

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FRANCIS WOMACK and U.S. POSTAL SERVICE,
POST OFFICE, Rolling Fork, MS

*Docket No. 98-1643; Submitted on the Record;
Issued October 26, 1999*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation for refusal to accept suitable employment.

On April 11, 1996 appellant, then a 43-year-old letter carrier, filed a claim for bilateral carpal tunnel syndrome which she related to repetitive motion in her job. Appellant underwent surgery on April 24, 1996 for carpal tunnel release in the left hand. The employing establishment offered, and appellant accepted, a limited-duty position to case mail with her right hand, and answer the telephone with no lifting over 20 pounds and no use of the left hand. Appellant returned to work on April 29, 1996. In a June 3, 1996 letter, the Office accepted appellant's claim for bilateral carpal tunnel syndrome. On January 27, 1997 appellant underwent surgery for right carpal tunnel release.

In letters dated May 9 and November 17, 1997, the employing establishment offered appellant a position as a modified part-time flexible distribution clerk. The employing establishment indicated that among other duties she would box mail, write up accountable mail, write second notices, distribute letters and flats at distribution cases, answer the telephone, stamp and return certain classes of mail and perform window duties within her work limitations. The employing establishment stated that the physical requirements of the job were lifting 45 pounds intermittently and 20 pounds frequently, and sitting, standing, walking, simple grasping, fine manipulation, pulling, pushing, reaching above the shoulders, bending, stooping and twisting for 8 hours a day intermittently for each activity. Appellant declined the position on November 28, 1997. In letters dated August 4 and December 22, 1997, the Office found that the position offered to appellant was suitable and currently available to her. The Office gave appellant 30 days to accept the position or provide an explanation for refusing the position. The Office indicated that after 30 days a final decision would be made. It stated that any explanation given for refusing the position would be considered prior to determining whether her reasons for declining the position were justified. The Office warned appellant that if she refused the position without a justifiable reason, her right to compensation would be jeopardized.

On November 13, 1997 appellant underwent surgery for a repeat left carpal tunnel release. In a December 15, 1997 duty status report, Dr. William C. Porter, Jr., an orthopedic surgeon, indicated that appellant could lift up to 45 pounds intermittently and could sit, stand, walk, bend, stoop, and twist 8 hours a day intermittently and could perform pushing, pulling, fine manipulation, simple grasping and reaching above the shoulder 2 hours a day intermittently.

In a January 22, 1998 decision, the Office terminated appellant's right to compensation, effective that day, on the grounds that she refused an offer of suitable work. In an accompanying memorandum, the Office noted that appellant had not responded to its December 22, 1997 letter.

In a January 29, 1998 letter, appellant requested reconsideration. She stated that her application for disability retirement had been approved and she had stopped working on December 22, 1997. Appellant indicated that she had been on limited duty since March 1996. She commented that the part-time job that the employing establishment had offered to her contained most of the duties she was performing in her limited-duty position. Appellant stated that she felt no need to take a demotion. She noted that she performed the position until October 24, 1997 when the postmaster threatened her with dismissal if she did not sign the job offer immediately. She refused and was not scheduled to work after October 25, 1997. Appellant was then called back effective December 8, 1997 into the part-time flexible clerk position she had refused and worked until she received her disability retirement.

In a March 9, 1998 decision, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was irrelevant and immaterial and therefore insufficient to warrant review of the prior decision.

The Board finds that the Office improperly terminated appellant's compensation for refusal to accept suitable work.

Section 8106(c)(2) of the Federal Employees' Compensation Act states: "a partially disabled employee who: (1) refused to seek suitable work; or (2) refuses or neglects to work after suitable work is offered is not entitled to compensation."¹ 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.²

The employing establishment, in its job offer to appellant, indicated that the offered position required appellant to sit, walk, stand, bend, stoop, twist, push, pull, work above her shoulders and perform simple grasping and fine manipulation for eight hours a day intermittently. However, in his December 15, 1997 duty status report, Dr. Porter indicated that appellant could perform pushing, pulling, reaching above the shoulder, simple grasping and fine manipulation only two hours a day, intermittently. Therefore, the medical evidence at the time of the Office's December 22, 1997 letter, which found the position was suitable, shows that the offered position was unsuitable for appellant as it exceeded her work limitations at the time of

¹ 5 U.S.C. § 8106(c)(2).

² 20 C.F.R. § 10.124.

the Office's finding that the position was found to be suitable. The Office therefore improperly terminated appellant's compensation.

The decisions of the Office of Workers' Compensation Programs, dated March 9 and January 22, 1998, are hereby reversed.

Dated, Washington, D.C.
October 26, 1999

David S. Gerson
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member