

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LINDA BLUE and U.S. POSTAL SERVICE, SALT LAKE
CITY REMOTE ENCODING CENTER, Salt Lake City, Utah

*Docket No. 98-2178; Submitted on the Record;
Issued January 28, 1999*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

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

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

It is well settled that once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.¹ As the Office in this case terminated appellant's compensation under 5 U.S.C. § 8106(c), the Office must establish that appellant refused an offer of suitable work.

Section 10.124(c)² of the Office's regulations provides that an employee who refuses or neglects to work after suitable work has been offered or secured for the employee, has the burden of showing that such refusal or failure to work was reasonable or justified, and shall be provided with the opportunity to make such showing before a determination is made with respect to termination of entitlement to compensation.³ To justify termination of compensation, the Office must show that the work offered was suitable, and must inform appellant of the consequences of refusal to accept such employment.⁴

¹ *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

² 20 C.F.R. § 10.124(c).

³ *Arthur C. Reck*, 47 ECAB 339 (1995).

⁴ *Id.*

In the present case, the Office accepted that appellant developed stenosing tenosynovitis, or trigger digit, of her right middle finger in the performance of duty on or around June 10, 1997. Appellant's attending physician, Dr. James White, completed a work restriction evaluation on December 4, 1997 and indicated that appellant could work eight hours a day provided she used only her left hand.

On February 11, 1998 the employing establishment offered appellant a limited-duty position at the Remote Encoding Center, appellant's place of work at the time of her injury. The physical requirements of this position were data entry with the left hand only using a 10-key pad, 7 hours a day, 3 days a week. Dr. White reviewed the limited-duty job description and indicated that appellant was able to perform the work as described. Appellant rejected this position on February 27, 1998 on the grounds that she was not left handed, that requiring her to perform a job using only her left hand would place undue stress on that hand, possibly injuring it, and that the position would interfere with her continuing efforts to rehabilitate her injured right hand. In support of her objections, appellant submitted a February 19, 1998 letter from her physical therapist, John H. Nebeker, who stated that he concurred with appellant's concerns regarding the limited-duty position. He stated that it was not recommended that appellant use only her left hand to type as this would, over time, cause "a possible carpal tunnel problem or some kind of tendinitis to the wrist or elbow," and could also cause a postural problem in her back. Mr. Nebeker concluded that appellant needed another month of physical therapy to strengthen her right upper extremity, after which she could probably return at least to light duty.

By letter dated March 24, 1998, the Office complied with its procedural requirements by advising appellant that the limited-duty position involving left-handed data entry was suitable, that the position was currently available, and that appellant would have 30 days to accept the position or provide an explanation for refusing it. Appellant was advised that her previously advanced reasons for refusing the offer of employment had been considered and found to be insufficient, but that the Office would consider any explanation provided by her prior to making a decision as to whether she was justified in refusing the offered position. Finally, the Office informed appellant that her wage-loss compensation would be terminated if she refused suitable work and did not provide a valid reason for doing so. Appellant did not respond.

By decision dated June 2, 1998, the Office terminated appellant's compensation on the grounds that she had refused suitable work.

The Board finds that the evidence of record establishes that appellant is capable of performing the duties involving left-handed data entry which was offered to her by the employing establishment. In duty status reports dated December 4 and 23, 1997, and February 26, 1998, Dr. White, appellant's attending physician, reported that appellant was able to return to limited work provided she did not use her right hand. The position offered to appellant of left-handed data entry using a 10-key pad fit within these restrictions.

In rejecting the offer by the employing establishment, appellant relied in part on the opinion of her physical therapist, Mr. Nebeker. The evaluation of appellant's physical therapist

is of no probative value as a physical therapist is not a physician under the Federal Employees' Compensation Act and is not competent to render a medical opinion.⁵

The weight of the medical evidence indicates that the position offered is consistent with appellant's physical limitations. Therefore, the refusal of the job offer cannot be deemed reasonable or justified, and the Office properly terminated appellant's compensation.

The decision of the Office of Workers' Compensation Programs dated June 2, 1998 is hereby affirmed.

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

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

⁵ See 5 U.S.C. § 8101(2).