U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BARBARA D. GOBBEL and U.S. POSTAL SERVICE,
POST OFFICE, Jacksonville, Fla.

Docket No. 97-1040; Submitted on the Record;
Issued January 28, 1999

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective November 28, 1995 on the grounds that she neglected to work after receiving an offer of suitable work.

The Board finds that the Office improperly terminated appellant's compensation effective November 28, 1995 on the grounds that she neglected to work after receiving an offer of suitable work.

Section 8106(c)(2) of the Federal Employees' Compensation Act 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."[1] However, to justify such 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]

In the present case, the Office accepted that appellant sustained employment-related bilateral carpal tunnel syndrome and trigger finger of the right thumb.[4] By decision dated November 28, 1995, the Office terminated appellant's compensation effective that date on the grounds that she neglected to work after receiving an offer of suitable work and, by decisions

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[1] 5 U.S.C. § 8106(c)(2).

[2] *David P. Camacho,* 40 ECAB 267, 275 (1988); *Harry B. Topping, Jr.*, 33 ECAB 341, 345 (1981).

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

[4] Between 1993 and 1995, appellant had two bilateral carpal tunnel releases which were authorized by the Office.

dated March 14, 1996 and January 13, 1997, the Office denied modification of its November 28, 1995 decision.[5]

The evidence of record does not show that appellant was capable of performing the modified clerk position offered by the employing establishment and determined to be suitable by the Office in August 1995. The position involves the handling of mail and requires lifting up to five pounds. Although the position description indicates that the position does not require repetitive hand use, the position requires duties suggestive of repetitive hand use such as removing loose mail from conveyer belts, cutting mail straps, removing mail sleeves and sorting mail trays.

In determining that appellant is physically capable of performing the modified clerk position, the Office relied on the opinion of Dr. Robert L. Bowman, a Board-certified orthopedic surgeon, to whom the Office referred appellant. The Board has carefully reviewed the opinion of Dr. Bowman and notes that it does not clearly show that appellant could perform the modified clerk position at the time it was offered. Dr. Bowman indicated that appellant remained symptomatic and noted that she could only perform "very light clerical work" which needed to be "subject to review after a period of one to two months." It is unclear from Dr. Bowman's report whether appellant could perform the duties of the modified clerk position.[6] Moreover, the description of the modified clerk position does not contain adequate detail regarding the nature of the duties required by the position. According to Office procedure, a job offer must contain a description of the duties to be performed and the specific physical requirements of the position.[7]

In addition, the record contains other medical evidence which suggests that appellant was incapable of performing the modified clerk position when it was offered. In a report dated, October 13, 1995, Dr. Robert J. Kleinhaus, an attending Board-certified orthopedic surgeon, indicated that appellant could not work more than four hours per day, lift more than two pounds or perform repetitive hand work. In further reports dated December 15, 1995, February 19 and July 17, 1996, Dr. Kleinhaus provided similar assessments of appellant's condition.

For these reasons, the Office did not meet its burden to show that the modified clerk position was suitable. Therefore, the Office improperly terminated appellant's compensation effective November 28, 1995 on the grounds that she refused an offer of suitable work.

[5] In April 1995, the employing establishment offered appellant a full-time position as a modified clerk. Appellant worked for four hours per day between November 25 and December 10, 1995 in the position, but she did not work any hours in the position after December 10, 1995.

[6] It is unclear whether Dr. Bowman reviewed the description of the modified position offered by the employing establishment and he did not provide any assessment of the extent to which appellant could lift.

[7] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Determining Wage-Earning Capacity*, Chapter 2.814.4a (December 1993).

The decisions of the Office of Workers' Compensation Programs dated January 13, 1997 and March 14, 1996 are reversed.

Dated, Washington, D.C.
January 28, 1999

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member