

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of LEON P. NEAL and U.S. POSTAL SERVICE,  
POST OFFICE, Dayton, OH

*Docket No. 00-2114; Submitted on the Record;  
Issued June 5, 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 he refused an offer of suitable work.

The Office accepted that appellant sustained a bilateral metatarsalgia causally related to his federal employment. He stopped working in April 1997. On April 30, 1999 the employing establishment offered appellant a light-duty position as a distribution clerk. The job description indicated that the position involved minimal standing or walking, a 10-pound lifting restriction and also stated that all duties would be in strict compliance with the restrictions imposed by the attending physician. On May 25, 1999 appellant rejected the job offer, stating that he and the attending physician, Dr. John Urse, an osteopath, felt that appellant should not return to work. By letter dated June 15, 1999, the Office stated that it found that offered position to be suitable, advised appellant of the provisions of 5 U.S.C. § 8106(c)(2) and notified him that he must accept the position or provide reasons for refusing the position in 30 days. In a letter dated August 4, 1999, the Office advised appellant that he had not provided acceptable reasons for refusing the position and he had 15 days to accept the position.

By decision dated September 2, 1999, the Office terminated appellant's compensation on the grounds that he refused an offer of suitable work. By decision dated April 28, 2000, an Office hearing representative affirmed the termination.

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

Section 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.<sup>1</sup> To justify such a

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<sup>1</sup> Henry P. Gilmore, 46 ECAB 709 (1995).

termination, the Office must show that the work offered was suitable.<sup>2</sup> An employee who refuses or neglects to work after suitable work has been offered to him has the burden of showing that such refusal to work was justified.<sup>3</sup>

With respect to the procedural requirements of termination under section 8106(c), the Board has held that the Office must inform appellant of the consequences of refusal to accept suitable work and allow appellant an opportunity to provide reasons for refusing the offered position.<sup>4</sup> If appellant presents reasons for refusing the offered position, the Office must inform the employee if it finds the reasons inadequate to justify the refusal of the offered position and afford appellant a final opportunity to accept the position.<sup>5</sup>

In this case, the Office met the appropriate procedural requirements in providing notice and an opportunity to respond prior to the termination of benefits. With respect to the Office's finding that the offered position was suitable, the evidence indicates that the position was within appellant's medical restrictions. The offered position was specifically tailored to the restrictions of Dr. Urse in an October 26, 1998 report. Appellant stated that Dr. Urse felt he should not return to work, but the record does not contain a report from Dr. Urse indicating that he reviewed the offered position and opining that he could not perform the position. The probative evidence indicated that the position was within medical restrictions and appellant did not submit reliable evidence that the position was medically unsuitable. After the September 2, 1999 decision, appellant noted that Dr. Urse had included the "ability to remove shoes" in his report and he submitted a copy of an employing establishment policy that appellant argued was sufficient to establish that the offered position was unsuitable. The policy, however, offers only general guidelines on proper footwear. The offered job description stated that all restrictions would be complied with and there is no probative evidence establishing otherwise.

Accordingly, the Board finds that the Office properly determined the position to be suitable. Appellant did not offer acceptable reasons for refusing the position and therefore under 5 U.S.C. § 8106(c)(2), his compensation is properly terminated.

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<sup>2</sup> *John E. Lemker*, 45 ECAB 258 (1993).

<sup>3</sup> *Catherine G. Hammond*, 41 ECAB 375, 385 (1990); 20 C.F.R. § 10.517(a).

<sup>4</sup> *Maggie L. Moore*, 42 ECAB 484 (1991); *reaff'd on recon.*, 43 ECAB 818 (1992).

<sup>5</sup> *Id.*

The decisions of the Office of Workers' Compensation Programs dated April 28, 2000 and September 9, 1999 are affirmed.

Dated, Washington, DC  
June 5, 2001

Michael J. Walsh  
Chairman

David S. Gerson  
Member

A. Peter Kanjorski  
Alternate Member