

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOYCE L. HATCH and U.S. POSTAL SERVICE,
POST OFFICE, Houston, TX

*Docket No. 99-2506; Submitted on the Record;
Issued January 11, 2000*

DECISION and ORDER

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

The issues are: (1) whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective February 28, 1998 on the grounds that she neglected suitable work; and (2) whether the Office abused its discretion by refusing to reopen appellant's claim for merit review on February 18, 1999.

On February 18, 1997 appellant, then a 47-year-old mailhandler, filed a claim for occupational disease alleging that she sustained hand and arm injuries in the course of her federal employment duties. On May 23, 1997 the Office accepted that appellant developed employment-related bilateral carpal tunnel syndrome, bilateral cubital tunnel syndrome and right shoulder impingement. Appellant stopped work on March 10, 1997, the day she underwent surgery for her conditions. The Office placed appellant on the periodic rolls and paid appropriate compensation benefits.

On October 30, 1997 appellant's treating physician, Dr. Thomas L. Mehlhoff, a Board-certified orthopedic surgeon, released appellant to light-duty work, four hours a day, effective November 3, 1997. The physician restricted appellant from lifting more than 10 pounds and from reaching above her head.¹

On November 5, 1997 the employing establishment offered appellant a position in the damaged mail unit, four hours a day five days a week. The position corresponded exactly to the physical restrictions delineated by Dr. Mehlhoff and was approved by the physician. On November 13, 1997 the Office advised appellant that the modified distribution clerk position had been found to be suitable to her capabilities and was currently available. Appellant was advised that she should accept the position or provide an explanation for refusing the position within 30

¹ Dr. Mehlhoff's October 30, 1997 report states that appellant can return to work four hours a day, however, an accompanying form report indicates that appellant can work eight hours a day within her restrictions.

days. Finally, the Office informed appellant that if she failed to accept the offered position and failed to demonstrate that the failure was justified, her compensation would be terminated.

On December 3, 1997 appellant declined to accept the offered position, stating that she was unable to return to work at the employing establishment, that she felt she had been rendered ineffective for the job for which she had been hired, and that she was receiving counseling in an attempt to regain her personal pride.

By letter dated December 11, 1997, the Office informed appellant that her reasons for refusing the position were not acceptable and allowed an additional 15 days for appellant to accept the position.

Appellant subsequently accepted the offered position and returned to work on January 2, 1998. Appellant stopped work, however, on January 4, 1998.

On January 13, 1998 the Office reduced appellant's compensation to reflect that she was working four hours a day.

On February 9, 1998 the Office advised appellant that it had learned that she had stopped work completely on January 4, 1998. The Office allowed appellant another 15 days to accept the position.

By letter dated February 20, 1998, appellant stated that her injuries had worsened as a result of performing her duties in the damaged mail unit and advised the Office that she was seeking more suitable employment in the private sector. Appellant further stated that her physician agreed that she should change jobs. In support of her position, appellant submitted several progress reports from Dr. Mehlhoff dated January 13 to February 8, 1998. In his January 13, 1998 progress note, he stated that appellant had attempted to return to work on January 2, 1998, but could not tolerate the repetitive lifting of tubs of mail throughout the workday. Dr. Mehlhoff noted that appellant had been off work since January 4, 1998 and had resigned herself to changing jobs. He concluded that appellant was able to work but must have a 10-pound lifting restriction for both hands. Dr. Mehlhoff further stated that appellant might have to change jobs as she had been unable to perform the work she had attempted.

After determining that the offered job remained available, by decision dated February 25, 1998 and finalized February 28, 1998, the Office terminated appellant's compensation benefits finding that she had neglected suitable work after work was offered to her.

By letter dated February 28, 1998, appellant requested a review of the written record. In her letter, appellant stated that she could not do the light-duty job because the tubs of mail she was required to lift were not labeled with their weight and that therefore she was lifting more than her restrictions allowed.

In a decision dated August 13, 1998, an Office hearing representative affirmed the Office's February 28, 1998 termination of benefits.

By letter dated August 24, 1998, appellant requested reconsideration of the Office's prior decision and submitted additional medical evidence from Dr. Mehlhoff in support of her request. Appellant specifically asserted that the tubs of mail she was required to lift were not labeled as to their weight, and that most of them weighed more than her 10-pound restrictions allowed. In an additional narrative statement submitted in support of her request, appellant stated that her supervisor in the damaged mail unit would instruct all the employees to perform certain tasks, such as lifting heavy parcels, and that she was never told she did not have to perform these duties and she felt she had to comply with what she understood to be the requirements of the position or risk losing her job. In a merit decision dated January 5, 1999, the Office found that the information submitted with appellant's request for reconsideration was insufficient to warrant modification of the prior decision.

By letter dated February 1, 1999, appellant again requested reconsideration of the Office's decision. Appellant asserted that she had since returned to work and requested that her compensation benefits be reinstated so that she could work four hours a day and receive compensation for four hours a day, as before. Appellant submitted additional evidence from Dr. Mehlhoff in support of her request. In a decision dated February 18, 1999, the Office found the arguments and evidence submitted to be immaterial in nature and therefore insufficient to warrant merit review of the claim.

The Board finds that the Office properly terminated appellant's compensation on the grounds that she neglected suitable work.

Once the Office accepts a claim it has the burden of justifying termination or modification of compensation benefits.² This includes cases in which the Office terminates compensation under section 8106(c)(2) of the Act for refusal to accept suitable work.

Section 8106(c)(2)³ of the Act provides that a partially disabled employee who refuses or neglects to work after suitable work is offered to, procured by, or secured for the employee is not entitled to compensation. Section 10.124(e)⁴ of the Office's regulations provides that an employee who refuses or neglects to work after suitable work has been offered or secured 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.⁵ To justify termination, the Office must show that the work offered was suitable,⁶ and must inform appellant of the consequences of refusal to accept

² *Betty F. Wade*, 37 ECAB 556, 565 (1986); *Ella M. Garner*, 36 ECAB 238, 241 (1984).

³ 5 U.S.C. § 8106(c)(2).

⁴ 20 C.F.R. § 10.124(c).

⁵ *Maggie L. Moore*, 42 ECAB 484, 488 (1991); *reaff'd on recon.*, 43 ECAB 818 (1992).

⁶ *See Carl W. Putzier*, 37 ECAB 691 (1986); *Herbert R. Oldham*, 35 ECAB 339 (1983).

such employment.⁷ According to Office procedures, certain explanations for refusing an offer of suitable work are considered acceptable.⁸

The Office properly terminated appellant's compensation benefits for neglecting to work after suitable work was procured for her. The employing establishment identified a sedentary position in the damaged mail unit within the restrictions delineated by Dr. Mehlhoff and advised appellant of the offered position on November 5, 1997. The Office reviewed the position description and medical evidence, and notified appellant of its determination by a November 13, 1997 letter stating that the offered position was within her capabilities. The Office further advised appellant that if she refused to accept the position her compensation could be terminated. After reviewing appellant's reasons for refusal and finding them unjustified, the Office allowed appellant an additional 15 days to accept the position.

Appellant returned to work for two days and then stopped completely. By letters dated December 3, 1997 and February 20, 1998, appellant stated that she was physically unable to perform the duties of the position and that doing so caused her great pain. However, the determination of whether an employee is physically capable of performing a particular job is a medical question that must be resolved by medical evidence.⁹ An employee's contention that her condition prevents her from performing the required employment duties is of no probative value and will not be deemed reasonable or justifiable grounds for refusing or neglecting suitable work where the medical evidence of record indicates that the position offered is consistent with appellant's physical limitations.¹⁰ The weight of the medical evidence in this case establishes that appellant was capable of performing the duties in the damaged mail unit.

In nearly all his medical reports of record, Dr. Mehlhoff, appellant's treating physician, stated that appellant could work four hours a day, as long as she did not lift more than 10 pounds and did not perform overhead reaching. These physical restrictions are consistent with those required by the position in the damaged mail unit and Dr. Mehlhoff approved the position. While the physician did state, in several reports, that if appellant's position could not be modified to accommodate appellant's restrictions, she would have to change jobs, this supports that he felt appellant capable of performing the duties within the restrictions prescribed. In addition, while appellant asserted in her letter that the job was not within her restrictions because the mail tubs were not labeled as to their weight and she felt had no choice but to comply with the instructions of her supervisor to perform tasks outside of her restrictions, this assertion is not supported by the evidence of record. In a letter of response dated June 18, 1998, a representative from the employing establishment stated that at no time was appellant instructed to lift tubs of mail weighing more than her 10-pound restriction, and that at no time while appellant was

⁷ See *Maggie L. Moore*, *supra* note 5; see Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.5(d)(1).

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.5(a)(1)-(5).

⁹ *Camillo R. DeArcangelis*, 42 ECAB 941 (1991).

¹⁰ *Id.*

performing the duties of the position did appellant indicate to the employing establishment management that she was having any difficulty. Thus, it appears that while appellant may have performed duties outside of her physical restrictions, she was not required to do so and further did not raise any objections at the time.

The medical evidence indicates that the position offered is consistent with appellant's physical limitations and there is insufficient support for appellant's stated reasons in neglecting the suitable work. Although appellant alleged that she was physically unable to work, she did not submit any medical evidence to substantiate her claimed inability to perform the duties of the position in the damaged mail unit as offered to her by the employing establishment.

Therefore, the neglect of the job offer cannot be deemed reasonable or justified, and the Office properly terminated appellant's compensation benefits effective February 28, 1998.

The Board further finds that the Office did not abuse its discretion by refusing to reopen appellant's claim for merit review on February 18, 1999.

Under section 8128(a) of the Act,¹¹ the Office has the discretion to reopen a case for review on the merits. The Office must exercise this discretion in accordance with the guidelines set forth in section 10.138(b)(1) of the implementing federal regulations,¹² which provides that a claimant may obtain review of the merits of the claim by:

“(i) Showing that the Office erroneously applied or interpreted a point of law; or

“(ii) Advancing a point of law or a fact not previously considered by the Office;
or

“(iii) Submitting relevant and pertinent evidence not previously considered by the Office.”

Section 10.138(b)(2) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in paragraphs (b)(1)(i) through (iii) of this section will be denied by the Office without review of the merits of the claim.¹³

In her February 1, 1999 letter requesting reconsideration, appellant stated that she had since returned to work and requested that her compensation benefits be restored so that she could again receive compensation for four hours a day and be eligible for a schedule award. In support of her request, appellant submitted a copy of her request to the employing establishment for light duty, a January 22, 1999 medical report from Dr. Mehlhoff reiterating appellant's 10-pound lifting restriction and restriction on overhead reaching, and a January 28, 1999 letter from the employing

¹¹ 5 U.S.C. § 8128(a).

¹² 20 C.F.R. § 10.138(b)(1).

¹³ 20 C.F.R. § 10.138(b)(2).

establishment granting appellant a light-duty position in the damaged mail unit.¹⁴ Appellant's compensation was terminated, however, because appellant neglected suitable work after such had been offered. As the evidence and arguments submitted by appellant in support of her request for reconsideration do not address her ability to perform the light-duty job or her reasons for abandoning the position after she had accepted it, the evidence and arguments are not relevant to the issue for which the Office denied appellant's claim, and are thus insufficient to require the Office to reopen appellant's claim for review of the merits pursuant to section 10.138(b)(1)(ii). Therefore, the Office did not abuse its discretion by refusing to reopen appellant's claim for review of the merits on February 18, 1999.

The decisions of the Office of Workers' Compensation Programs dated February 18 and January 5, 1999 and August 13, 1998 are hereby affirmed.

Dated, Washington, D.C.
January 11, 2000

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member

¹⁴ The letter states that appellant will work Tour III and follow her normal reporting time and scheduled days off.