

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RENA MEDICA and U.S. POSTAL SERVICE,
REMOTE ENCODING CENTER, Princeton, NJ

*Docket No. 00-2429; Submitted on the Record;
Issued August 8, 2001*

DECISION and ORDER

Before DAVID S. GERSON, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation for refusal to accept suitable employment.

On October 15, 1998 appellant, then a 29-year-old data conversion operator, filed a claim for carpal tunnel syndrome, which she attributed to typing at work. She stopped working on October 21, 1998. The Office accepted appellant's claim for right carpal tunnel syndrome and began payment of temporary total disability compensation. Appellant underwent surgery on February 24, 1999 for release of carpal tunnel syndrome in the right arm.

In a March 5, 1999 note, Dr. Richard C. Fiorelli, the Board-certified orthopedic surgeon, who performed the surgery, stated that appellant was still having flexor tendon sheath pain. Dr. Fiorelli indicated that he would refer appellant for physical therapy. He noted that since appellant spent up to 10 hours a day at the keyboard, she would be out of work for at least 2 to 3 more weeks. In a March 11, 1999 report, Dr. Fiorelli commented that appellant would be off work until April 16, 1999, recognizing that her job entailed a considerable amount of "fast-paced typing." In a March 29, 1999 report, he stated that appellant had a full range of motion of the fingers and wrist but very weak grip strength.

The Office, in a March 26, 1999 letter, requested a report on appellant's work limitations. In an April 9, 1999 report, Dr. Fiorelli stated appellant was progressing well, but still had discomfort radiating up her arm. He noted that appellant could return to work on April 19, 1999 at data conversion for four hours a day for two weeks, increasing to six hours a week for two weeks and then regular duty. In an undated note, Dr. Fiorelli indicated that appellant could return to work on May 3, 1999 and would achieve an eight-hour workday on May 24, 1999.

In a May 11, 1999 letter, the employing establishment offered appellant a limited-duty assignment as a modified data conversion operator effective May 22, 1999. The employing establishment indicated that appellant would perform keypunch and electronic data entry from source documents, verify keypunched information, select the correct program for each date entry

job application, prepare and maintain program control cards for jobs processed on keypunch, maintain instructions for all keypunching job and record machine utilization information. The employing establishment indicated that the job would be performed up to appellant's tolerance.

In a May 25, 1999 letter, the Office informed appellant that it had reviewed the job offered by the employing establishment and found it suitable. The Office indicated that appellant had 30 days to accept the job or provide a reasonable explanation for refusing to accept it. The Office warned appellant that if she refused the job or failed to report when scheduled without reasonable cause, her compensation would be terminated.

Appellant submitted a May 10, 1999 report from Dr. William Gomez, a Board-certified orthopedic surgeon, who stated that appellant had full shoulder, elbow and wrist range of motion. Dr. Gomez related that appellant complained of increasing pain in her wrist since the surgery. He noted that she worked in data entry, using her hands for eight hours a day and stated that she could not return to her duties under the current circumstances. Dr. Gomez indicated that appellant appeared to have some atrophy of the thenar musculature and decreased strength of opposition and pinch. He recommended that appellant get an electromyogram.

In a July 14, 1999 decision, the Office terminated appellant's compensation for refusal to accept suitable work.

Appellant's attorney requested a hearing and submitted a July 29, 1999 report from Dr. Daniel J. Fletcher, an orthopedic surgeon, who indicated that appellant had negative Tinel's and Phalen's signs and Finkelstein's test. He found no significant flexor tendon tenderness, triggering or locking. Dr. Fletcher reported that the sensory and motor examinations were grossly intact with normal sensation to all fingertips and dermatomes in the arms. He stated that new electrodiagnostic tests showed normalization of the median nerve function with an early right C6 radiculopathy.

In a November 8, 1999 note, Dr. Charles N. Jeck, an osteopath, stated that appellant had carpal tunnel syndrome with tendinitis and, therefore, could not do typing or repetitive tasks.

At the February 29, 2000 hearing, appellant testified that she could not perform the data conversion job because she could not type more than six minutes at a time without pain. Subsequent to the hearing, appellant's attorney submitted additional medical reports from Dr. Jeck.

In a May 29, 1999 report, Dr. Jeck stated that appellant had been unable to work since October 1998 and continued to have arm and wrist pain. He indicated that she currently was unable to work. In an August 23, 1999 report, Dr. Jeck stated that appellant reported no relief in pain since the carpal tunnel surgery. He concluded that appellant could not perform her duties as data conversion operator due to her medical condition. Dr. Jeck stated that the job required typing at a high rate of speed for several consecutive hours a day and that appellant could not perform repetitive tasks of this nature because it would aggravate her condition.

In a February 3, 2000 report, Dr. Jeck stated that appellant had chronic right carpal tunnel syndrome, which prevented her from performing her job as a data conversion operator due to the

requirement of performing repetitive motion. He indicated that appellant had a pinched-nerve in her neck with a C6 radiculopathy on the right side.

In an April 13, 2000 decision, the Office hearing representative affirmed the Office's July 14, 1999 decision to terminate appellant's compensation.

The Board finds that the Office properly terminated appellant's compensation for refusal to accept suitable work.

Section 8106(c)(2) of the Federal Employees' Compensation Act states: "A partially disabled employee who: (1) refused to seek suitable work; or (2) refuses or neglects to work after suitable work is offered is not entitled to compensation."¹ 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 justified.² Before the Office can terminate appellant's compensation for refusal to accept suitable work, it must first establish that the job offered to appellant was suitable.³

In this case, Dr. Fiorelli stated generally that appellant could return to her data conversion job as of May 3, 1999. His reports in March 1999 showed that he was aware that appellant's job required considerable repetitive motion. In light of this knowledge, Dr. Fiorelli's conclusion that appellant could return to this position has great probative value, particularly because he had been the treating physician who had performed the surgery on appellant and had continued treating her after the surgery.

Dr. Gomez only reported on appellant's current condition but did not discuss whether she could return to her regular duties or to the position offered to her by the employing establishment. Dr. Jeck stated that appellant could not perform the duties of the offered position because she could not tolerate the pain of the high-speed typing for several hours a day. The employing establishment indicated, however, that appellant would be required to perform the position up to her tolerance.

Dr. Jeck did not provide any rationale in support of his opinion that appellant could not perform the duties of the offered position, particularly any description of the cause and source of the pain, which he stated would prevent appellant from performing the duties of the offered position. Dr. Jeck's report, therefore, has limited probative value and is insufficient to overcome the probative value of the reports of Dr. Fiorelli, appellant's treating physician, who stated appellant could return to work and provided the information on which the Office based its job offer. The Office, therefore, properly terminated appellant's compensation for refusal to accept suitable work.

¹ 5 U.S.C. § 8106(c)(2).

² 20 C.F.R. § 10.124.

³ *Henry W. Shepard, III*, 48 ECAB 382 (1997).

The decision of the Office of Workers' Compensation Programs, dated April 13, 2000, is hereby affirmed

Dated, Washington, DC
August 8, 2001

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member