

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RONALD WALKER and U.S. POSTAL SERVICE,
POST OFFICE, Baton Rouge, LA

*Docket No. 01-452; Submitted on the Record;
Issued January 6, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective June 20, 1999 on the grounds that he neglected to work after being offered suitable work.

In October 1988, appellant, then a 42-year-old letter carrier, filed an occupational injury claim alleging that he sustained a low back injury due to the repetitive tasks required by his position. The Office accepted that appellant sustained a ruptured disc at L4-5 and authorized laminectomy surgery at L4-5 which was performed on September 13, 1989.¹ On April 22, 1999 the Office offered appellant a position as a modified distribution clerk for eight hours per day. The position, which involved sorting mail, was essentially sedentary and required lifting 10 pounds and walking 100 yards. The position allowed appellant to alternate sitting for 30 minutes at a time and standing for 5 minutes at a time. On April 22, 1999 the Office advised appellant of its determination that the modified distribution clerk position was suitable; the Office also informed appellant of the consequences of refusing the position or neglecting to work in the position without good cause. The Office advised appellant that he should accept the position or provide reasons for not doing so within 30 days. Appellant neglected to work in the offered position within the time allotted.² By decision dated June 4, 1999, the Office terminated appellant's compensation effective June 20, 1999 on the grounds that he neglected to work after being offered suitable work. By decision dated January 20, 2000 and finalized January 27, 2000, an Office hearing representative affirmed the Office's June 4, 1999 decision. By decision dated September 15, 2000, the Office affirmed the January 27, 2000 decision.

The Board finds that the Office properly terminated appellant's compensation effective June 20, 1999 on the grounds that he neglected to work after being offered suitable work.

¹ Appellant underwent additional surgeries in 1990 and 1991.

² Appellant later reported for work on June 21, 1999, but stopped working after one and a half hours.

Section 8106(c)(2) of the Federal Employees' Compensation Act provides in pertinent part, "A partially disabled employee who ... (2) refuses or neglects to work after suitable work is offered ... is not entitled to compensation."³ However, to justify such termination, the Office must show that the work offered was suitable.⁴ An employee who refuses or neglects to work after suitable work has been offered to him has the burden of showing that such refusal to work was justified.⁵

The evidence of record shows that appellant is capable of performing the modified distribution clerk position offered by the employing establishment and determined to be suitable by the Office in April 1999. The position was essentially sedentary in nature, required lifting 10 pounds and walking 100 yards, and allowed appellant to alternate sitting for 30 minutes at a time and standing for 5 minutes at a time. The record does not reveal that the modified distribution clerk position was temporary or seasonal in nature.⁶

In determining that appellant was physically capable of performing the modified distribution clerk position, the Office properly relied on the opinion of Dr. Randall Lea, a Board-certified orthopedic surgeon who served as an Office referral physician. In a report dated October 8, 1998, Dr. Lea reported the findings of his examination which was performed on that date. Dr. Lea indicated that, by appellant's own admission, appellant could lift 10 pounds in a seated position, walk 100 yards and alternate between sitting 30 minutes at a time and standing 5 minutes at a time. He noted that appellant reported some pain in the low back, but that he had no neurological deficit in his lower extremities. Dr. Lea indicated that, while he did not have a work restrictions form to complete, he was of the opinion that appellant would at least be capable of performing sedentary to light work. He noted that appellant did not give a reasonable effort during functional capacity testing obtained in February 1998.

The opinion of Dr. Lea shows that appellant was able to perform the limited duties of the sedentary position of modified distribution clerk offered by the employing establishment. The Board notes that, therefore, the Office has established that the modified distribution clerk position was suitable. As noted above, once the Office has established that a particular position is suitable, an employee who refuses or neglects to work after suitable work has been offered to him has the burden of showing that such refusal to work was justified. The Board has carefully reviewed the evidence and argument submitted by appellant in support of his neglect to work in the modified distribution clerk position and notes that it is insufficient to justify his neglect to work in the position.

Appellant submitted a June 7, 2000 report in which Dr. Billy A. May, an attending Board-certified family practitioner, indicated that there was not any job, even on a part-time basis, which could accommodate the frequent work breaks and alterations of positions required

³ 5 U.S.C. § 8106(c)(2).

⁴ *David P. Camacho*, 40 ECAB 267, 275 (1988); *Harry B. Topping, Jr.*, 33 ECAB 341, 345 (1981).

⁵ 20 C.F.R. § 10.124; *See Catherine G. Hammond*, 41 ECAB 375, 385 (1990).

⁶ *See* Federal (FECA) Procedure Manual, Part 2 -- Claim, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.4b (July 1997).

by appellant. Dr. May indicated that he agreed with work recommendations provided in 1995 by Dr. Steven Holmes, an attending physician Board-certified in occupational medicine. However, Dr. May did not clearly indicate that appellant had such work restrictions around the time that the modified distribution clerk position was offered in mid 1999. Moreover, Dr. May did not describe appellant's back condition around that time in any detail or explain how specific findings showed that such restrictions were necessary. Appellant also submitted medical reports from 1994 and 1995 of Dr. Holmes and Dr. Andrew King, an attending Board-certified orthopedic surgeon, but these reports would not be relevant to appellant's physical condition around the time the modified distribution clerk position was offered in mid 1999.

For these reasons, the Office properly terminated appellant's compensation effective June 20, 1999 on the grounds that he neglected to work after being offered suitable work.⁷

The decisions of the Office of Workers' Compensation Programs dated September 15 and January 27, 2000 are affirmed.

Dated, Washington, DC
January 6, 2003

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

⁷ The Board notes that the Office complied with its procedural requirements prior to terminating appellant's compensation, including providing appellant with an opportunity to accept the modified distribution clerk position after informing him that his reasons for neglecting to work in the position were not valid. *See generally Maggie L. Moore*, 42 ECAB 484 (1991); *reaff'd on recon.*, 43 ECAB 818 (1992). Appellant suggested that he did not receive certain correspondence from the Office. It is presumed, in the absence of evidence to the contrary, that a notice mailed to an individual in the ordinary course of business was received by that individual; this presumption arises when it appears from the record that the notice was properly addressed and duly mailed. *Michelle R. Littlejohn*, 42 ECAB 463, 465 (1991). The relevant letters were properly addressed and mailed and appellant did not submit sufficient contrary evidence to rebut the presumption of receipt.