

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of FREDDIE MOSLEY and U.S. POSTAL SERVICE,  
BULK MAIL CENTER, Jacksonville, FL

*Docket No. 00-1398; Submitted on the Record;  
Issued November 19, 2001*

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DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,  
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective February 2, 1997 on the basis that he refused an offer of suitable work.

On August 11, 1992 appellant, then a 34-year-old mailhandler, filed a claim for carpal tunnel syndrome of the left wrist. This condition was accepted by the Office, and appellant underwent carpal tunnel release surgery on December 9, 1992.

On December 15, 1992 appellant filed a claim for a traumatic injury sustained on February 27, 1992 when a pile of sacks came down a slide and struck him on the left side of the neck and shoulder area. The Office accepted that appellant sustained a left shoulder strain and impingement and a strain of the cervical spine.

By letter dated November 7, 1995, the Office advised appellant that the modified mailhandler position offered to him by the employing establishment was suitable work and that he had 30 days to accept the position or explain why he was refusing it. Appellant submitted a December 12, 1995 report from his attending physician, Dr. Allen Brillhart, stating that he was temporarily unable to work.

The Office determined that there was a conflict of medical opinion between Dr. Brillhart and Dr. Ethan Todd, to whom the Office referred appellant for a second opinion evaluation. Dr. Todd's January 19, 1995 report indicating the duties appellant could perform, and his November 17, 1994 work tolerance limitations were the basis of the Office's offer, made to appellant in February 1995. The Office referred appellant to Dr. James W. Dyer, a Board-certified orthopedic surgeon, selected as the impartial medical specialist.

On October 7, 1996 the employing establishment offered appellant a position as a modified mailhandler, with duties of processing loose mail, sorting trays of mail into containers, and rewrapping soiled or damaged mail. The physical requirements were listed as intermittent

lifting/carrying of up to 10 pounds 1 hour a day, intermittent sitting 4 hours a day, intermittent standing and walking 1 hour a day, intermittent kneeling/bending/stooping/twisting 1 hour a day, no pulling/pushing, simple grasping 8 hours per day, no fine manipulation, no reaching above the shoulder, no driving, no operating machinery and no overhead work.

On October 11, 1996 appellant rejected the employing establishment's offer, stating that he was not able to perform these duties and that he had tried before.

By letter dated November 26, 1996, the Office advised appellant that the modified mailhandler position offered to him by the employing establishment was suitable, that he had 30 days to accept the position or explain why he was refusing it, and that a partially disabled employee who refuses suitable work is not entitled to compensation.

By decision dated January 31, 1997, the Office terminated appellant's compensation effective February 2, 1997 on the basis that he refused an offer of suitable work.

By letter dated January 30, 1998, appellant requested reconsideration and submitted additional medical evidence. By decision dated April 7, 1998, the Office found that the additional evidence was insufficient to warrant modification of its prior decision.

By letter dated November 3, 1998, appellant requested reconsideration. By decision dated April 21, 1999, the Office found that the additional evidence was insufficient to warrant modification of its prior decisions.

By letter dated October 11, 1999, appellant requested reconsideration and submitted additional medical evidence. By decision dated January 21, 2000, the Office found that the additional evidence was insufficient to warrant modification of its prior decisions.

The Board finds that the Office properly terminated appellant's compensation effective February 2, 1997 on the basis that he refused an offer of suitable work.

Under section 8106(c)(2) of the Federal Employees' Compensation Act,<sup>1</sup> 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.<sup>2</sup> To justify termination of compensation, the Office must establish that the work offered was suitable.<sup>3</sup> Section 10.516 of the Code of Federal Regulations<sup>4</sup> provides that an employee who refuses or neglects to work after suitable work has been offered or secured 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

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> 5 U.S.C. § 8106(c)(2) provides in pertinent part: "A partially disabled employee who ... (2) refuses or neglects to work after suitable work is offered to, procured by, or secured for him; is not entitled to compensation."

<sup>3</sup> *David P. Camacho*, 40 ECAB 267 (1988).

<sup>4</sup> 20 C.F.R. § 10.516.

such showing before a determination is made with respect to termination of entitlement to compensation.<sup>5</sup>

The physical requirements of the position of modified mailhandler offered to appellant on October 7, 1996 do not exceed the work tolerance limitations set forth on August 1, 1996 by Dr. Dyer, the impartial medical specialist who resolved a conflict of medical opinion on appellant's ability to work. In his narrative report dated July 31, 1996, Dr. Dyer concluded that appellant could lift up to 10 pounds, and that he could not perform repetitive motions with the left wrist or overhead activity with his left arm or extended neck.

The physical requirements of the offered position also do not exceed the work tolerance limitations set forth by appellant's attending physician, Dr. Brillhart, on August 22, 1996. Although the Office's referral physician, Dr. Todd, indicated in a January 19, 1995 note that appellant could not rewrap mail, this opinion does not outweigh those of Drs. Brillhart and Dyer, which were rendered about two months before the offer was made on October 7, 1996. The weight of the medical evidence establishes that the position of modified mailhandler offered to appellant by the employing establishment on October 7, 1996 was suitable.

The medical evidence appellant submitted with his requests for reconsideration does not establish that the offered position was not suitable. Although Dr. Orlando G. Florete, Jr. stated in a February 23, 1998 report that appellant could not do the job as a modified mailhandler "because of the persistence of his pain," this opinion essentially repeats appellant's complaint that he hurts too much to work, which, without objective signs of disability, does not constitute a basis for payment of compensation.<sup>6</sup>

In an October 5, 1999 deposition, Dr. Florete stated that his opinion that appellant could not perform the duties of the offered position was not based on the offer, but rather on his understanding of what appellant might be required to do. When asked if appellant could do the job offered on October 7, 1996, Dr. Florete responded that he could not "in a practical sense," because the post office handled parcels weighing up to 50 pounds and it was "quite impractical for him [appellant] not to be able to be involved in lifting these boxes." Dr. Florete's opinion is based on his own speculation and not on the duties and restrictions described in the offered position. Therefore, its probative value is insufficient to create a conflict with the opinion of the impartial medical specialist, Dr. Dyer.

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<sup>5</sup> See *Camillo R. DeArcangelis*, 42 ECAB 941 (1991).

<sup>6</sup> *John L. Clark*, 32 ECAB 1618 (1981).

The decisions of the Office of Workers' Compensation Programs dated January 21, 2000 and April 21, 1999 are affirmed.

Dated, Washington, DC  
November 19, 2001

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

Priscilla Anne Schwab  
Alternate Member