

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FATIMA JACKSON and U.S. POSTAL SERVICE,
POST OFFICE, Bremerton, OH

*Docket No. 00-83; Submitted on the Record;
Issued November 27, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
VALERIE D. EVANS-HARRELL

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.

On January 10, 1997 appellant, then a 34-year-old mail carrier, sustained a herniated disc at C3-4 and a right trapezius strain in the performance of duty. She stopped work on January 13, 1997 and returned to work casing mail with restrictions on February 3, 1997 but stopped work again on February 7, 1997. By letter dated September 29, 1997, the Office advised appellant that she had been placed on the periodic compensation rolls to receive compensation benefits for temporary total disability commencing on August 24, 1997.

The record shows that the employing establishment offered appellant a modified letter carrier position and provided a copy of the job description, which consisted of responding to customer inquiries by telephone or in person, putting data into a computer, counting clerk deposits, preparing registered mail and working accountable mail to the carriers in the afternoon. The employing establishment noted that there was no twisting, bending, or stooping and appellant could sit or stand as needed for comfort, that a case nurse would be available to assist appellant on her return to work and that the job would be for four hours a day with gradual increases with her doctor's permission.

On July 31, 1998 Dr. Daniel M. Dorfman, appellant's attending Board-certified physiatrist, indicated that appellant could return to work with restrictions as described in the limited-duty job offer. In a narrative report also dated July 31, 1998, he noted that appellant had reported for her limited-duty position on July 27, 1998 but had complaints of discomfort in her cervical spine and right upper extremity. He provided findings on examination and recommended that appellant continue with her limited-duty job for four hours a day for the next month.

By letter dated September 16, 1998, the employing establishment advised that the limited-duty job offer was still available.

By letter dated September 18, 1998, the Office noted that the employing establishment had offered appellant a modified letter carrier position and stated that it had found the position to be suitable to her work capabilities. The Office advised that she had 30 days in which to accept the position or provide an explanation for her reasons for refusing it. Appellant was further advised that a partially disabled employee who refused or neglected to work after suitable work was offered was not entitled to further compensation for wage loss.

In an undated letter received by the Office on October 14, 1998, appellant stated that she attempted to perform the limited-duty position for one week but could not continue because she experienced severe pain in her neck and arms and because medication for the pain made her sleepy and unable to drive. She indicated that she was presently working for six hours a day in a day care center.

By letter dated October 15, 1998, the Office advised appellant that her reasons for refusing the job offer were not acceptable and advised her that she had 15 days in which to report to work.

In a report dated October 24, 1998, Mary Ann Rohrig, the rehabilitation nurse assigned to appellant's case, related that appellant had been released to a four-hour a day limited-duty position consisting primarily of answering a telephone but she complained that this work caused her to have an increase in cervical pain and that she felt worthless working in that position and that she chose to quit working at the employing establishment on July 31, 1998.

By decision dated November 3, 1998, the Office terminated appellant's compensation benefits on the grounds that she had refused an offer of suitable employment.

On April 28, 1999 a hearing was held before an Office hearing representative at which time appellant testified. By decision dated July 22, 1999, the Office hearing representative affirmed the Office's November 3, 1998 decision.

The Board finds that the Office met its burden of proof in terminating appellant's compensation benefits on the grounds that she 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

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

² 5 U.S.C. § 8106(c)(2).

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 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.

In the present case, the record shows that the employing establishment offered appellant a modified letter carrier position. On July 31, 1998 Dr. Dorfman, appellant's attending psychiatrist, reviewed the modified letter carrier position description and opined that appellant was able to perform the position. On September 18, 1998 the Office complied with its procedural requirements by advising appellant of the suitability of the position offered and that her failure to accept the offer, without justification, would result in the termination of her compensation benefits. The Office provided appellant 30 days within which to either accept the position offered or submit her reasons for refusal. In an undated letter received by the Office on October 14, 1998, appellant refused the job offer and submitted her reasons for rejecting the job offer. On October 15, 1998 the Office informed appellant that her reasons for rejecting the job offer were not justified⁸ and offered her 15 additional days in which to accept the job offer. Appellant did not accept the job offer. Appellant did not submit any medical evidence showing that the position was outside her physical limitations as recommended by her attending physician. Therefore, the Office properly terminated appellant's compensation for refusing an offer of suitable work.

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

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

⁵ *Id.*

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

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

⁸ *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.5(a) (July 1997) for a list of circumstances, which may serve as acceptable reasons for refusing the offered position.

The July 22, 1999 and November 3, 1998 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC
November 27, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Valerie D. Evans-Harrell
Alternate Member