U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM H. SHIELDS and U.S. POSTAL SERVICE,
POST OFFICE, St. Louis, MO

Docket No. 99-2248; Submitted on the Record;
Issued June 21, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation as of March 27, 1997 on the grounds that he refused an offer of suitable work.

The Office accepted appellant's claim for a left calcaneal stress fracture. On March 12, 1997 appellant's treating physician, Dr. John T. Yetter, a Board-certified family practitioner, released appellant to return to work on March 17, 1997, stating that appellant should have no weight bearing on his feet for two weeks and work no more than four hours, and stated that after two weeks if he has no problem, appellant could work eight hours a day with a two-hour weight bearing limitation at a time. On March 27, 1997 the employing establishment presented appellant with a job offer on a form, "the limited-duty worksheet," stating a tour of duty from "7:00 to 15:30," described as a case route and involved lifting no more than 20 pounds with standing, climbing, bending and pushing, walking and twisting for 2 hours or less. At the bottom of the offer, in a note dated April 25, 1997, an employing establishment official stated that appellant refused to sign the worksheet on either the "accept" or "refuse" line and "submitted a form to him saying "tell manager I'm not signing it."

By letter dated June 13, 1997, a manager from the employing establishment stated that the job offer was issued to appellant on March 27, 1997, that appellant avoided the subject for one month stating that he was discussing it with his union representative, and they made him return the offer on April 25, 1997 when he refused to sign whether he accepted or refused the job offer.

By letter dated July 30, 1997, the Office stated that the record showed that appellant was released to limited duty on March 17, 1997 and that the employing establishment made appellant a job offer for full-time employment within the medical restrictions set by his physician. The Office advised that the limited duty was available for eight hours and he refused to either accept or reject the limited-duty offer. The Office stated that appellant's refusal to respond was being

treated as a rejection and he had 30 days to respond and provide his reasons for rejecting the job offer.

By letters dated August 18 and 20, 1997, which were date stamped received by the Office on August 26, 1997, the union vice president, Mike Weir, and the union steward, Barry Linan, respectively, explained why appellant did not accept the job offer. They submitted appellant's leave slips from March 17 through April 28, 1997, a letter from appellant dated August 19, 1997, and a union settlement in appellant's favor for employer wrongfully refusing him 14 hours of work to which he was entitled in March and April 1997. Specifically, Mr. Weir explained that on March 17, 1997 appellant was permitted to work eight hours but thereafter the employing establishment either refused to let appellant work at all or would only permit him to work two hours a day even though appellant's doctor had authorized him to work four hours. At Mr. Weir's suggestion, appellant filed a grievance which was ruled in appellant's favor. Mr. Weir stated that when appellant received the offer on the limited-duty worksheet form in late March 1997 from the employing establishment which said "casing route only," and it was his understanding the casing route only took two hours, the grievance was being processed on the issue and appellant did not sign the form. However, once the Office approved appellant's claim, appellant was offered eight hours, and appellant signed a job offer to that effect on May 8, 1997.

In his August 19, 1997 statement, appellant explained that he worked a full eight hours on March 17, 1997 in accordance with his doctor's recommendation but thereafter despite his persistent effort to work eight hours, the employing establishment sent him home on several occasions after only two hours, and that he interpreted the job offer as affording him only two hours of work because "casing route only" as described in the job offer took only two hours. He stated that he took the job offer to his union steward who told him that the job offer would deny him the four hours of work to which he was entitled. Appellant stated that after his compensation claim was approved, he was offered eight hours of work within his medical restrictions and signed the document to approve the job offer.

On a time analysis form dated June 2, 1997 appellant indicated that from March 19 through April 28, 1997, he was not provided with eight hours of work within his restrictions and frequently worked as little as two and one half to three hours a day. His leave slips for this time period noted that he was sent home early because no work was available for him. In the union settlement dated May 2, 1997, the employing establishment agreed to pay appellant two hours per days for seven different days from March 28 through April 7, 1997 when appellant was denied work.

By decision dated October 1, 1997, the Office denied appellant compensation for any time lost after March 27, 1997, stating that appellant did not provide any rationale for rejecting a job that was well within the restrictions set by his physician. The Office stated that by letter dated July 30, 1997, appellant was requested to provide his reasoning for rejecting the limited-duty job offer within 30 days but no response was received.

By letter dated October 17, 1997, appellant requested an oral hearing before an Office hearing representative which was held on January 21, 1999. At the hearing, appellant's representative, Mr. Weir, essentially reiterated the contents of his August 20, 1997 letter, explaining that the March 27, 1997 offer with its description of "casing route only" was actually

only for two hours and from March 18 through the end of April 1997 the employing establishment did not provide appellant with eight hours of work despite the union's attempt to compel management to do so. Mr. Weir also stated that he received the Office's July 30, 1997 letter and responded to it by his letter dated August 20, 1997. Appellant's testimony confirmed Mr. Weir's testimony. Further, when asked by the hearing representative why he did not respond in writing to the March 17, 1997 job offer from the employing establishment in writing, appellant stated that he "figured" the verbal explanation he gave to the manager would be adequate and he lacked experience with filling out that kind of form.

At the hearing, appellant submitted a copy of the May 9, 1997 job offer from the employing establishment, also on the "limited-duty worksheet" form which described the job as case routes and two hours of walking and unlimited driving, with the other restrictions the same as in the previous job description and which appellant signed.

By letter dated February 18, 1999, Mr. Weir reiterated his position that the March 27, 1997 job offer was not a valid job offer for eight hours of work.

By decision dated April 14, 1999, the Office hearing representative affirmed the Office's October 1, 1997 decision.

The Board finds that the Office erred in terminating appellant's compensation as of March 27, 1997 on the grounds that he refused an offer of suitable work.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. This includes cases in which the Office terminates compensation under 5 U.S.C. § 8106(c) for refusal to accept suitable work.[1]

Under section 8106(2) of Federal Employees' Compensation Act,[2] the Office may terminate compensation of an employee who refuses or neglects to work after suitable work is offered to, procured by or secured for the employee.[3] Section 10.124(c) 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.[4] To justify termination, the Office must show that the work offered was suitable and must inform appellant of the consequences of refusal to accept such employment.[5] The Board has required that if an employee presents reasons for refusing an offered position, the Office must inform the employee

[1] *Henry W. Sheperd, III*, 48 ECAB 382 (1997); *Shirley B. Livingston*, 24 ECAB 855 (1991).

[2] 5 U.S.C. §§ 8101-8193.

[3] *Henry W. Sheperd, III*, *supra* note 1; *Patrick A. Santucci*, 40 ECAB 151 (1988).

[4] 20 C.F.R. § 10.124 (c); *see also Catherine G. Hammond*, 41 ECAB 375 (1990).

[5] *Karen L. Mayewski*, 45 ECAB 219 (1993).

if it finds the reasons inadequate to justify the refusal of the offered position and afford appellant one final opportunity to accept the position.[6]

There are certain procedures the Office is required to follow in determining whether appellant has unreasonably refused a job offer. Specifically, the Office must inform appellant in writing that the job is considered suitable, that it remains open for appellant and that appellant has 30 days from the date of the Office's letter to either accept the job or provide a written explanation for the reasons for refusing it.[7] The Office is required to provide appellant this advice even if the employing establishment has told appellant of his responsibilities and the sanctions which may be imposed.[8]

In the present case, Mr. Weir's and Mr. Linan's August 18 and 20, 1997 letters and the accompanying evidence of appellant's leave slips and the settlement of the grievance in appellant's favor was submitted to the Office within 30 days of the Office's July 30, 1997 letter. In its October 2, 1997 decision, the Office did not address any of the evidence appellant submitted since it noted that appellant did not respond. In the April 14, 1999 decision, the Office hearing representative addressed the fact that appellant and his union representatives thought that the job offer was only for two hours because it said "route casing only" despite the fact that the job description indicated the job was for eight hours. The Office hearing representative, however, did not address the evidence of record that appellant was sent home on several days after March 18, 1997 because the employer did not have work available, and that appellant even won a grievance awarding him lost time. The evidence of record does not establish that the Office afforded the procedural protections by advising him that his stated reasons for refusing the job were found insufficient or in allowing appellant the opportunity to accept the position.[9] The Office therefore has not met its burden to terminate appellant's compensation benefits on the grounds that appellant unreasonably refused an offer of suitable work.

[6] *Rosie E. Garner*, 48 ECAB 220 (1996); *Maggie L. Moore*, 42 ECAB 484 (1991), *reaff'd on recon.*, 43 ECAB 818 (1992).

[7] *Eileen R. Kates*, 46 ECAB 573, 578-79 (1995); *Maggie L. Moore*, *supra* note 6 at 488; *see* Federal (FECA) Procedure Manual, Part 2 -- *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.914.4(c) (December 1993).

[8] *Eileen R. Kates*, *supra* note 7; *Maggie L. Moore*, *supra* note 6.

[9] *See Leonard W. Larson*, 48 ECAB 507 (1997).

The decision of the Office of Workers' Compensation Programs dated April 14, 1999 is hereby reversed.

Dated, Washington, D.C.
June 21, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member