U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOANN WILLIAMS and U.S. POSTAL SERVICE,
POST OFFICE, Irving, TX

Docket No. 99-2432; Submitted on the Record;
Issued February 13, 2001

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
PRISCILLA ANNE SCHWAB

The issues are: (1) whether the Office of Workers' Compensation Programs properly terminated appellant's compensation on the basis that she refused an offer of suitable work; and (2) whether the Office properly refused to reopen appellant's case for further review of the merits of her claim.

The Office accepted that appellant's November 28, 1990 employment injury, in which the closer bar of a general purpose container struck appellant on the head, resulted in head trauma, a cervical strain and a mild herniated disc at L5-S1. She received continuation of pay from November 28, 1990 to January 12, 1991, followed by compensation for temporary total disability until she returned to part-time limited duty as a modified clerk on May 19, 1992. On May 16, 1992 appellant was elected to a three-year term as health plan director of her local union and on June 17, 1992 she began working 15 hours at the union and 5 hours a week at the employing establishment. The Office paid wage-loss compensation.

On August 28, 1995 the employing establishment offered appellant a full-time position as a modified distribution clerk. By letter dated September 29, 1995, the Office advised appellant that it had found the employing establishment's offer suitable, that she had 30 days to accept the offer or provide an explanation for refusing it and that section 8106(c) of the Federal Employees' Compensation Act[1] provides that an employee who refuses an offer of suitable work is not entitled to compensation.

Appellant declined this offer on October 16, 1995, contending that it was not within her work tolerance limitations, that it violated the collective bargaining agreement by changing her work station and hours and that she should be allowed to work hours that would allow her to travel during "nonheavy traffic hours, *i.e.*, 0650-0950/PO -- 1000-1300 union." She filed a

[1] 5 U.S.C. 8101 et seq.

grievance regarding this job offer, but on March 21, 1996 a labor relations specialist denied the grievance, finding that the assignment was proper.

By letter dated July 9, 1996, the Office advised appellant that it had found that her reasons for refusing the employing establishment's offer were unacceptable and that she had 15 days to accept the offer or have her compensation terminated. By decision dated July 29, 1996, the Office terminated appellant's compensation effective that date on the basis that she neglected to work after suitable work was offered to her.

Appellant requested a hearing, which was held on May 1, 1997. By decision dated January 14, 1998, an Office hearing representative found that her reasons for refusing the employing establishment's offer were unacceptable and that the Office properly terminated her compensation for refusing suitable work. Appellant requested reconsideration and submitted additional evidence. By decision dated June 2, 1998, the Office found that the additional evidence was repetitive and not sufficient to warrant review of its prior decisions.

The Board finds that the Office properly terminated appellant's compensation on the basis that she refused an offer of suitable work.

Under section 8106(c)(2) of the Federal Employees' Compensation Act, the Office may terminate the compensation of an employee who refuses or neglects to work after suitable work is offered to, procured by or secured for the employee.[2] To justify termination of compensation, the Office must establish that the work offered was suitable.[3]

The evidence establishes that the position offered by the employing establishment on August 28, 1995 was suitable. In a July 18, 1995 report of appellant's work tolerance limitations, appellant's attending physician, Dr. James O. Royder, indicated that appellant could frequently lift up to 10 pounds and occasionally lift up 24 pounds and that she could alternately sit and stand four hours, walk one hour and sit eight hours with rests. He also stated that appellant needed an ergonomically correct work station. These limitations are not exceeded by the August 28, 1995 offer and the employing establishment provided ergonomic furniture by July 9, 1996. On October 19, 1995 the Office wrote to Dr. Royder, describing the duties and physical requirements of the offered position; on October 23, 1995 Dr. Royder indicated that appellant could physically perform the duties of the position.

Appellant's other reasons for not accepting the offered position are also unacceptable. She filed a grievance contending that the offer violated the collective bargaining agreement, but this grievance was denied. The Board has no jurisdiction to review alleged violations of collective bargaining agreements.

Appellant's other contention is that the offer is not suitable because she cannot travel to the work site during rush hour. Dr. Royder addressed her ability to commute in an October 13,

[2] 5 U.S.C. § 8106(c)(2) provides in pertinent part: "A partially disabled employee who ... (2) refuses or neglects to work after suitable work is offered to, procured by or secured for him; is not entitled to compensation."

[3] *David P. Camacho*, 40 ECAB 267 (1988).

1995 report: "Working hours should be scheduled in such a manner that does not require her to travel during heavy rush hour traffic. This has and will cause stress that tenses her neck, shoulders and back." This is an unacceptable reason for refusing an offer of employment, as the Office's procedure manual provides that inability to travel to the job is an acceptable reason only when the inability is due to residuals of the employment injury.[4]

The Board further finds that the Office properly refused to reopen appellant's case for further review of the merits of her claim.

Section 8128(a) of the Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation:

> "The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. The Secretary, in accordance with the facts found on review may --
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> '(1) end, decrease, or increase the compensation awarded; or
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> '(2) award compensation previously refused or discontinued.'"

Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a point of law, by advancing a point of law or fact not previously considered by the Office, or by submitting relevant and pertinent evidence not previously considered by the Office. Section 10.138(b)(2) provides that, when an application for review of the merits of a claim does not meet at least one of these three requirements the Office will deny the application for review without reviewing the merits of the claim. Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.[5]

In support of her March 20, 1998 request for reconsideration, appellant submitted additional reports from Dr. Royder dated February 11 and 14, 1998. These reports were repetitive of Dr. Royder's prior reports and thus do not constitute a basis for reopening appellant's case for further review of the merits of her claim.

[4] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.5a(5) (July 1996).

[5] *Eugene F. Butler*, 36 ECAB 393 (1984).

The decisions of the Office of Workers' Compensation Programs June 2 and January 14, 1998 are affirmed.

Dated, Washington, DC
February 13, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member