U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ARMARETHIA ANDREWS and U.S. POSTAL SERVICE, DALLAS BULK MAIL CENTER, Dallas, Tex.

Docket No. 96-724; Submitted on the Record;
Issued May 7, 1998

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON, MICHAEL E. GROOM

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

The Board has duly reviewed the record and finds that the Office properly terminated appellant's compensation.

On September 26, 1991 appellant, then a 23-year-old mail handler, filed a claim alleging that she sustained carpal tunnel syndrome as a result of repetitive hand movements in her federal employment. The Office accepted the claim for bilateral carpal tunnel syndrome on December 1, 1992. Appellant underwent surgical release of both hands. Medical expenses were authorized and compensation for wage loss was paid. On August 30, 1994 appellant's attending physician, Dr. David Martin, released appellant to full-time limited-duty work. Dr. Martin indicated that appellant could not do repetitive work with her hands, or repetitive pushing or pulling, but could do intermittent lifting up to 75 pounds if the lifting was not repetitive.

By letter dated September 29, 1994, the employing establishment offered appellant a full-time limited-duty position as a modified mail handler. The position description specifically stated that it would involve lifting 50 to 75 pounds, but not repetitively, and that it would not involve repetitive pulling or pushing.

On October 3, 1994 in response to a request by appellant's physicians, the employing establishment clarified the duties of the proposed limited-duty position. In this communication, the employing establishment stated that while appellant would be required to lift sacks of mail weighing 35 to 45 pounds, if she felt the sack was too heavy she could freely ask for assistance from one of the other mail handlers. The employing establishment also stated that appellant would be required to carry buckets of mail weighing 10 to 20 pounds, but that the rest of the duties were relatively light, consisting of sorting mail and fixing mail that had come open. The employing establishment specifically stated that no specific aspect of the job required repetitive

type work, and that the duties of the assignment were diverse enough so that appellant could perform various duties within her restrictions rather than just stand in one place and repeatedly perform only one function repetitively.

On October 10, 1994 Dr. Martin informed the Office and the employing establishment that his prior indication that appellant could lift 50 to 75 pounds was a mistake, and that appellant could actually lift no more than 10 pounds.

By letter dated October 21, 1994, the employing establishment notified appellant that the prior job offer had been "amended to change your lifting restrictions from 50 [to] 75 lbs. to 1 [to] 10 lbs." The employing establishment further advised appellant that this was the "only change" to her job offer.

On October 26, 1994 the Office advised appellant that the September 29, 1994 job offer, as amended on October 21, 1994, was considered suitable to her physical restrictions as delineated by her physician. The Office afforded appellant 30 days in which to either accept the position, or provide an explanation of the reasons for refusing it. Appellant neither accepted the position nor provided an explanation for her refusal.

In a decision dated November 30 and issued on December 1, 1994, the Office terminated appellant's compensation on the grounds that she refused an offer of suitable work. In a decision dated December 22, 1994, the Office reviewed the merits of appellant's claim on reconsideration and declined to modify its December 1, 1994 termination. Following a second reconsideration request, the Office determined, in a decision dated November 24, 1995, that the evidence submitted in support of the request was repetitious in nature and insufficient to warrant review of the prior decision.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation.[1] Under section 8106(c)(2) of the Federal Employees' Compensation Act,[2] 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.[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]

With respect to the procedural requirements for termination under section 8106(c), the Office advised appellant, by letter dated October 26, 1994, that the modified mail handler position offered by the employing establishment was found to be suitable and appellant had 30 days to either accept the offer or provide reasons for refusing the offer. The Office further

[1] *Frank J. Mela, Jr.*, 41 ECAB 115 (1989); *Mary E. Jones*, 40 ECAB 1125 (1989).

[2] 5 U.S.C. § 8101 *et seq.*

[3] *Patrick A. Santucci*, 40 ECAB 151 (1988); *Donald M. Parker*, 39 ECAB 289 (1987).

[4] *Arthur C. Reck*, 47 ECAB __ (Docket No. 94-1072, issued December 4, 1995).

[5] *See Maggie L. Moore*, 42 ECAB 484 (1991), *reaff'd on recon.*, 43 ECAB 818 (1972).

informed appellant that at the expiration of 30 days, a final decision would be issued, and that if she refused to accept the position, any explanation or additional evidence offered would be considered prior to determining whether her reasons for refusing the job were justified. Subsequent to appellant's failure to either accept the position or provide an explanation for her refusal, the Office terminated appellant's compensation benefits. The Board therefore finds that the Office properly followed the procedural requirements for termination under section 8106(c).

Appellant indicated that her primary reason for declining the modified mail handler position offered by the employing establishment was her physical inability to perform the position. She stated that although the employing establishment amended the job offer to reflect that she would not have to lift more than 10 pounds, it also stated that this would be the only change to the position offer, and thus did not appear to eliminate the requirement of the position that she "dump mail," a task which involves lifting sacks of mail weighing at least 35 pounds, or the requirement that she lift buckets or trays of mail, which weigh 10 to 20 pounds.

The determination of whether appellant is capable of performing the offered position is a medical question that must be resolved by medical evidence.[6] The Board finds that the probative medical evidence indicates that the position offered was within appellant's medical restrictions.

Dr. Martin, appellant's treating physician, opined that appellant could work full-time light duty as long as the position did not require repetitive hand movements or lifting over ten pounds. While Dr. Martin subsequently stated, in a letter dated December 12, 1994, that he was concerned that the proposed job description appeared to involve a lot of repetitive hand movements in the continual opening of mail sacks, he did not state that appellant was unable to perform the position, but rather stated that appellant could perform these tasks for short periods. In addition, the employing establishment's official job offer and subsequent detailed description of the proposed duties specifically stated that the position would not involve repetitive movements, and that appellant would be free to vary her tasks so that she did not perform any one task for a long period of time. Similarly, although Dr. Martin expressed concern in his letter dated September 25, 1995, that the proposed position still described "dumping mail" as one of the required duties, and that this was incompatible with his earlier restriction that appellant lift no more than 10 pounds, the Office specifically amended the position, in writing, to limit any lifting to 10 pounds.

Accordingly, the Board finds that the medical evidence indicates that appellant was capable of performing the modified mail handler position. It is, as noted above, the Office's burden to establish that the job offer was suitable, and the Office has met its burden in this case. While the employing establishment did not specifically amend the language of the modified job offer to delete the requirement that appellant perform the heavy tasks such as "dumping mail," the employing establishment did offer appellant written assurance that she would not be required to lift more than ten pounds or perform repetitive hand movements, in accordance with her physician's recommendations. Therefore, the modified position offered is considered suitable work. Having been offered a suitable job, appellant must show that her refusal of the position

[6] *Camillo R. DeArcangelis*, 42 ECAB 941 (1991).

was reasonable or justified.[7] Her stated reason that she was physically unable to perform the position is not, for the reasons discussed, supported by the medical evidence of record.

The decisions of the Office of Workers' Compensation Programs dated November 24, 1995 and December 22, 1994 are hereby affirmed.[8]

Dated, Washington, D.C.
May 7, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member

[7] *See* 20 CFR § 10.124(c).

[8] The Board notes that the record contains an additional decision, issued by the Office on February 1, 1996, denying appellant's November 28, 1995 request for an oral hearing. Appellant's notice of appeal, however, postmarked December 21, 1995, was received by the Board on January 11, 1996. As the Board and the Office may not simultaneously have jurisdiction over the same issue in the same case, the Office did not have the authority to issue the February 1, 1996 decision and it is null and void. *Russell E. Lerman*, 43 ECAB 770 (1992); *Douglas E. Billings*, 41 ECAB 880 (1990).