to accept suitable work.

The Board finds that the Office did not meet its burden of proof to terminate appellant's compensation benefits. Appellant's attending physician, Dr. LeRoy, approved the offered position with limitations. The employing establishment noted these limitations in a letter to the Office, but did not indicate that it had reconstructed the offered position to comply with the restrictions required by appellant's physician. In finding the position suitable, the Office did not indicate whether it was approving the limited-duty position as first offered by the employing establishment or with the additional limitations provided by Dr. LeRoy. Furthermore, Dr. Eckbold indicated that appellant could not lift more than 10 pounds and the limited-duty position required lifting of 20 pounds. As there is no medical evidence in the record supporting that appellant could perform the duties of the position as offered by the employing establishment, the Office improperly found that appellant had refused an offer of suitable work and terminated his compensation benefits.[6]

[6] As the Office did not meet its burden of proof to terminate appellant's compensation benefits, it is not necessary to reach the issue of whether the Office abused its discretion by refusing to reopen appellant's claim for consideration of the merits on March 19, 1996.

The decision of the Office of Workers' Compensation Programs dated October 11, 1995 is hereby reversed.

Dated, Washington, D.C.
August 26, 1998

David S. Gerson
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member