U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LAUREL A. WICK-LANGILL and U.S. POSTAL SERVICE,
POST OFFICE, Santa Clara, CA

Docket No. 01-1015; Submitted on the Record;
Issued July 26, 2001

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation on the grounds that she refused an offer of suitable work.

In the present case, the Office accepted that appellant sustained an aggravation of left rotator cuff causally related to her duties as a letter carrier. Appellant returned to work in a part-time position in April 1998 and then stopped working in December 1998. By letter dated December 29, 1999, the Office notified appellant that it found a job offered by the employing establishment to be suitable work. The Office noted the provisions of 5 U.S.C. § 8106, and advised appellant that she had 30 days to accept the position or provide reasons for refusing. In a letter dated February 3, 2000, the Office determined that the reasons provided by appellant for refusing the position were unacceptable, and appellant was provided an additional 15 days to accept the position.

By decision dated February 18, 2000, the Office terminated appellant's compensation.

The Board finds that the Office properly terminated appellant's compensation in this case.

5 U.S.C. § 8106(c) 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." It is the Office's burden to terminate compensation under section 8106(c) for refusing to accept suitable work or neglecting to perform suitable work.[1] To justify such a termination, the Office must show that the work offered was suitable.[2] An employee who refuses or neglects to work

[1] *Henry P. Gilmore*, 46 ECAB 709 (1995).

[2] *John E. Lemker*, 45 ECAB 258 (1993).

after suitable work has been offered to her has the burden of showing that such refusal to work was justified.[3]

With respect to appellant's work restrictions, the Office found that a conflict existed between the attending physician, Dr. John C. Becker, an orthopedic surgeon, and Dr. John Lavorgna, an orthopedic surgeon selected as an Office second opinion physician. Dr. Becker had opined that appellant was totally disabled for work, while Dr. Lavorgna had opined that appellant could work four hours per day with restrictions and then increased her working hours.

In a report dated November 29, 1999, Dr. John F. Stahler, an orthopedic surgeon selected as an impartial medical specialist, provided a history and results on examination. Dr. Stahler completed a work capacity evaluation (Form OWCP-5) dated December 29, 1999, stating that appellant should return to work initially at four hours per day, because of the amount of time away from work, and then resume full time after three months. Dr. Stahler provided limitations on certain activities, such as reaching, pushing, pulling, and lifting with the left arm.

The Board finds that Dr. Stahler represents the weight of the medical evidence with respect to appellant's work restrictions. He provided a complete report based on an accurate history that resolves the conflict in the evidence. It is well established that when a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.[4]

The job offered by the employing establishment was a light-duty job answering telephones and organizing files. The physical requirements were specifically tailored to the left arm restrictions recommended by Dr. Stahler, and the position began at four hours per day.

Accordingly, the Board finds that the offered position was medically suitable. The reason offered by appellant for refusing the position was Dr. Becker's unrationalized opinion that she was totally disabled. The opinion of Dr. Becker, however, was on one side of the conflict in the evidence that was resolved by Dr. Stahler. The Office specifically noted that Dr. Becker had not provided any objective finding to substantiate disability. Accordingly, it does not constitute a sufficient basis to refuse the offered position in this case.

The Office properly advised appellant that the position was suitable and the reason offered for refusing was insufficient. Accordingly, the Board finds that the Office properly terminated appellant's compensation based on a refusal of suitable work under 5 U.S.C. § 8106(c).

[3] *Catherine G. Hammond*, 41 ECAB 375, 385 (1990); 20 C.F.R. § 10.517(a).

[4] *Harrison Combs, Jr.*, 45 ECAB 716, 727 (1994).

The decision of the Office of Workers' Compensation Programs dated February 18, 2000 is affirmed.

Dated, Washington, DC
July 26, 2001

David S. Gerson
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member