

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL R. RIFE and U.S. POSTAL SERVICE,
POST OFFICE, Jackson, MI

*Docket No. 99-1771; Submitted on the Record;
Issued March 10, 2000*

DECISION and ORDER

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

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 he refused an offer of suitable work.

The Board has duly reviewed the case record and concludes that the Office met its burden of proof in terminating appellant's compensation benefits 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 and this includes cases in which the Office terminates compensation under section 8106(c) of the Federal Employees' Compensation Act for refusing to accept suitable work or neglecting to perform suitable work.¹ Section 8106(c)(2) provides in pertinent part, "A partially disabled employee who ... (2) refuses or neglects to work after suitable work is offered ... is not entitled to compensation."² However, to justify such termination, the Office must show that the work offered was suitable.³ 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 justified⁴ 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

¹ *Shirley B. Livingston*, 42 ECAB 855, 860-61 (1991).

² 5 U.S.C. § 8106(c)(2).

³ *David P. Camacho*, 40 ECAB 267, 275 (1988); *Harry B. Topping, Jr.*, 33 ECAB 341, 345 (1981).

⁴ *See Catherine G. Hammond*, 41 ECAB 375, 385 (1990).

⁵ *Camillo R. DeArcangelis*, 42 ECAB 941, 943 (1991).

termination, the Office must show that the work offered was suitable⁶ and must inform appellant of the consequences of refusal to accept such employment.⁷ The Office met its burden of proof here.

On November 3, 1995 appellant, then a 33-year-old letter carrier, sustained a herniated nucleus pulposus at L5-S1 and right sciatica in the performance of duty at work. Effective December 20, 1997, the Office placed appellant on the periodic compensation rolls to receive compensation benefits for temporary total disability.

By letter dated June 24, 1998, Dr. Michael T. Andary, a physiatrist of professorial rank, advised that appellant could return to work on July 2, 1998 with restrictions and he provided a detailed list of these work restrictions.

On July 22, 1998 the employing establishment offered appellant a limited-duty distribution clerk position within the physical restrictions as set forth in Dr. Andary's June 24, 1998 letter.

On July 28, 1998 appellant refused the offered position on the grounds that he was physically unable to perform certain task including twisting and turning at the pouch rack, working more than eight hours a day, working in the register room and throwing mail. He also refused the position on the grounds that he would have to work the night shift and would not be able to bid for other positions.

By letter dated August 6, 1998, the Office advised appellant that it found the modified distribution clerk position offered by the employing establishment to be suitable to his work capabilities, it provided a description of the duties and physical limitations of the offered position and noted that the position was currently available to him. The Office advised him that upon acceptance of the position he would be paid compensation based on the difference (if any) between the pay of the offered position and the pay of his position on the date of injury. The Office advised appellant that he had 30 days from the date of the letter to either accept the position or provide an explanation of his reasons for refusing it and noted that any claimant who refused an offer of suitable employment or failed to report for work when scheduled was not entitled to any further compensation. The Office stated that it had reviewed his July 28, 1998 letter and found that the reasons he provided for refusing the job offer were insufficient as there was no medical evidence to support that he could not perform the offered position.

By letter dated October 21, 1998, the Office advised appellant that he had 15 additional days to accept the position and that if he continued to refuse the offered position the Office would render a final decision on the matter.

⁶ *Carl W. Putzier*, 37 ECAB 691, 700 (1986); *Herbert R. Oldham*, 35 ECAB 339, 346 (1983).

⁷ *See Maggie L. Moore*, 42 ECAB 484 (1991), *reaff'd on recon.*, 43 ECAB 818 (1992).

By decision dated November 13, 1998, the Office terminated appellant's compensation benefits effective December 6, 1998 on the grounds that he had refused a suitable job offer.⁸

The Board finds that the Office met its burden of proof in terminating appellant's compensation benefits pursuant to 5 U.S.C. § 8106.

The record shows that the employing establishment offered appellant a limited-duty position within the work restrictions set forth by his attending physician, Dr. Andary, and provided him with a copy of the job description. Appellant alleged in a letter dated July 28, 1998 that he was not physically capable of performing the position but provided no medical documentation in support of his allegation. The Office advised him on August 6, 1998 that it had found the position suitable to his work capabilities and noted that it was currently available. The Office advised him that his reasons for refusing the job offer were insufficient as there was no medical evidence establishing that he was incapable of performing the limited-duty position. The Office noted that a claimant who refused an offer of suitable work was not entitled to any further compensation. On October 21, 1998 the Office allotted appellant an additional 15 days in which to accept the position and terminated his compensation benefits by decision dated November 13, 1998, when he did not accept the position. As the Office properly determined that appellant refused an offer of suitable work and informed him of the consequences for such refusal, it met its burden in terminating his compensation benefits effective December 6, 1998.

The November 13, 1998 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
March 10, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas

⁸ The Board notes that this case record contains material belonging to another claimant. Upon return of the record, this material should be placed in the correct file. The Board also notes that the record contains new evidence submitted subsequent to issuance of the Office's November 13, 1998 decision. The Board has no jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).

Alternate Member