

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RONALD M. JONES and U.S. POSTAL SERVICE,
AIRPORT STATION, Oakland, CA

*Docket No. 99-1606; Submitted on the Record;
Issued December 28, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant was entitled to wage-loss compensation from July 2, 1997 through February 17, 1998 for disability resulting from an accepted bilateral foot condition, after the Office of Workers' Compensation Programs terminated his wage-loss compensation.

This case has been previously before the Board. The pertinent facts are as follows. Appellant sustained bilateral ulcerated interphalangeal keratoses in the performance of his duties as a letter carrier in Oakland, California, on or before September 17, 1987, receiving compensation for temporary total disability beginning October 23, 1988. In approximately 1989, appellant voluntarily relocated his family to Valley Springs, approximately a two-hour drive from Oakland. On August 24, 1993 the employing establishment offered appellant a light-duty position, determined to be suitable work. Appellant refused the position as he did not want to relocate to Oakland. The Office terminated appellant's wage-loss compensation effective August 21, 1994 on the grounds that he refused an offer of suitable work. The Office's Branch of Hearings and Review affirmed this termination by a decision dated December 11, 1994 and finalized December 12, 1994. By decision and order issued July 24, 1997,¹ the Board affirmed the decision of the Office's Branch of Hearings and Review. The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference.

Appellant submitted additional evidence in support of his claim for wage-loss compensation on and after August 21, 1994.² In periodic reports from February 9, 1995 to September 10, 1996, Dr. James R. Boccio, an attending podiatrist, opined that appellant's recurrent calluses and "chronic heel pain," permanently disabled him from work requiring

¹ Docket No. 95-1374.

² The most recent evidence before the Board on the previous appeal was an Office letter dated July 19, 1994.

“weight bearing and pressure on the foot,” precluding “any walking route or sitting on stools to sort mail.”³

On March 11, 1998 appellant accepted a March 6, 1998 limited-duty job offer as a modified full-time letter carrier at his former duty station in Oakland.⁴ The record indicates that he returned to work effective February 17, 1998.

In an October 8, 1998 letter, Dr. Boccio noted that, following appellant’s return to work, he experienced “an exacerbation of heel pain” and callus formation “directly related ... to on-foot time, especially if having to carry mail or excessive walking.” Dr. Boccio stated that appellant should work in a position with limited “on-foot time.”

On January 22, 1999 appellant filed a claim for continuing compensation on account of disability (Form CA-8) for the period July 2, 1997 through February 17, 1998, a period prior to his return to work on February 17, 1998.⁵

By letter decision dated February 3, 1999, the Office found that, following appellant’s “refusal of suitable employment for which [his] compensation benefits were terminated on August 8, 1994, the [employing establishment] was under no obligation to provide modified work for [appellant], at any point in time. There is no provision for this under [the Act]. Therefore, [appellant was] not entitled to compensation for the claimed period.”⁶

The Board finds that appellant is not entitled to wage-loss compensation from July 2, 1997 through February 17, 1998.

Section 8106(c)(2) of the Federal Employees’ Compensation Act⁷ provides in pertinent part, “A partially disabled employee who ... refuses or neglects to work after suitable work is offered ... is not entitled to compensation.”⁸ To prevail under this provision, the Office must show that the work offered was suitable and must inform the employee of the consequences of

³ On April 18, 1996 appellant filed a notice of occupational disease (Form CA-2) for bilateral foot conditions beginning on June 17, 1987. The Office assigned Claim No. A-130835775. In an October 21, 1996 letter, the Office advised appellant that the April 18, 1996 claim form was duplicative of Claim No. 13-935885, accepted for ulcerated interphalangeal keratoses occurring on or before June 30, 1987, which was “still active and open for medical treatment.” The Office then doubled the two claims.

⁴ The position involved routing and casing mail, with standing and walking up to two hours, bending and squatting, pushing and pulling up to one hour, lifting limited to 24 pounds, and unrestricted sitting and driving. Dr. Boccio approved these duties in a February 23, 1998 duty status report.

⁵ In a January 25, 1999 form report, Dr. Boccio indicated that he had released appellant to return to work as of February 17, 1998.

⁶ On appeal to the Board, appellant wrote an undated note on the February 3, 1999 letter, stating that he wished to appeal the “decision.”

⁷ 5 U.S.C. §§ 8101-8193.

⁸ 5 U.S.C. § 8106(c)(2).

refusal to accept such employment. An employee who refuses or neglects to work after suitable work has been offered has the burden of showing that such refusal to work was justified.⁹

As set forth in the Board's prior decision and order, the Office properly demonstrated that the light-duty position offered appellant on August 24, 1993 was suitable work based on his restrictions at that time. The burden then shifted to appellant to show that his refusal to work in that position was justified.¹⁰ However, appellant's only reason for refusing the offered suitable work position was that he did not want to relocate to Oakland from Valley Springs. As this reason for refusing the offer of suitable work was found insufficient under the facts and circumstances of appellant's case, the Office properly terminated his wage-loss compensation effective August 21, 1994.

Regarding appellant's claim for wage-loss compensation for the period July 2, 1997 through February 17, 1998, the Board notes that section 8106(c) serves as a bar to receipt of further compensation under section 8107 of the Act for a period of disability arising from the accepted employment injury.¹¹ Thus, appellant was not entitled to wage-loss compensation for the claimed period, and the Office's denial of appellant's claim was justified.

The decision of the Office of Workers' Compensation Programs dated February 3, 1999 is hereby affirmed.

Dated, Washington, DC
December 28, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Member

⁹ See *Michael I. Schaffer*, 46 ECAB 845 (1995).

¹⁰ See *Henry P. Gilmore*, 46 ECAB 709 (1995).

¹¹ 5 U.S.C. §§ 8106-8107; see *Armando D. Rodriguez*, 46 ECAB 721 (1995); see also *Merlind K. Cannon*, 46 ECAB 581 (1995).