U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOYCE R. GILL and U.S. POSTAL SERVICE,
GENERAL MAIL FACILITY, Boston, Mass.

Docket No. 96-2283; Submitted on the Record;
Issued September 3, 1998

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

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

In the present case, appellant filed a claim alleging that she sustained injury when she slipped and fell in the performance of duty on January 22, 1990. The Office accepted the claim for low back strain and appellant received compensation for temporary total disability. In a letter dated March 4, 1996, the Office advised appellant that a job offer from the employing establishment, for a modified clerk position at four hours per day, was found to be suitable. The Office noted the provisions of 5 U.S.C. § 8106(c)(2), and indicated that appellant had 30 days to either accept the position or provide reasons for refusing the position.

In a letter dated March 14, 1996, appellant stated that she could not accept the offered job. Appellant indicated that her husband had requested and received a transfer to West Virginia, and they were making arrangements to move after April 14, 1996. By letter dated April 8, 1996, the Office advised appellant that her reasons for refusing the position were not acceptable, and she would have 15 days to accept the position or her compensation would be terminated.

In a decision dated May 8, 1996, the Office terminated appellant's compensation on the grounds that she had refused an offer of suitable work.

The Board finds that the Office did not properly terminate appellant's compensation under 5 U.S.C. § 8106(c)(2).

Section 8106(c) 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." It is the Office's burden to terminate compensation under section 8106(c) for refusing to accept

suitable work or neglecting to perform suitable work.[1] To justify such a termination, the Office must show that the work offered was suitable.[2] An employee who refuses or neglects to work after suitable work has been offered to her has the burden of showing that such refusal to work was justified.[3]

The initial question presented is whether the Office properly determined that the offered position was suitable. The offer letter from the employing establishment, dated February 26, 1996, indicates that appellant was offered the position of "temporary modified clerk." No additional information was provided regarding the meaning of "temporary" in this case. It is not clear, for example, whether the offered position had a specific date of termination. There is no indication that the Office acknowledged that the offered position was described as temporary by the employing establishment.[4]

Office procedures discuss specific factors that must be considered in making an assessment of whether an offered job is suitable. With regard to a temporary job, the Office Procedure Manual provides in pertinent part:

> "A temporary job will be considered unsuitable unless the claimant was a temporary employee when injured and the temporary job reasonably represents the claimants WEC [wage-earning capacity]. Even if these conditions are met, a job which will terminate in less than 90 days will be considered unsuitable."[5]

Since the offer letter describes the job as temporary, and no further information was provided, the Board finds that the offered position was a temporary job. Appellant was not a temporary employee at the time of the injury,[6] and therefore under Office procedures the offered job in this case is unsuitable. The Office has accordingly failed to meet its burden of proof in terminating compensation under 5 U.S.C. § 8106(c)(2).

[1] *Henry P. Gilmore*, 46 ECAB 709 (1995).

[2] *John E. Lemker*, 45 ECAB 258 (1993).

[3] *Catherine G. Hammond*, 41 ECAB 375, 385 (1990); 20 C.F.R. § 10.124(c).

[4] The March 4, 1996 letter and the May 8, 1996 decision both refer to the offered position as a modified clerk position, without mention of the term "temporary."

[5] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment, Determining Wage-Earning Capacity*, Chapter 2.814.4(b)(3) (December 1993).

[6] A vocational rehabilitation report dated August 31, 1990 states that appellant had worked for over four years as a letter sorting machine clerk.

The decision of the Office of Workers' Compensation Programs dated May 8, 1996 is reversed.

Dated, Washington, D.C.
September 3, 1998

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member