

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HORTON R. BLAKE and U.S. POSTAL SERVICE,
ARSENAL STATION, San Antonio, TX

*Docket No. 00-2605; Submitted on the Record;
Issued July 3, 2001*

DECISION and ORDER

Before WILLIE T.C. THOMAS, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation for refusing an offer of suitable employment.

On June 24, 1999 appellant, then a 40-year-old letter carrier, filed a claim for a dog bite to his right calf and a twisting injury to his right knee and ankle sustained on June 24, 1999. The Office accepted right knee and ankle sprains and paid appellant compensation for intermittent periods of disability through November 24, 1999. Appellant last worked at the employing establishment on November 26, 1999, and the Office began paying appellant compensation for total disability beginning November 27, 1999.

By letter dated March 21, 2000, the Office advised appellant that a March 8, 2000 offer of limited duty from the employing establishment was suitable, and allotted appellant 30 days to accept the offer or provide an explanation for not accepting it. The Office also advised appellant that a claimant who refuses an offer of suitable employment is not entitled to compensation. By letter dated May 10, 2000, the Office advised that he had 15 days to accept the offered position. By decision dated June 8, 2000, the Office terminated appellant's compensation effective May 30, 2000 for failure to accept an offer of suitable employment.

Under section 8106(c)(2) of the Federal Employees' Compensation Act,¹ the Office may terminate the compensation of a partially disabled employee who refuses or neglects to work after suitable work is offered to, procured by or secured for the employee.² To justify termination, the Office must show that the work offered was suitable.³

¹ 5 U.S.C. § 8106(c)(2).

² *Michael I. Schaffer*, 46 ECAB 845 (1995).

³ *See* 20 C.F.R. § 10.124(e).

The Office has made that showing. Not only were the duties of the offered position within the work tolerance limitations set forth by Dr. Theodore Parsons, a Board-certified orthopedic surgeon to whom the Office referred appellant for a second opinion, but also the Office sent a copy of the job offer to appellant's attending physician, Dr. Ty H. Goletz, a Board-certified orthopedic surgeon, who stated that appellant could do the job described.

Section 10.516 of the Code of Federal Regulations⁴ provides that an employee who refuses or neglects to work after suitable work has been offered or secured for the employee has the burden of showing that such refusal or failure to work was reasonable or justified, 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

By letter dated March 21, 2000, the Office advised appellant that it had found the position offered by the employing establishment on March 8, 2000 to be suitable; appellant was allotted 30 days to accept the position or provide an explanation of his reasons for refusing it. Appellant was further advised that pursuant to 5 U.S.C. § 8106(c) if he failed to accept the offered position and failed to demonstrate that the failure was justified, his compensation would be terminated.

Appellant declined the position by letter dated April 14, 2000, stating that he had to relocate to Baltimore because of family obligations. This is not a valid reason for refusing the position offered by the employing establishment in San Antonio, Texas. An employee's move away from the area in which the employing establishment is located is an unacceptable reason for his refusal to accept an offered position if the employee is still on the agency's rolls.⁶ Appellant's refusal of the limited-duty position was not justified by his voluntary move to Baltimore for personal reasons, especially as appellant moved after the employing establishment offered him suitable employment.

⁴ 20 C.F.R. § 10.516

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

⁶ *Richard S. Gumper*, 43 ECAB 811 (1992).

The decision of the Office of Workers' Compensation Programs dated June 8, 2000 is affirmed.

Dated, Washington, DC
July 3, 2001

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member