

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of VIRDIE M. DECUIRE and DEPARTMENT OF THE TREASURY,  
INTERNAL REVENUE SERVICE, Houston, Tex.

*Docket No. 96-2337; Submitted on the Record;  
Issued June 5, 1998*

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DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,  
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation benefits effective May 26, 1996 on the grounds that she refused an offer of suitable work pursuant to 5 U.S.C. § 8106(c).

The Board has duly reviewed the case record in the present appeal and finds that the Office properly terminated appellant's compensation benefits effective May 26, 1996 on the grounds that she refused an offer of suitable work pursuant to 5 U.S.C. § 8106(c).

On August 31, 1995 appellant, then a 51-year-old internal revenue agent, filed a traumatic injury claim (Form CA-1) alleging that on August 29, 1995, she experienced intense pain and increasing stiffness in both legs, thighs, buttocks, lower left back, right knee and upper right arm while walking down bare concrete stairs to exist a building. Appellant stopped work on September 1, 1995. Appellant returned to work on October 3, 1995, but was unable to work on October 4, 1995. Appellant returned to work on October 5, 1995, but stopped work after that date.<sup>1</sup>

The Office accepted appellant's claim for aggravated degenerative disc disease of the lumbar spine and aggravated osteoarthritis of the left knee.

By decision dated May 9, 1996, the Office terminated appellant's compensation benefits effective May 26, 1996 based on her refusal of an offer of suitable employment.

It is well settled that once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.<sup>2</sup> This includes cases in which the Office

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<sup>1</sup> Appellant retired from the employing establishment on December 22, 1995.

<sup>2</sup> *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

terminates compensation under section 8106(c)(2) of the Federal Employees' Compensation Act for refusal to accept suitable work.

Section 8106(c)(2) of the Act provides that a partially disabled employee who refuses or neglects to work after suitable work is offered to, procured by, or secured for the employee is not entitled to compensation.<sup>3</sup> Section 10.124(e)<sup>4</sup> 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 showing before a determination is made with respect to termination of entitlement to compensation.<sup>5</sup> To justify termination, the Office must show that the work offered was suitable,<sup>6</sup> and must inform appellant of the consequences of refusal to accept such employment.<sup>7</sup> According to Office procedures, certain explanations for refusing an offer of suitable work are considered acceptable.<sup>8</sup>

Dr. Thaddeus W. Hume, a Board-certified orthopedic surgeon and appellant's treating physician, stated in a March 11, 1996 narrative report that appellant had aggravated her pre-existing degenerative disc disease of the lumbar spine and osteoarthritis of her left knee. Dr. Hume further stated that magnetic resonance imaging testing revealed evidence of a degenerative tear of the body of the meniscus and a possible chronic tear of the anterior cruciate ligament. Dr. Hume indicated that appellant had aggravated her arthritis, but that it was uncertain as to what extent she had done so, but noted that appellant should have recovered from any associated sprain/strain injury. Dr. Hume concluded, however, that appellant had some permanent aggravation which constituted a six percent whole-body impairment, that appellant could benefit from vocational rehabilitation and that some permanent limitations had to be considered. In a March 28, 1996 work restriction evaluation, Dr. Hume indicated that appellant could work eight hours per day limiting repetitive bending, stooping or lifting, and no climbing, prolonged standing, or walking. Dr. Hume further indicated that appellant could lift no more than 10 pounds occasionally, that appellant could walk or stand intermittently for 1 to 4 hours, and that appellant could sit intermittently for 5 to 10 hours. In the present case, the employing establishment offered appellant the position of internal revenue agent/examination program coordinator. The description of the offered position of internal revenue agent/examination program coordinator involved sedentary work. The Board finds that the internal revenue agent/examination program coordinator position is within the physical restrictions outlined by Dr. Hume in his March 28, 1996 work restriction evaluation.

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<sup>3</sup> 5 U.S.C. § 8106(c)(2).

<sup>4</sup> 20 C.F.R. § 10.124(e).

<sup>5</sup> *Maggie L. Moore*, 42 ECAB 484, 488 (1991); *reaff'd on recon.*, 43 ECAB 818 (1992).

<sup>6</sup> *See Carl W. Putzier*, 37 ECAB 691 (1986); *Herbert R. Oldham*, 35 ECAB 339 (1983).

<sup>7</sup> *See Maggie L. Moore*, *supra* note 5; *see also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.5(d)(1).

<sup>8</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.5(a)(1)-(5).

Accordingly, the Board finds that the medical evidence of record establishes that appellant is capable of performing the duties of the internal revenue agent/examination program coordinator position. Therefore, the Office properly found that the offered position was suitable in this case.

In order to properly terminate appellant's compensation under section 8106 of the Act, the Office must provide appellant with notice of its finding that an offered position is suitable and give appellant an opportunity to accept or provide reasons for declining the position.<sup>9</sup> The employing establishment offered the position of internal revenue agent/examination program coordinator on March 22, 1996. With respect to the procedural requirements for termination under section 8106(c), the Office advised appellant, by letter dated April 9, 1996, that the internal revenue agent/examination program coordinator position offered by the employing establishment was found to be suitable and that appellant had 30 days to either accept the offer or provide written reasons for refusing the offer. Appellant did not provide any reasons for rejecting the position or otherwise respond to the Office's April 9, 1996 notification. Further, on May 8, 1996, the employing establishment advised the Office that appellant had not returned to work and that appellant had elected to receive benefits from the Office of Personnel Management. The Board therefore finds that the Office properly followed the procedural requirements for terminating appellant's compensation under section 8106(c).<sup>10</sup>

Accordingly, the Board finds that the record establishes that the Office properly terminated appellant's compensation pursuant to section 8106(c) of the Act.

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<sup>9</sup> See *Maggie L. Moore*, *supra* note 5.

<sup>10</sup> After the issuance of the Office's May 9, 1996 decision, appellant alleged that she did not receive a copy of the Office's April 9, 1996 letter addressing the employing establishment's offer of the position of internal revenue agent/examination program coordinator. The Office also received additional evidence. However, the Board's jurisdiction to decide appeals from final decisions of the Office is limited to reviewing the evidence that was before the Office at the time of its final decision, and the Board may not, therefore, consider whether appellant's explanation is sufficient to rebut the presumption of receipt raised by the "mailbox rule" and the additional evidence; *see* 20 C.F.R. § 501.2(c). Appellant may submit such argument and any supporting evidence in a request for review to the Office pursuant to 5 U.S.C. § 8128.

The May 9, 1996 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.  
June 5, 1998

George E. Rivers  
Member

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member