

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TERI A. RANSOM and U.S. POSTAL SERVICE,
POST OFFICE, Denver, CO

*Docket No. 97-1025; Submitted on the Record;
Issued October 27, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether appellant is entitled to compensation for the period June 11 to December 18, 1994 in addition to that already received.

The Board finds that appellant is not entitled to compensation for the period June 11 to December 18, 1994 in addition to that already received.

It is well settled that a claimant is not entitled to dual workers' compensation benefits for the same injury. A claimant may not receive compensation for temporary total disability and under a schedule award covering the same period of time.¹ As Professor Larson points out, generally "the schedule award is added to the allowance for temporary total disability."² However, he makes clear that both benefits are not to be paid concurrently. In comparing schedule benefits with other benefits provided under workers' compensation laws for an injury, he notes, "It goes without saying that, when the statute provides parallel remedies for the same injury, it is not intended that claimant should have both."³ With respect to the Federal Employees' Compensation Act, the Board has held that "An employee cannot concurrently receive compensation under a schedule award and compensation for disability for work."⁴

In the present case, the Office of Workers' Compensation Programs accepted in 1990 that appellant, then a 37-year-old distribution clerk, sustained bilateral thoracic outlet syndrome and bilateral carpal tunnel syndrome.⁵ In April 1996 the employing establishment offered appellant a

¹ *Robert T. Leonard*, 34 ECAB 1687, 1690 (1983); *Marie J. Born*, 27 ECAB 623, 628 (1976).

² A. Larson, *The Law of Workers' Compensation* § 58.15 (1993).

³ *Id.* at § 58.25, n. 42.

⁴ *Andrew B. Poe*, 27 ECAB 510, 512 (1976).

⁵ In December 1992 appellant underwent a carpal tunnel syndrome release which was authorized by the Office.

job as a modified distribution clerk. Appellant accepted the job and began working on May 14, 1994. She stopped work on June 10, 1994 alleging that the duties of the position exceeded her work restrictions.⁶

By award of compensation dated June 10, 1994, the Office granted appellant a schedule award for a five percent permanent impairment of her right arm and a five percent permanent impairment of her left arm. The award ran for 31.2 weeks from May 14 to December 18, 1994. By decision dated and finalized December 7, 1994, an Office hearing representative remanded the case to the Office for a formal determination regarding appellant's entitlement to total disability compensation beginning June 11, 1994 and continuing. By decision dated February 8, 1995, the Office terminated appellant's compensation effective June 11, 1994 on the grounds that she neglected to work after suitable work was offered. By decision dated July 21, 1995, the Office denied modification of its February 8, 1995 decision and, by decision dated October 13, 1995, the Office denied appellant's August 21, 1995 request for merit review of her claim.

By decision dated October 21, 1996, the Office reversed its prior decisions on the grounds that it had improperly terminated appellant's compensation effective June 11, 1994 because she had neglected to work after suitable work was offered. The Office found that it had failed to meet its obligation to advise appellant of its determination that the modified distribution clerk position was suitable. The Office further determined that appellant was entitled to receive total disability compensation beginning December 18, 1994, the date after the expiration of her schedule award.

The Board notes that the Office correctly found in its March 24, 1997 decision that it had improperly terminated appellant's compensation effective June 11, 1994 because she had neglected to work in a suitable position. The Office properly noted that it had failed to meet its obligation to advise appellant of its determination that the modified distribution clerk position was suitable.⁷ On appeal appellant asserted that she was entitled to receive additional compensation in the form of total disability compensation for the period June 11 to December 18, 1994.

⁶ In September 1993 the employing establishment had offered appellant another light-duty position. Appellant's physician determined that the position was physically unsuitable and the employing establishment withdrew the offer.

⁷ Section 8106(c)(2) of the 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." 5 U.S.C. § 8106(c)(2). However, to justify such termination, the Office must show that the work offered was suitable. 20 C.F.R. § 10.124; see *Catherine G. Hammond*, 41 ECAB 375, 385 (1990). 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. *David P. Camacho*, 40 ECAB 267, 275 (1988); *Harry B. Topping, Jr.*, 33 ECAB 341, 345 (1981). Before terminating compensation based on refusing or neglecting to work after suitable work is offered, the Office must first meet certain procedural requirements such as advising the claimant of its determination that the offered position is suitable and allowing the claimant to provide reasons for not accepting the position; see *Maggie L. Moore*, 42 ECAB 484 (1991); *reaff'd on recon.*, 43 ECAB 818 (1992); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.4 (December 1993).

As noted above, the Office granted appellant a schedule award on June 10, 1994 for a five percent permanent impairment of her right arm and a five percent permanent impairment of her left arm which ran from May 14 to December 18, 1994. Appellant requested suspension of her schedule award compensation, but the record reveals that appellant actually received schedule award compensation for the period May 14 to December 18, 1994. Because appellant received schedule award compensation for a period which included the period June 11 to December 18, 1994, she would not also be entitled to receive total disability compensation for this period. Therefore, the Office properly determined that appellant is not entitled to compensation for the period June 11 to December 18, 1994 in addition to that already received.

The decision of the Office of Workers' Compensation Programs dated October 21, 1996 is affirmed.

Dated, Washington, D.C.
October 27, 1999

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member