

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOANNE WOODARD and U.S. POSTAL SERVICE,
POST OFFICE, Lewiston, Maine

*Docket No. 97-918; Submitted on the Record;
Issued January 6, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective August 20, 1995 on the grounds that she refused an offer of suitable work.

In the present case, the Office accepted that appellant sustained a left shoulder strain and left acromioclavicular joint separation in the performance of duty on December 29, 1976. Appellant began receiving compensation for temporary total disability. By letter dated June 19, 1995, the employing establishment offered appellant a part-time modified clerk position. By letter dated June 20, 1995, the Office advised appellant that it found the offered position to be suitable, and notified appellant that she had 30 days to either accept the position or provide reasons for refusing the offer. The Office indicated that under 5 U.S.C. § 8106(c), an employee who refuses to work, after suitable work is offered, is not entitled to compensation.

In a letter dated July 26, 1995, appellant advised the Office that she would not accept the offered position. In a letter dated July 31, 1995, the Office determined that appellant's reasons were unacceptable and appellant was notified that the offered position remained available for 15 days.

By decision dated August 16, 1995, the Office terminated appellant's compensation effective August 20, 1995. By decision dated September 30, 1996, the Office reviewed the case on its merits and denied modification of the prior decision.

The Board has reviewed the record and finds that the Office properly terminated appellant's compensation on the grounds that she refused an offer of suitable work.

5 U.S.C. § 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 him has the burden of showing that such refusal to work was justified.³

In this case, the Board finds that the offered position was medically suitable. The job description indicated that the position was sedentary, with no lifting over two pounds and no use of the left arm. The attending orthopedic surgeon, Dr. Catherine E. Meikle, provided appellant's work restrictions in a form report (OWCP-5) dated January 5, 1995. Dr. Meikle indicated that appellant was unable to perform reaching, lifting, pushing, or pulling activities with the left arm and could work four hours per day with interrupted breaks. In a treatment note dated May 16, 1995, Dr. Meikle specifically indicated that she had reviewed a job description of the offered position, and stated that it was reasonable for appellant to begin at two days a week for one to two hours, and increase her hours with a goal of working four hours per day, five days per week, after three weeks. The June 19, 1995 job offer indicated that it would begin the first week at two days, for one to two hours per day, the second week at three hours per day, three days a week and the third week at four hours per day, five days a week. The job offer was therefore within the recommendations provided by Dr. Meikle.

Accordingly, the Board finds that the offered position was within appellant's physical restrictions and was properly found to be a suitable position. The Office properly advised appellant that it found that offered position was suitable and provided appellant an opportunity to accept the position or provide reasons for refusing the position.⁴ As noted above, it is appellant's burden to show that the refusal to work was justified. In her July 26, 1995 letter, appellant questioned the length of time after the injury before a job offer was made, alleged that requested modifications to her work schedule were not made, asserted that a request from the Office to Dr. Meikle for further information served to undermine the doctor patient relationship, and stated that she had no guarantee that a return to work would not aggravate her condition. None of these statements constitute a valid reason for refusing to accept the offered position.⁵

The Board finds that the Office properly found appellant's reasons for refusing the position to be unacceptable. The Office then appropriately notified appellant of their finding and offered appellant an opportunity to accept the position.⁶ Since the offered position was suitable,

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 *Maggie L. Moore*, 42 ECAB 484 (1991); *reaff'd on recon.*, 43 ECAB 818 (1992).

⁵ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment, Determining Wage-Earning Capacity*, Chapter 2.8145, which notes that acceptable reasons for refusal include that the offered position was withdrawn, the claimant found other work, the medical evidence established a worsening of appellant's condition, or that the decision to refuse the offer was based on reasoned medical opinion evidence.

⁶ See *Maggie L. Moore*, *supra* note 4.

and the Office properly followed its procedures with respect to notice and an opportunity to respond, the Board finds that pursuant to section 8106(c), appellant has refused an offer of suitable work and she therefore is not entitled to compensation.

The decision of the Office of Workers' Compensation Programs dated September 30, 1996 is affirmed.

Dated, Washington, D.C.
January 6, 1999

George E. Rivers
Member

David S. Gerson
Member

Michael E. Groom
Alternate Member