U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARTIN JOSEPH RYAN and U.S. POSTAL SERVICE,
POST OFFICE, Brooklyn, NY

Docket No. 00-1262; Submitted on the Record;
Issued June 14, 2002

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective March 27, 1999 on the grounds that he refused an offer of suitable work.

This case has previously been on appeal before the Board.[1] In a decision dated December 20, 1988, the Board reversed the Office's January 12, 1988 decision on the grounds that appellant met his burden of proof in establishing that he was unable to perform the light-duty position to which he returned on August 18, 1984. Accordingly, the Board found that appellant was entitled to compensation for the period after he retired on August 31, 1985. The facts of the case are hereby incorporated by reference.

On March 17, 1989 appellant elected to receive compensation benefits under the Federal Employees' Compensation Act in lieu of retirement benefits provided by the Office of Personnel Management.

In an undated work capacity evaluation form received by the employing establishment on December 27, 1996, Dr. Edward C. Jacobson, an attending osteopath, indicated that appellant could work five hours a day with restrictions.

By letter dated September 29, 1997, the employing establishment offered appellant a modified letter carrier position working limited duty for five hours a day. The employing establishment noted that the position was in strict compliance with appellant's work limitations. The position was located at appellant's date-of-injury duty station in Jamaica, New York. The employing establishment indicated that it would be willing to pay appellant's relocation expenses.

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[1] Docket No. 88-936 (issued December 20, 1988).

In a letter dated October 2, 1997, appellant declined the job offer. He noted that he had been living in Florida for over 20 years and owned a home; his wife suffered a stroke the prior year and was under a physician's care and required assistance.

In a letter dated November 10, 1998, the Office advised appellant that the modified letter carrier position was found to be suitable and was within the work tolerance limitations imposed by his attending physician. Appellant was advised of the provisions of 5 U.S.C. § 8106(c) and given 30 days to either accept the position or provide reasons for refusing the position.

In a letter dated December 1, 1998, appellant argued that the job offer in New York was inappropriate in that his last employment was at the Clearwater Post Office in Clearwater, Florida.

In a letter dated December 15, 1998, the Office advised that the reasons appellant provided for refusing the position were not acceptable. He was provided 15 additional days from the date of the letter in which to accept the position of modified letter carrier without penalty. Appellant was advised that no further reasons for refusal would be considered.

In a letter dated December 21, 1998, appellant reiterated his position that his circumstances warranted his refusal of the position. He noted that the fact that he was last employed in Clearwater, Florida; was placed on the compensation rolls in Florida; had lived in Florida for over 22 years; owned a home; and again discussed the physical condition of his wife.

In a letter dated January 19, 1999, the Office advised appellant that its procedural manual provides as an acceptable reason for job refusal when a claimant is no longer on the employing establishment rolls and has moved, or there exists a medical condition of the claimant or family member which contraindicates return to the area of residence at the time of the injury. Based on appellant's allegation that his wife had suffered a stoke, the Office advised appellant that he could submit medical reports from his wife's attending physician which described her condition and whether she was able to return to New York to live. He was afforded 20 days in which to provide his wife's medical information to the Office.

On January 11, 2000 the Office received the medical reports of appellant's wife. There was no indication in the reports that her medical condition rendered her unable to return to or live in New York.

In a letter dated February 26, 1999, the Office advised appellant that his reasons for refusal were found unacceptable. The medical documentation did not address whether his wife was unable to return to New York to live. Appellant was advised that he did not submit sufficient medical documentation to support his claim that he was medically unable to perform the duties of modified letter carrier. The Office stated that the offered position was still available. Appellant was given 15 days in which to accept the offered job without penalty. If he did not accept the job within the appropriate time frame, his compensation benefits would be terminated under 5 U.S.C. § 8106(c).

By decision dated March 24, 1999, the Office terminated appellant's compensation for wage loss on the grounds that he had refused an offer of suitable work. The Office addressed the

reasons given by appellant for his refusal to accept the offered position and found that his refusal was not justified.

Appellant requested a hearing by an Office hearing representative.

In a decision dated February 8, 2000, the Office hearing representative affirmed the March 24, 1999 Office decision. He found that appellant had not submitted medical evidence to establish his contention that a medical condition of a family member contraindicated his return to work in New York. The Office hearing representative further found that as the regulations merely state that the reemployment should be in the current area "if possible," there was no prohibition against offering reemployment away from appellant's area of residence.

The Board finds that the Office improperly terminated appellant's compensation effective March 27, 1999 on the grounds that he refused an offer of suitable work.

Section 8106(c) of the Act provides: "A partially disabled employee who -- (1) refuses to seek suitable work; or (2) refuses or neglects to work after suitable work is offered to, procured by, or secured for him; is not entitled to compensation."[2] Section 10.517 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.[3] To justify termination of compensation, the Office must show that the work offered was suitable[4] and must inform appellant of the consequences of refusal to accept such employment.[5]

In the present case, the employing establishment offered appellant the position of modified letter carrier. The position was consistent with a work capacity evaluation form received by the employing establishment on December 27, 1996 and signed by Dr. Jacobson. The Office advised appellant by letter dated November 10, 1998, that it found the position to be suitable and that the employing establishment would pay his relocation expenses from Florida to New York. The Office additionally notified appellant of the provisions of 5 U.S.C. § 8106(c) which allowed 30 days to either accept the position or provide reasons for refusing the position. Appellant responded in letters dated December 1 and 21, 1998, advising that he could not relocate because his home has been in Florida for over 20 years, his last place of employment was in Florida, he received compensation from the Florida District Office, he owns property in Florida and his wife had suffered a stroke and he has family obligations. In letters dated December 15, 1998 and February 26, 1999, the Office notified appellant that his reasons for refusal were unacceptable and was provided 15 additional days to accept the offered position without penalty or, if the job was not accepted, his compensation benefits would be terminated

[2] 5 U.S.C. § 8106(c).

[3] 20 C.F.R. § 10.517; *see also Catherine G. Hammond*, 41 ECAB 375 (1990).

[4] *See Carl W. Putzier*, 37 ECAB 691 (1986); *Herbert R. Oldham*, 35 ECAB 339 (1983).

[5] *See Maggie L. Moore*, 42 ECAB 484 (1991), *reaff'd on recon.*, 43 ECAB 818 (1992).

under 5 U.S.C. § 8106(c). The Board finds no procedural deficiencies with the termination pursuant to 5 U.S.C. § 8106(c) in this case.[6]

The offered position of modified letter carrier is consistent with appellant's physical restrictions as indicated by the Office's form received by the employing establishment December 27, 1996. Appellant has not argued, nor submitted supporting evidence, that he is medically or vocationally unable to perform the duties of the modified letter carrier position.

The offered position would require appellant to relocate from Clearwater, Florida, where he has been living over 20 years, to Jamaica, New York. Appellant has argued that the relocation would cause his family severe hardship as he owns a home in Florida and his wife suffered a stroke and requires care. Although medical conditions of a family member could justify a refusal to accept a job offer, [7] appellant has not submitted any medical evidence documenting that a medical condition regarding his wife exists which contraindicated his return to New York. The medical records submitted regarding the condition of appellant's wife fail to support a showing of medical necessity for appellant's stay in Florida. The Board finds that appellant has not submitted a probative medical report establishing that his relocation to New York is medically contraindicated. Ownership of property is also not considered sufficient to justify a refusal of suitable work. Moreover, the Office advised appellant that he would be entitled to reasonable relocation expenses to assist him in his move.[8]

Appellant also suggested that the employer was precluded from offering him a job in New York in that he was last employed by the employing establishment in Clearwater, Florida and he currently lived in that location. The Office regulations pertaining to the employing establishment's responsibilities in returning the employee to work provide, "If possible, the employer should offer suitable reemployment in the location where the employee currently resides. If this is not practical, the employer may offer suitable reemployment at the employee's former duty station or other location."[9] The record contains evidence which shows that the employer attempted to determine whether it was "possible" to offer appellant suitable reemployment in the location where he resided at the time of the offer, *i.e.*, Clearwater, Florida. The employer indicated that, despite its efforts, no appropriate positions for appellant were found in Florida. As the employer attempted to assess the practicality of offering appellant a job in

[6] *See Maggie L. Moore*, *supra* note 5.

[7] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.5(b)(3) (December 1993). Section 2.814.5(b)(3) is applicable to claimants that have been "separated by formal personnel action" from the employing establishment. *Id.*, Chapter 2.814.5(b). The record indicates that appellant had been separated from employment by formal personnel action.

[8] With respect to relocation expenses, the relevant portion of the Office regulations provides, "Where the distance between the location of the offered job and the location where the employee currently resides is at least 50 miles, [the Office] may pay such relocation expenses as are considered reasonable and necessary if the employee has been terminated from the agency's employment rolls and would incur relocation expenses by accepting the offered reemployment." 20 C.F.R. § 10.508.

[9] 20 C.F.R. § 10.508.

Florida and determined that it was not practical to do so, it was proper for the employer to offer appellant a job in another location, *i.e.*, New York.

For these reasons, the Office properly determined that the job offered to appellant was suitable. Therefore, the Office properly terminated appellant's compensation effective March 27, 1999 on the grounds that he refused an offer of suitable work.

The February 8, 2000 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
June 14, 2002

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member