U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES F. YOUNT and U.S. POSTAL SERVICE,
POST OFFICE, Detroit, MI

Docket No. 98-383; Submitted on the Record;
Issued August 4, 1999

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's entitlement to monetary compensation benefits under 5 U.S.C. § 8106(c)(2) on the grounds that he refused to report for work after suitable work had been procured for him.

The Board has given careful consideration to the issue in question, to appellant's contentions on appeal and to the complete case record. The Board finds that the July 14, 1997 decision of the Office's hearing representative is in accordance with the law and the facts in this case and hereby adopts the findings and conclusions of the hearing representative.[1]

On September 3, 1997 appellant requested reconsideration of the July 14, 1997 decision and in support he submitted new medical evidence from July through September 1997

[1] On March 19, 1996 the impartial medical examiner determined that appellant could work for four hours per day and he specified necessary activity restrictions; on April 9, 1996 appellant was offered a part-time position as a modified clerk within his activity restrictions; also on April 9, 1996 the Office advised appellant that the offered position had been found to be suitable to his partially disabled condition, and that he had 30 days within which to accept the position, and it advised him of the provisions of 5 U.S.C. § 8106(c)(2); on May 9, 1996 appellant declined the position and claimed that it was in violation of his driving restrictions, that he was being discriminated against because he was never given a weekend off, that casing mail required that he reach over 12 inches, and that he needed a place to lie down; on May 14, 1996 the impartial medical examiner opined that appellant could perform the offered position and that the driving restrictions were not excessive; on May 21, 1996 the Office advised appellant that his reasons for declining the offered position were not acceptable, and that he had 15 days within which to accept the position; on May 23, 1996 that time-limitation period was extended to June 5, 1996; and on June 5, 1996 appellant faxed a message to the Office stating that he would attempt to perform the offered position. Appellant was scheduled to report for preemployment processing and physical examination on June 13, 1996 but on June 12, 1996 he faxed a message to the Office stating that he would be absent for his prehire physical and reemployment processing. Appellant's explanation was that he was "laid up." On June 24, 1996 appellant faxed the Office a letter inquiring about the status of his case and requesting forms so that his pay would not be interrupted. On June 25, 1996 the Office invoked 5 U.S.C. § 8106(c)(2) and terminated appellant's monetary compensation entitlement.

addressing his conditions in 1997, and a June 10, 1996 report from his treating physician, Dr. Kenneth K. Newton, a Board-certified internist, who noted that appellant was examined that date for "severe backache," and that he recommended bedrest and Tylenol #3 for pain. Dr. Newton did not address appellant's disability for limited-duty work on June 13, 1996. Further, the Board notes that Dr. Newton's opinion finding appellant's continuing disability for work was on one side of the medical opinion evidence conflict that was resolved by the impartial medical examiner. As appellant's condition in 1997 was irrelevant to his ability to perform suitable work on June 13, 1996, as Dr. Newton's June 10, 1996 report did not specifically address his ability to perform limited-duty work on June 13, 1996, and as Dr. Newton was on one side of the conflict which was resolved by the impartial medical examiner, his additional report is insufficient to create a conflict with the report of the impartial medical examiner on the issue of whether appellant was indeed capable of performing the four-hour per day limited-duty position.[2] Further, this limited report did not provide medical opinion with rationale which would support appellant's refusal to report for his preemployment processing and physical examination on June 13, 1996.[3]

By decision dated September 24, 1997, the Office determined that this evidence did not support appellant's refusal to report for preemployment processing and physical examination on June 13, 1996. The Board now makes similar findings and concurs with the Office's determination.

[2] *Howard Y. Miyashiro*, 43 ECAB 1101 (1992); *Josephine L. Bass*, 43 ECAB 929 (1992); *LeAnne E. Maynard*, 43 ECAB 482 (1992).

[3] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.5(a)(4) which requires medical reasoning to support a physician's advice on refusal of an offered position.

Accordingly, the decisions of the Office of Workers' Compensation Programs dated September 24 and July 14 1997 are hereby affirmed.

Dated, Washington, D.C.
August 4, 1999

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member