

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BARBARA A. AMBROSE and U.S. POSTAL SERVICE,
POST OFFICE, New Orleans, LA

*Docket No. 00-1902; Submitted on the Record;
Issued December 20, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective April 23, 2000 on the grounds that she neglected to work after suitable work was offered.

The Board finds that the Office did not meet its burden to terminate appellant's compensation effective April 23, 2000 on the grounds that she neglected to work after suitable work was offered.

Section 8106(c)(2) of the Federal Employees' Compensation Act 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."¹ However, to justify such termination, the Office must show that the work offered was suitable.² An employee who refuses or neglects to work after suitable work has been offered to her has the burden of showing that such refusal to work was justified.³

In September 1997 appellant, then a distribution clerk, filed a claim alleging that she sustained bilateral carpal tunnel syndrome due to her work duties. The Office accepted her claim for bilateral carpal tunnel syndrome and authorized surgery for bilateral carpal tunnel release. Appellant began to work for the employing establishment for four hours per day in a limited-duty job.

On December 14, 1999 the employing establishment offered appellant a limited-duty position as modified mail processor for eight hours per day. The job involved preparing, loading

¹ 5 U.S.C. § 8106(c)(2).

² *David P. Camacho*, 40 ECAB 267, 275 (1988); *Harry B. Topping, Jr.*, 33 ECAB 341, 345 (1981).

³ *See Catherine G. Hammond*, 41 ECAB 375, 385 (1990).

and sweeping mail and required lifting up to 70 pounds. On December 28, 1999 appellant rejected the offered position, she later accepted the position but neglected to report for work. On January 5, 2000 the Office advised appellant that the position offered to her constituted suitable work. By decision dated April 10, 2000, the Office terminated appellant's compensation effective April 23, 2000 on the grounds that she neglected to work after suitable work was offered.

The Board finds that the medical evidence does not establish that appellant was physically capable of performing the modified mail processor position offered to her by the employing establishment. As the Office did not establish that the position was suitable, it did not meet its burden of proof to terminate appellant's compensation effective April 23, 2000 on the grounds that she neglected to work after suitable work was offered.

In a report dated September 15, 1999, Dr. Donald Faust, a Board-certified orthopedic surgeon, who served as an Office referral physician, indicated that appellant could work in a job that did not require her to lift more than 70 pounds. In a September 15, 1999 form report, Dr. Faust indicated that appellant could work for eight hours per day and lift and reach for eight hours per day. On October 26, 1999 Dr. Timothy Finney, an attending Board-certified orthopedic surgeon, indicated that he agreed with the restrictions in September 15, 1999 form report of Dr. Faust; he also completed a work restriction form similar to that completed by Dr. Faust.

However, Dr. Finney did not provide any indication regarding the amount of weight appellant was capable of lifting. Moreover, in a report dated February 4, 2000, Dr. Finney indicated that appellant could not lift more than 10 pounds, could not engage in grasping or fine manipulation for more than an hour per day and should avoid working with machines. In other reports dated in December 1999 and January 2000, Dr. Finney indicated that appellant should avoid repetitive handwork and noted that she needed further evaluation to determine the extent of her ability to work.⁴

Therefore, there is a conflict in the medical evidence regarding appellant's ability to perform the modified mail processor position. The medical record does not clearly indicate that appellant was capable of performing the position offered by the employing establishment and the Office improperly terminated her compensation effective April 23, 2000.

⁴ He noted that appellant had tendinitis in addition to carpal tunnel syndrome. Other medical reports from this period indicated that appellant also had reflex sympathetic dystrophy.

The April 10, 2000 decision of the Office of Workers' Compensation Programs is reversed.

Dated, Washington, DC
December 20, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member