

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of IRENE M. VIANCO and DEPARTMENT OF VETERANS AFFAIRS,  
REGIONAL OFFICE, Waco, Tex.

*Docket No. 97-1805; Submitted on the Record;  
Issued April 12, 1999*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
BRADLEY T. KNOTT

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

In a decision dated February 24, 1997, the Office terminated appellant's monetary compensation on the grounds that she refused an offer of suitable work. The Office found that the weight of the medical evidence rested with the June 18, 1996 opinion of Dr. William E. Blair, Jr., who served as an impartial medical specialist to resolve a conflict concerning the extent of any continuing injury-related disability and concerning appellant's ability to return to work. Having found that a limited-duty position based on Dr. Blair's work tolerance limitations was suitable and having received appellant's refusal of the offer, the Office determined that appellant was no longer entitled to monetary compensation.

The Board finds that the Office did not meet its burden of proof to justify terminating appellant's compensation.<sup>1</sup>

Section 8106(c)(2) of the Federal Employees' Compensation Act states that a partially disabled employee who refuses to seek suitable work, or refuses or neglects to work after suitable work is offered to, procured by or secured for him is not entitled to compensation.<sup>2</sup> The Office has authority under this section to terminate compensation for any partially disabled employee who refuses or neglects suitable work when it is offered. Before compensation can be terminated, however, the Office has the burden of demonstrating that the employee can work, setting forth the specific restrictions, if any, on the employee's ability to work and has the burden of establishing that a position has been offered within the employee's work restrictions, setting

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<sup>1</sup> Once the Office accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits. *Harold S. McGough*, 36 ECAB 332 (1984).

<sup>2</sup> 5 U.S.C. § 8106(c)(2).

forth the specific job requirements of the position.<sup>3</sup> In other words, to justify termination of compensation under 5 U.S.C. § 8106(c)(2), which is a penalty provision, the Office has the burden of showing that the work offered to and refused or neglected by appellant was suitable.<sup>4</sup>

The Board finds that the offer of employment is, on its face, inconsistent with the work restrictions imposed by the impartial medical specialist, Dr. Blair. In his narrative report of June 18, 1996, Dr. Blair stated that appellant “should not be required to stand or sit for long periods.” The position description of the offered position of clerk typist, however, states the following under Factor 8, Physical Demands: “The work requires long periods of sitting and listening through headphones while transcribing dictated material.” The offer of employment, dated September 24, 1996, also states that the position is a sedentary one that requires sitting at a typewriter and typing dictated material, forms and form letters. The offer asserts that these duties are within the physical limitations described by Dr. Blair.

The specific job requirements of the position, specifically the long periods of sitting, are not within appellant’s work restrictions. The Board therefore finds that the position offered was not suitable, that appellant’s refusal was justified and that the Office erred in terminating her monetary compensation on the grounds that she refused an offer of suitable work.

The February 24, 1997 decision of the Office of Workers’ Compensation Programs is reversed.

Dated, Washington, D.C.  
April 12, 1999

Michael J. Walsh  
Chairman

David S. Gerson  
Member

Bradley T. Knott  
Alternate Member

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<sup>3</sup> *Frank J. Sell, Jr.*, 34 ECAB 547 (1983).

<sup>4</sup> *Glen L. Sinclair*, 36 ECAB 664 (1985).