

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JANICE KRUZIENSKI and U.S. POSTAL SERVICE,  
LANCASTER AVENUE STATION, Wilmington, DE

*Docket No. 00-2082; Submitted on the Record;  
Issued June 20, 2001*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
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.

On November 11, 1997 appellant, then a 38-year-old registry clerk, filed a claim for an injury to the left side of her body, her arm and her back sustained on that date when a security gate broke off its hinges and fell on her. The Office accepted that appellant sustained cervical and lumbar spine sprains and a contusion of the left shoulder, and paid compensation for temporary total disability until appellant returned to limited duty for two hours per day on February 5, 1998.

On June 5, 1998 the employing establishment offered appellant a full-time limited-duty assignment as a registry clerk. By letter dated August 10, 1998, the Office advised appellant that it had found this position to be suitable, that section 8106(c) of the Federal Employees' Compensation Act provides that a partially disabled employee who refuses an offer of suitable work is not entitled to compensation, and that she had 30 days to accept the employing establishment's offer or to provide reasons for not doing so. By letter dated November 4, 1998, the Office advised appellant that the reason she provided for refusing the offer -- that she could not work more than two hours a day due to her pain -- was not acceptable, and that she had 15 days to accept the offer.

By decision dated January 14, 1999, the Office terminated appellant's compensation on the grounds that she refused an offer of suitable work. Appellant requested a hearing, which was held on September 21, 1999. By decision dated December 15, 1999, an Office hearing representative found that the Office met its burden of proof to terminate appellant's compensation for refusing an offer of suitable work. By letter received February 17, 2000, appellant requested reconsideration, and submitted additional medical evidence. By decision dated March 2, 2000, the Office found that the additional evidence was not sufficient to warrant modification of its prior decisions.

Under section 8106(c)(2) of the 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.<sup>1</sup> To justify termination of compensation, the Office must establish that the work offered was suitable.<sup>2</sup>

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

The Board finds that the Office has not established that the full-time limited-duty position offered to appellant by the employing establishment was suitable. The physical requirements of this position include no lifting over 15 pounds. This exceeds the lifting restriction of 10 pounds set forth on March 2, 1998 by Dr. Andrew J. Gelman, an osteopath specializing in orthopedics to whom the Office referred appellant for a second opinion evaluation. Appellant's attending physician, Dr. William C. Ware, an internist, also set forth a 10-pound lifting limitation. Although Dr. Gelman stated in his narrative report that appellant described to him the sedentary position performing desk and file duties she was performing two hours per day, and that he saw no reason that appellant could not perform that particular duty on a full-time basis, this does not show that appellant could perform the position offered to her on June 5, 1998, which could require lifting up to 15 pounds. The limited-duty offer under which appellant was working two hours per day did not list any lifting restriction. As the medical evidence does not establish that appellant could lift up to 15 pounds, the employing establishment's June 5, 1998 offer was not suitable.

The decisions of the Office of Workers' Compensation Programs dated March 2, 2000 and December 15, 1999 are reversed.

Dated, Washington, DC  
June 20, 2001

Michael J. Walsh  
Chairman

David S. Gerson  
Member

A. Peter Kanjorski  
Alternate Member

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<sup>1</sup> 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."

<sup>2</sup> *David P. Camacho*, 40 ECAB 267 (1988).