

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BILLIE J. COOK and DEPARTMENT OF VETERANS AFFAIRS,
MEDICAL CENTER, Houston, Tex.

*Docket No. 97-1866; Submitted on the Record;
Issued April 19, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
DAVID S. GERSON

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation under 5 U.S.C. § 8106(c) based on her refusal to accept suitable employment as offered by the employing establishment.

The Board has duly reviewed the case on appeal and finds that the Office met its burden to terminate appellant's compensation benefits.

On February 2, 1982 appellant, then a 51-year-old registered nurse, sustained an employment-related fracture of the right tibia and torn lateral meniscus of the right knee which developed into right knee traumatic arthritis requiring a total knee replacement. She did not return to work and was placed on the periodic rolls. By letter dated February 4, 1987, appellant's treating Board-certified orthopedic surgeon, Dr. William J. Bryan, advised that she could perform desk duty for eight hours per day. She subsequently moved to Rainbow City, Alabama. In an October 17, 1996 report, Dr. William N. Haller, a Board-certified orthopedic surgeon, who had provided a second opinion evaluation for the Office, advised that he had reviewed a proposed job and opined that he could see no reason why appellant could not perform a desk or sitting-type job if lifting were restricted to 10 pounds, standing to 2 hours per day and walking to 1 hour per day. By letter dated December 5, 1996, the employing establishment offered appellant a limited-duty position as information receptionist within the restrictions provided by Dr. Haller. She was to respond by December 16, 1996 and begin work on December 23, 1996. Relocation expenses were authorized. By decision dated February 28, 1997, the Office terminated appellant's wage-loss compensation on that day on the grounds that she declined an offer of suitable work.

Section 8106(c)(2) of the Federal Employees' Compensation Act¹ provides in pertinent part, "A partially disabled employee who ... refuses or neglects to work after suitable work is

¹ 5 U.S.C. §§ 8101-8193.

offered ... is not entitled to compensation.”² To prevail under this provision, the Office must show that the work offered was suitable and must inform the employee of the consequences of refusal to accept such employment. An employee who refuses or neglects to work after suitable work has been offered has the burden of showing that such refusal to work was justified.³

In the present case, the record reflects that the limited-duty receptionist position offered to appellant conformed to the restrictions provided by Dr. Haller. The medical evidence of record thus establishes that, at the time the job offer was made, appellant was capable of performing the modified position.⁴ Office procedures provide that acceptable reasons for refusing an offered job include withdrawal of the offer and medical evidence of inability to perform the position or to travel to the job. The procedures also note that unacceptable reasons for refusing an offered job include personal dislike of the position, promotion potential and job security.⁵ Furthermore, if, while on establishment rolls, an employee moves or relocates from the area in which the employing establishment is located, such a move is an unacceptable reason for refusing to accept an offer of suitable employment.⁶ The Board, therefore, finds appellant’s reasons for refusing the receptionist position unacceptable.

In order to properly terminate appellant’s compensation under 5 U.S.C. § 8106, the Office must provide appellant notice of its finding that an offered position is suitable and give appellant an opportunity to accept or provide reasons for declining the position,⁷ and the record in this case indicates that the Office properly followed the procedural requirements. By letter dated December 31, 1996, the Office advised appellant that a partially disabled employee who refused suitable work was not entitled to compensation, that the offered position had been found suitable and allotted her 30 days to either accept or provide reasons for refusing the position. By letter dated January 24, 1997, appellant stated that a clerical position was not suitable for a registered nurse as it was not equivalent in status. By letter dated February 7, 1997, the Office advised appellant that the reason given for not accepting the job offer was unacceptable. She was given an additional 15 days in which to respond. There is no evidence of a procedural defect in this case as the Office provided appellant with proper notice. She was offered a suitable position by the employing establishment and such offer was refused. Thus, under 5 U.S.C. § 8106 her compensation was properly terminated on February 28, 1997.

² 5 U.S.C. § 8106(c)(2).

³ See *Michael I. Schaffer*, 46 ECAB 845 (1995).

⁴ See *John E. Lemker*, 45 ECAB 258 (1993).

⁵ See *C.W. Hopkins*, 47 ECAB 725 (1996).

⁶ See *Edward P. Carroll*, 44 ECAB 331 (1992).

⁷ See *Maggie L. Moore*, 42 ECAB 484 (1991), *reaff’d on recon.*, 43 ECAB 818 (1992).

The decision of the Office of Workers' Compensation Programs dated February 28, 1997 is hereby affirmed.

Dated, Washington, D.C.
April 19, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

David S. Gerson
Member