

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LINDA A. DE GRUY and U.S. POSTAL SERVICE,
POST OFFICE, New Orleans, La.

*Docket No. 95-2419; Submitted on the Record;
Issued February 17, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective May 16, 1995 on the grounds that she refused an offer of suitable work.

In the present case, the Office accepted that appellant sustained contusions to her left hand and right knee and cervical lumbar strain on February 27, 1988 when she fell on an uneven floor. On March 17, 1988 appellant returned to limited-duty work. On June 16, 1988 appellant filed a claim, alleging a recurrence of chronic low back pain beginning April 15, 1988 and stopped work. By decision dated September 30, 1988, the Office accepted appellant's claim for cervical and lumbar strains. On July 24, 1990 appellant accepted a limited-duty position, with the employing establishment and returned to work on August 13, 1990. However, on August 25, 1990 appellant stopped work and began filing claims for continuing disability. Effective August 25, 1990, the Office began paying appellant compensation for four hours per day loss of wage-earning capacity through September 21, 1990. Subsequently, the Office determined that appellant was fully temporarily totally disabled and began payment of appropriate compensation.

On August 31, 1994 appellant's physician, Dr. James C. Butler, a Board-certified orthopedic surgeon, indicated that appellant had a 10 percent orthopedic impairment and requested a functional capacity examination, to determine the extent of her physical capabilities. After a functional capacity examination had been approved, by the Office and administered to appellant, Dr. Butler concluded that appellant's physical capacity exceeded the requirements of her occupation which was sedentary and that she could return to work with the previously indicated restrictions.

By letter dated November 22, 1994, the employing establishment advised appellant that it had received a letter from her physician, which indicated that she could return to work with restrictions and scheduled a meeting for December 1, 1994 to offer her a modified position. On November 30 and December 1, 1994 appellant rejected the proposed position. On December 12,

1994 Dr. Butler approved the proposed modified clerk position as being within appellant's physical capabilities. By letter dated January 26, 1995, the Office informed appellant that it found the proposed position suitable and informed her of the penalty provision of 5 U.S.C. § 8106(c). The Office allowed appellant 30 days to provide an explanation if she refused the offer. By letter dated February 21, 1995, appellant noted concerns she had about working at night, but stated, "I am willing to perform the duties of the position, the best of my ability, as long as I can." By letter dated March 20, 1995, the Office interpreted appellant's February 21, 1995 letter, as a refusal and provided her with 15 days to accept the offered position which it deemed suitable. By decision dated May 16, 1995, the Office terminated appellant's compensation on the grounds that she refused an offer of suitable work.

The Board has reviewed the case record, in the present appeal and finds that the Office properly terminated appellant's compensation effective May 16, 1995 on the grounds that she refused an offer of suitable work.

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."¹ However, to justify such termination, the Office must show that the work offered is suitable.² An employee who refuses or neglects to work after suitable work has been offered to him or her has the burden of showing that such refusal of work was justified.³

In the present case, the employing establishment offered appellant a limited-duty position on December 1, 1994 which she initially rejected. Once she was advised by the Office of the consequences of her failure to accept the position which constituted suitable work, she responded in a letter dated February 21, 1995, expressed reservations about the proposed position and purportedly accepted the position. The Office properly interpreted appellant's February 21, 1995 response as a rejection of the offered position and, in accordance with proper procedure, notified appellant that she had 15 days to accept the position or her compensation would be terminated.⁴ In the March 20, 1995 letter, the Office also evaluated appellant's concerns that were provided in her February 21, 1995 letter and found that her reasons for not accepting the proffered position were unacceptable. No response to the Office's March 20, 1995 letter was received. Appellant's failure to respond to the Office's March 20, 1995 letter, nullified her purported earlier acceptance of the proposed position. Therefore, since appellant ultimately failed to accept the proposed position, she refused an offer of suitable work, and the Office thereafter properly terminated appellant's compensation benefits pursuant to 5 U.S.C. § 8106.

¹ 5 U.S.C. § 8106(c)(2).

² *David P. Comacho*, 40 ECAB 267 (1988); *Harry B. Topping, Jr.*, 33 ECAB 341 (1981).

³ 20 C.F.R. § 10.124; see *Catherine G. Hammond*, 41 ECAB 375 (1990).

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814(5)(c) and (d)(1) (December 1993).

The decision of the Office of Workers' Compensation Programs dated May 16, 1995 is hereby affirmed.

Dated, Washington, D.C.
February 17, 1998

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member