U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HAROLD E. SANDERS and U. S. POSTAL SERVICE,
New York City, N.Y.

Docket No. 95-3049; Submitted on the Record;
Issued June 19, 1998

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
WILLIE T.C. THOMAS

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

On June 28, 1983 appellant, then a 31-year-old letter carrier, filed a claim alleging a recurrence of a work-related back injury. Appellant stopped work on June 17, 1983. The Office accepted the claim for recurrence of disability and paid compensation for temporary total disability from June 17, 1983 through December 21, 1994.

On September 17, 1984 the employing establishment notified the Office that it had removed appellant from its rolls effective April 27, 1984 for continuous absence without leave.

In a letter dated October 15, 1993 appellant notified the Office that he was relocating to Florida effective October 18, 1993. On February 10, 1994 the employing establishment offered appellant a position as a modified carrier in the New York City area.

On February 20, 1994 appellant rejected the job offer because he had relocated to Florida from New York.

On May 10, 1994 the employing establishment notified the Office that appellant had rejected a suitable job because he had relocated.

On May 18, 1994 the Office notified appellant that relocation to a permanent residence in Florida was not a sufficient reason to reject a suitable job offer in the New York City area, and provided appellant 30 days from the date of its letter to either accept the offered position or provide an acceptable reason for refusing the job. The Office stated that if appellant failed to accept the position or failed to provide an acceptable reason for refusal, his compensation benefits would be terminated.

On June 14, 1994 appellant replied to the Office's May 18, 1994 notice and stated that his relocation to Florida was based on medical advise from his treating physician and, as a result of the costs associated with the relocation, appellant had depleted all his financial savings, "making it a considerable financial hardship *** to relocate back to the New York City area to accept the offered position."

On July 12, 1994 the Office notified appellant that it had considered the evidence he had submitted in his June 14, 1994 letter and determined that it was insufficient to warrant a change to its previous determination. The Office thereupon stated that if appellant refused the offered position or failed to appear for work when scheduled, his compensation would be terminated within 15 days.

On December 12, 1994 the Office terminated appellant's compensation effective December 22, 1994 on the grounds that he refused an offer of suitable work.

The Board finds that the Office has not met its burden of proof to terminate appellant's benefits.

The Board finds that the Office improperly terminated appellant's compensation benefits under 5 U.S.C. § 8106(c)(2) of the Act.

Section 8106(c)(2) of the Act states: "a partially disabled employee who: (1) refuses to seek suitable work; or (2) refuses or neglects to work after suitable work is offered is not entitled to compensation."[1]

Under 5 U.S.C. § 8106(c)(2) the Office may terminate the compensation of an employee who refuses or neglects to work after suitable work is offered to, procured by, or secured for him.[2] However, to justify such termination, the Office must show that the work offered was suitable.[3] The Office has not shown that here.

Appellant was offered a job which was within his physical capabilities but which would require that he and his family relocate from Florida to the New York City area. However, the Office, after appellant notified it that he was rejecting the job offer because, *inter alia*, of the financial hardship associated with relocating his family, failed to notify him that he could apply for relocation expenses upon acceptance of the offered job. In that regard, section 6a. of the Federal (FECA) Procedure Manual provides in pertinent part:

> "*Criteria for Payment.* Relocation expenses are payable only to claimants who are no longer on the agency rolls. They are payable whether the claimant still resides in the locale where he or she last worked and is offered employment in

[1] 5 U.S.C. § 8106(c)(2).

[2] *Carl N. Curts,* 45 ECAB 374 (1994); *David P. Camacho,* 40 ECAB 267 (1988); *Galen E. Franklin,* 37 ECAB 478 (1986); *Herman L. Anderson,* 36 ECAB 253 (1984).

[3] *David P. Camacho, supra* note 2; *Robert Bledsoe,* 34 ECAB 144 (1982); *Harry B. Topping, Jr.,* 33 ECAB 341 (1981).

> another area, or whether the claimant has moved away from the locale where he or she was employed and is offered employment in either the original area or a different one. Expenses may be paid for relocation to a temporary job as long as it is expected to lead to a permanent assignment. The distance between the two locations must be at least 50 miles, but the claimant is not required to demonstrate financial need for relocation expenses to be paid."[4]

In accordance with its own procedures the Office should have advised appellant of the availability of relocation expenses in reaching a determination that the position of a modified clerk in the New York City area was deemed suitable employment. Since this factor was not considered, the Board finds that appellant had provided the Office with a valid reason for refusing the position when he did not have the financial means to relocate from Florida to New York to accept the position in the absence of being informed by the Office that his relocation expenses would be paid by his employer. Under the circumstances of this case the Board finds that the Office that his relocation expenses would be paid by his employer. Under the circumstances of this case, the Board finds that the Office improperly terminated appellant's compensation benefits.

The decision of the Office of Workers' Compensation Programs dated December 22, 1994 is hereby reversed.

Dated, Washington, D.C.
June 19, 1998

George E. Rivers
Member

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

[4] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment and Determining Wage-Earning Capacity*, Chapter 2-0814.6(a) (December 1993).