U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DOROTHY A. MATCHINSKY and DEPARTMENT OF VETERANS AFFAIRS, DES MOINES MEDICAL CENTER, Des Moines, Iowa

Docket No. 97-2563; Submitted on the Record;
Issued July 15, 1999

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate 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 met its burden of proof to terminate appellant's compensation benefits.

Appellant filed a claim on June 4, 1989 alleging that she developed wrist pain due to factors of her federal employment. The Office accepted appellant's claim for bilateral tenosynovitis on November 15, 1989 and entered her on the periodic rolls on February 14, 1990. The Office expanded appellant's claim to include aggravation of arthritis in the wrists on November 8, 1995. By decision dated May 6, 1996, the Office terminated appellant's compensation benefits finding that she refused an offer of suitable work. Appellant requested an oral hearing and by decision dated June 9, 1997, the hearing representative affirmed the Office's May 6, 1996 decision.

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 8106(c) of the Federal Employees' Compensation Act[2] provides that a partially disabled employee who refuses or neglects to work after suitable work is offered, procured by, or secured for the employee is not entitled to compensation. Section 10.124(c) of the applicable regulations[3] provides that an employee who refuses or

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

[2] 5 U.S.C. § 8106(c)(2).

[3] 20 C.F.R. § 10.124(c).

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. 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]

In this case, appellant's attending physician, Dr. Peter D. Wirtz, a Board-certified orthopedic surgeon, completed a work restriction evaluation on December 13, 1995 and indicated that appellant should limit standing secondary to her preexisting right hip and left knee conditions and should lift no more than five pounds due to her accepted employment injuries. He indicated that appellant could work two to four hours a day, that she had no limitations of the fine motor activities of the upper extremity, but that appellant could not perform repetitive motions of the wrist. Dr. Wirtz also noted that appellant had an eye condition. In a note of the same date, Dr. Wirtz diagnosed symptoms related to soft tissue strain, both wrists and listed appellant's restrictions as "15 minutes of typing with inactivity and five pound weight limit on repetitive basis."

The employing establishment provided appellant with a limited-duty job description of medical clerk. The physical demands of the position included sitting at a desk to do the work, sitting or standing to make photocopies or send faxes. The position required that appellant occasionally walk between offices and carry medical records weighing up to three pounds. The position necessitated "minimal computer data entry." Appellant was required to make telephone calls, maintain time cards and make photocopies or send faxes.

The Office referred this position description to Dr. Wirtz and on January 18, 1996 he stated that the physical demands of the medical clerk position were well within appellant's physical abilities. Appellant refused the position on February 19, 1996 and stated that she was convinced that the repetitive motions of photocopying and other clerical duties would aggravate her condition. By letter dated February 26, 1996, the Office informed appellant of the penalty provision of the Act and allowed appellant 30 days to accept the position or offer her reasons for refusal.

In a report dated February 28, 1996, Dr. Wirtz stated:

> "[Appellant] states that she has not tried her job and does not want to try the job because she would have to go through reexamination if she were unable to complete the job. She also relates that, other than her hand conditions, she has a right hip problem and a left knee problem with joint replacements and requires the use of a crutch and the employment activities would be in the basement area and the crutch activity would be limited in her work station walking requirements."

As the Office found, Dr. Wirtz did not offer his opinion that appellant was incapable of performing the duties of the offered position, but instead merely listed appellant's reservations.

[4] *Arthur C. Reck*, 47 ECAB 339 (1995).

This report is not sufficient to establish that the offered position was not medically suitable. The Office granted appellant an additional 15 days to accept the position and informed her that no other reasons would be considered.

Appellant responded on April 8, 1996 and stated that her "eye problem" made it difficult to read and that she was unable to use a computer. By decision dated May 6, 1996, the Office terminated appellant's compensation benefits finding that she refused an offer of suitable work.

The Board finds that at the time of the Office's May 6, 1996 decision, the medical evidence of record established that appellant could perform the duties of the offered position. Dr. Wirtz provided work restrictions in his December 13, 1995 reports and reviewed the position finding it was within appellant's abilities in his January 18, 1996 report. Although Dr. Wirtz listed appellant's stated concerns regarding the offered position in his February 28, 1996 report, he did not offer any opinion that appellant could not perform the duties of the offered position or that he agreed with appellant's assessment of her work capacity. As there was no medical evidence supporting appellant's contentions that the offered position was beyond her work capacity, the Office properly terminated her compensation benefits as she refused an offer of suitable work.

Following the Office's May 6, 1996 decision, appellant requested an oral hearing and submitted a report dated July 8, 1996 from Dr. H. Culver Boldt, a Board-certified opthalmologist of professorial rank. Dr. Boldt stated that appellant developed a suprachoroidal hemorrhage following cataract extraction in her right eye and that her visual acuity was limited to hand motions in that eye. He further noted that appellant had a cataract in her left eye. Dr. Boldt stated, "Her current level of visual acuity makes it difficult to read small print. I would expect her decreased vision to make it very difficult for her to function in a job where she needs to do much reading."

At the oral hearing, appellant testified that she knew she could not perform the duties of the offered position as she could not see a computer screen. She stated, however, that she was able to read the newspaper and watch television.

The evidence submitted by appellant is not sufficient to establish that the offered position is not suitable. Dr. Boldt indicated that appellant would have difficulty reading fine print, but did not comment specifically on appellant's inability to perform the duties of the offered position and did not offer an opinion as to whether appellant's eye condition would prevent her from performing those duties. Furthermore, appellant's testimony at the oral hearing indicates that she is capable of reading as well as watching television. These statements do not support her allegations that her eye condition would prevent her from performing the duties of her suitable work position.[5] The medical and factual evidence submitted by appellant is not sufficient to establish that the offered position was not suitable.

[5] All appellant's impairments whether work related or not, must be considered in assessing the suitability of the position. *Edward J. Stabell*, 49 ECAB ___ (Docket No. 96-1249, issued June 15, 1998).

The decision of the Office of Workers' Compensation Programs dated June 9, 1997 is hereby affirmed.

Dated, Washington, D.C.
July 15, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

Michael E. Groom
Alternate Member