

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of HELEN M. STEWART and U.S. POSTAL SERVICE,  
POST OFFICE, Chicago, IL

*Docket No. 99-1600; Submitted on the Record;  
Issued March 22, 2000*

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DECISION and ORDER

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

The issue is whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation benefits on the grounds that she refused an offer of suitable employment pursuant to 5 U.S.C. § 8106(c).

On October 16, 1989 appellant, then a 48-year-old mail processor, filed a notice of traumatic injury alleging that on March 19, 1989 she injured her left side in the performance of her federal employment.<sup>1</sup> She returned to limited duty on October 26, 1989. On July 19, 1991 appellant filed a notice of traumatic injury alleging that she injured her neck, shoulder and upper back in July 1989 in the course of her federal employment. Her July 1989 alleged injury also involved radiating pain on the right side of her body beginning from her head which affected her arm, hand and fingertips. The Office subsequently combined appellant's claims. On September 20, 1989 the Office accepted the claim for a lumbosacral sprain. On December 28, 1990 appellant filed a claim for a recurrence of disability. She stated that on December 23, 1990 her back just got worse. On January 22, 1991 the Office accepted appellant's claim for a recurrence of disability. On January 10, 1996 the Office indicated that it also accepted appellant's claim for a permanent aggravation of degenerative disc disease of the lumbar spine.

On June 24, 1997 Dr. Michael R. Treister, appellant's treating physician and a Board-certified orthopedic surgeon, completed a work capacity evaluation indicating that appellant should limit the activities of prolonged standing, bending and lifting over 15 pounds. He stated that appellant also must have a chair with a back support. Dr. Treister stated that within these limitations appellant could work eight hours per day.

On September 23, 1997 Dr. Treister indicated that appellant could continue the same light duty. He repeated his conclusions that appellant could perform no prolonged standing, that she could not lift over 15 pounds and that she needed a chair with back support.

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<sup>1</sup> Appellant previously filed a notice of occupational disease for the same injury on June 29, 1989.

On September 24, 1997 the employing establishment offered appellant a limited-duty job position as a mail processor. The position involved no prolonged standing in a stationary position more than five minutes, a chair with a back support, occasional walking for ten minutes at a time, lifting and pulling weight less than ten pounds and occasional bending and twisting.

On October 8, 1997 appellant rejected the limited-duty job offer on the basis that she was unable to perform the duties described.

By letter dated December 19, 1997, the Office advised appellant that the offered limited-duty position of a mail processor was suitable to her work capabilities. The Office also advised appellant that she had 30 days in which to accept the offered position or to provide an explanation of the reasons for refusing the job. The Office further advised appellant of the penalties for refusing an offer of suitable work under section 8106 of the Federal Employees' Compensation Act.

On December 23, 1997 Dr. Treister indicated that appellant was partially incapacitated and was capable of only light work. He stated that she could not perform prolonged standing, bending, stooping or lifting over 15 pounds and stated that she needed a chair with a back support.

Dr. Treister also completed a narrative report on December 23, 1997. He recorded appellant's complaints of increasing pain. In addition, he completed a physical examination of her cervical and lumbar spine and determined that there were no abnormal findings. Dr. Treister indicated that he reviewed the limited-duty position and that, "I think she could probably do it."

On March 17, 1998 Dr. Treister again found appellant partially incapacitated and indicated that she could only do light work. He stated that she could perform no prolonged standing, bending, stooping or lifting over 15 pounds. Dr. Treister also indicated that appellant needed a chair with a back support. His narrative report of March 17, 1998 indicated that there were no objective findings of a disabling condition.

In a letter received by the Office on March 24, 1997, appellant again indicated that she was physically unable to perform the duties of the limited-duty position.

By letter dated March 24, 1998, the Office indicated that it considered appellant's reasons for refusing the limited-duty job offer and found them unacceptable. Appellant was given 15 days to accept the offered position prior to the Office's final decision.

On April 4, 1998 appellant again indicated that she could not perform the duties of the job offer.

By decision dated April 27, 1998, the Office terminated appellant's compensation based on her refusal of an offer of suitable employment. The Office indicated that Dr. Treister found her capable of performing the duties described in the limited-duty offer.

The Board finds that the Office met its burden to terminate appellant's compensation benefits.

Once the Office accepts a claim it has the burden of proving that the disability has ceased or lessened before it may terminate or modify compensation benefits.<sup>2</sup>

Under section 8106(c)(2) of the Act<sup>3</sup> the Office may terminate the compensation of a partially disabled employee who refuses or neglects to work after suitable work is offered to, procured by or secured for the employee.<sup>4</sup> Section 10.124(c) Part 20 of the Code of Federal Regulations<sup>5</sup> provides that an employee who refuses or neglects to work after suitable work has been offered or secured for the employee 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.<sup>6</sup> To justify termination, the Office must show that the work offered was suitable<sup>7</sup> and must inform appellant of the consequences of refusal to accept such employment.<sup>8</sup>

In the present case, the Office has properly exercised its authority granted under the Act and the implementing federal regulations. The record demonstrates that following the Office's acceptance of appellant's claim the Office paid appropriate benefits and medical expenses. On September 24, 1997 the employing establishment offered appellant a limited-duty position as a mail processor. In his reports dated June 24, September 23, December 23 and March 17, 1998, Dr. Treister outlined physical restrictions that were within the physical requirements of the limited-duty position of a mail processor offered by the employing establishment on September 24, 1997.<sup>9</sup> On December 19, 1997 the Office complied with the procedural requirements by advising appellant of the suitability of the position offered, that the job remained open and that her failure to accept the offer, without justification, would result in the termination of her compensation. The Office provided appellant 30 days within which to either accept the position offered or submit her reasons for refusal. By letter dated March 24, 1997, appellant refused the job offer on the basis that she was physically unable to perform the duties of the limited-duty position. On March 24, 1998 the Office informed appellant that her reasons for rejecting the job offer were not justified and allowed her 15 days to accept the offered position prior to its final decision. On April 4, 1998 appellant again indicated that she could not perform the duties of the job offer. Thereafter, on April 27, 1998 the Office terminated appellant's compensation benefits.

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

<sup>3</sup> 5 U.S.C. § 8106(c)(2).

<sup>4</sup> *Camillo R. DeArcangelis*, 42 ECAB 941 (1991).

<sup>5</sup> 20 C.F.R. § 10.124(c).

<sup>6</sup> *Camillo R. DeArcangelis*, *supra* note 4; *see* 20 C.F.R. § 10.124(e).

<sup>7</sup> *See Carl W. Putzier*, 37 ECAB 691, 700 (1986); *Herbert R. Oldham*, 35 ECAB 339, 346 (1983).

<sup>8</sup> *See Maggie 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 2.814.10 (July 1997).

<sup>9</sup> Although Dr. Treister completed a narrative report on December 23, 1997 in which he reviewed the limited-duty job offer and only opined that appellant could probably do it, it is clear from the totality of his reports that he believed appellant was capable of performing the duties within the job offer.

The Board finds that the Office properly determined that appellant rejected an offer of suitable employment and met its burden of proof in terminating appellant's monetary compensation benefits.<sup>10</sup> The evidence of record establishes that, despite providing appellant with an opportunity to accept the position following notification of the Office's suitability determination, the penalty for refusing to accept an offer of suitable employment and the insufficiency of her reasons for rejecting the job offer, appellant did not accept the job offer. She did not attempt to demonstrate, nor did she submit any evidence that the position was outside her physical limitations as recommended by her attending physician.

Appellant failed to introduce any argument or any medical evidence establishing that she was not physically capable of performing the duties of the mail processor position as offered. Therefore, the Office properly terminated appellant's compensation for refusing an offer of suitable work.

The decision of the Office of Workers' Compensation Programs dated April 27, 1998 is affirmed.

Dated, Washington, D.C.  
March 22, 2000

George E. Rivers  
Member

David S. Gerson  
Member

Bradley T. Knott  
Alternate Member

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<sup>10</sup> See *Stephen R. Lubin*, 43 ECAB 564 (1992).