U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of IRIS T. BOONE and U.S. POSTAL SERVICE,
GENERAL MAIL FACILITY, Gaithersburg, MD

Docket No. 98-559; Submitted on the Record;
Issued April 7, 2000

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 for neglecting to work after suitable work was procured for her.

On July 18, 1987 appellant, a 32-year-old distribution clerk, injured her right arm while lifting a flat tray of mail. She filed a claim for benefits on the date of injury, which the Office accepted for right arm strain and right shoulder strain on August 4, 1988. Appellant worked intermittently after her injury until October 1, 1987, when she returned to work full time. She stopped work on April 4, 1988 and has not returned to gainful employment since that time. The Office paid appellant compensation for partial and temporary total disability for appropriate periods and eventually placed her on the periodic rolls.

By decision dated August 20, 1990, the Office terminated appellant's compensation on the grounds that she refused an offer of suitable work. By letter dated September 19, 1990, appellant requested an oral hearing, which was held on April 19, 1991. By decision dated July 31, 1991, the Office reversed the previous decision and reinstated appellant's compensation for temporary total disability. She was again placed on the periodic rolls.

In a March 18, 1996 report, Dr. Gary C. Dennis, a Board-certified neurosurgeon and appellant's treating physician, stated that appellant still had weakness in her right upper extremity which prevented her from doing a lot of repetitive activities in the right upper extremity; he stated, however, that appellant was able to write with her right hand and use it for normal activities. He diagnosed mild residual reflex sympathetic dystrophy (RSD), stable. Dr. Dennis recommended that appellant be referred for a limited-duty job with no pushing, pulling or lifting over 20 pounds and no sitting or standing over 2 hours at a time, without a break.

By letter dated April 18, 1996, the Office referred appellant to the employing establishment for placement in a limited-duty job within Dr. Dennis' work restrictions.

In a July 8, 1996 work restriction evaluation, Dr. Dennis indicated that appellant could work eight hours intermittently while sitting, walking, lifting, bending, squatting, climbing, kneeling, twisting and standing, and for two hours while lifting and bending. He reported that appellant could lift up to 50 pounds and totally restricted her from working above the shoulder, pushing and pulling. Dr. Dennis stated that appellant should avoid exposure to dust and required a chair with a back support.

By letter dated August 20, 1997, the employing establishment offered appellant a job as a modified distribution clerk consistent with the physical limitations and work restrictions outlined by Dr. Dennis. The letter indicated that the job offer was effective August 30, 1997.

By letter dated September 22, 1997, the employing establishment informed the Office that appellant had been offered a modified, light-duty job, but had failed to respond to the offer. On September 22, 1997 appellant accepted the offered position, and signed the letter of acceptance.

By letter dated October 7, 1997, the Office informed appellant that the employing establishment had made an offer of work to her consistent with the physical limitations and work restrictions outlined by Dr. Dennis. The Office stated that it had reviewed the offer of employment and had compared it with the medical evidence concerning her ability to work and had found the offer to be suitable. The Office informed appellant that if she refused the employment or failed to report for work when scheduled without reasonable cause then her compensation benefits would be terminated. The Office stated that the case would be kept open for 30 days. It instructed appellant to either indicate that she had accepted the job or submit any evidence or reasons for refusing the job offer. The Office further informed appellant that if she failed to accept the offered position and did not report to work, any reasons in justification of the failure would be considered by the Office before termination of benefits.

By letter dated October 9, 1997, the employing establishment informed the Office that appellant had accepted the modified job offer and was scheduled to report to work on October 13, 1997. The employing establishment indicated in a handwritten notation, however, that as of October 14, 1997, appellant had not reported to work. On October 16, 1997 appellant signed another letter of acceptance. She, however, never reported to work to begin the modified job.

By decision dated November 3, 1997, the Office terminated appellant's compensation effective November 5, 1997 because she refused or neglected to work after suitable work had been offered and accepted.

The Board finds that the Office properly terminated appellant's compensation for neglecting to perform suitable work.

Once the Office accepts a claim it has the burden of justifying termination or modification of compensation benefits.[1] This includes cases in which the Office terminates

[1] *Patrick A. Santucci*, 40 ECAB 151 (1988); *Donald M. Parker*, 39 ECAB 289 (1987).

compensation under 5 U.S.C. § 8106(c)(2) for refusal to accept suitable work.[2] Under section 8106(c)(2) of the Federal Employees' Compensation Act[3] 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 the employee. Section 10.124(c) of the Office's regulations provides that an employee who refuses or neglects to work after suitable work has been offered or secured 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 a determination is made with respect to termination of entitlement to compensation.[4] To justify termination, the Office must show that the work offered was suitable and must inform appellant of the consequences of refusal to accept such employment.[5]

The initial question in this case is whether the Office properly determined that the position was suitable. The Board finds that the weight of the medical evidence establishes that the position was within appellant's physical limitations. Dr. Dennis found that appellant could work eight hours intermittently while sitting, walking, lifting, bending, squatting, climbing, kneeling, twisting and standing and for two hours while lifting and bending. He stated that appellant could lift up to 50 pounds and totally restricted her from working above the shoulder, pushing and pulling. Dr. Dennis further indicated that appellant should avoid exposure to dust and required a chair with a back support. Based on these restrictions, the employing establishment identified the modified position of distribution clerk and determined that appellant was able to perform the duties of the position. The Office reviewed the job description and Dr. Dennis' work capacity evaluation and found that the modified job of distribution clerk offered by the employing establishment was within his restrictions. The offered position therefore appears to be consistent with these restrictions.

On October 7, 1997 the Office informed appellant that it found that the job was within her capabilities and advised her that if she refused to accept the position her compensation would be terminated. The employing establishment submitted letters dated August 20 and September 25, 1997 to appellant offering her the job, the latter of which appellant signed on September 30, 1997. She, however, failed to report on October 13, 1997, the date she was to begin work. Appellant signed another letter of acceptance on October 16, 1997, but never reported to work.

Appellant's failure to report to work on October 13, 1997 or on any subsequent date is, pursuant to 5 U.S.C. § 8106(c)(2), an action of neglecting to work after a suitable job was procured for her. Although she has claimed that she did not receive a return to work form prior to November 3, 1997, the record contains two letters offering her the modified job which bear her signature. The presence of her signature on these letters, therefore, indicates her acceptance of the offer and her intention to report to work to begin the job. Appellant has not given any

[2] *See Barbara R. Bryant*, 47 ECAB 715 (1996).

[3] 5 U.S.C. §§ 8101-8193.

[4] 20 C.F.R. § 10.124(c); *see also Catherine G. Hammond*, 41 ECAB 375 (1990).

[5] *See John E. Lemker*, 45 ECAB 258 (1993).

acceptable reason for her failure to report for work on October 13, 1997 within 30 days of the original offer, which was proffered August 20, 1997, or within 30 days of her original acceptance on September 30, 1997. The Office therefore acted properly in terminating appellant's compensation for neglecting to work after suitable work was procured for her.[6]

The decision of the Office of Workers' Compensation Programs, dated November 3, 1997, is hereby affirmed.

Dated, Washington, D.C.
April 7, 2000

George E. Rivers
Member

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

[6] *See Shirley B. Livingston*, 42 ECAB 855 (1991).