U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BRENDA M. KNOX and U.S. POSTAL SERVICE,
POST OFFICE, Wallingford, CT

Docket No. 00-2173; Submitted on the Record;
Issued June 18, 2001

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective May 16, 2000 on the grounds that she refused an offer of suitable work.

The Office accepted appellant's claim for lumbar strain and cervical strain resulting from a March 16, 1999 employment injury. Appellant was temporarily totally disabled from April 28, 1999 to April 7, 2000.

By letter dated July 9, 1999, appellant stated that her usual work of mail processor involved her being placed on any of three machines, the optical code reader (OCR), the delivery bar code sorter (DBCS) and the bar code sorter (BCS). She stated that of the three machines only working on the OCR was within her medical limitations. Appellant stated that she would like to be given a permanent regular bid job before being offered a temporary displaced job on another tour.

In a report dated July 22, 1999, appellant's treating physician, Dr. Kenneth M. Kramer, a Board-certified orthopedic surgeon, stated that appellant could work eight hours, with four hours performing her regular sedentary work on her "regular work type of machine" and on the OCR machine, and the other four hours performing standing or walking work.

In a report dated September 27, 1999, Dr. Kramer opined that appellant reached maximum medical improvement and that she had a 15-pound lifting restriction with no repetitive lifting, bending or overhead work.

In a report dated November 22, 1999, Dr. Kramer performed a physical examination of appellant and reiterated that appellant could work eight hours consisting of four hours of sitting work and four hours of standing work.

By letter dated January 5, 2000, the employing establishment offered appellant the position of modified clerk, eight hours a day. The job duties included obtaining mail off a rack, sorting the mail and verifying the labeling on trays. The physical restrictions included intermittent lifting of up to 15 pounds and a maximum of 4 hours each of intermittent standing, walking and sitting.

By letter dated January 12, 2000, the Office offered appellant the job of modified clerk, which was available and within her work capabilities and physical restrictions. The Office told appellant that she had 30 days to respond.

By letter dated January 19, 2000, appellant stated that the "newly made up temporary position" of modified clerk was not acceptable to her because she was unwilling to "trade [her] regular career position (that [she] can work) for a temporary position because [she] got injured on the job." She stated that she was a full-time regular mail processor, which was a permanent career position and she should not have to lose that job because she was injured at work. Appellant referred to Dr. Kramer's duty status report, Form CA-17, dated November 22, 1999, which recommended modification of her regular job and stated that she had yet to receive approval or denial of her physician's recommendation. The Form CA-17 dated November 22, 1999 from Dr. Kramer stated that appellant could work eight hours with four hours sedentary on "automation" and the OCR machine, and four hours standing or walking, with changes in positions as needed and a lumbar support seat.

By letter dated February 19, 2000, appellant stated that she was still waiting for an approval or denial of her physician's recommendations of modification of her career bid job, which she still held to date.

In an undated attending physician's report, Form CA-20, received by the Office on February 24, 2000 Dr. Kramer reiterated that appellant could work 8 hours, with 4 hours sedentary, 4 hours standing and a 15-pound lifting restriction.

By letter dated February 28, 2000, the Office stated that the reasons given by appellant for refusing the job offer were unacceptable. The Office gave appellant 15 days to respond to the job offer.

By letter dated March 10, 2000, appellant listed a chronology of her work history since July 2, 1999 when Dr. Kramer released her to return to eight hours of work, with four hours of sedentary work on the OCR machine and four hours of standing or walking work. Appellant stated that, since she was released to 4 hours of machine work, she did not understand why she could not return to her usual work for at least 4 hours, especially where the machine operated 24 hours, 7 days a week. She stated that "instead [she was] being forced and threatened" by the Office to take the modified clerk position which required constant sitting and was "strictly against" her doctor's recommendations.

A job analysis of a mail processor dated April 11, 2000, performed by a rehabilitation specialist and signed by appellant's supervisor, stated that a worker was required and must be capable of operating a variety of machines such as the OCR, the DBCS and the BCS. The supervisor stated that occasional to continuous bending was required especially on the OCR

machine. The supervisor stated that picking up mail trays was required on an occasional to constant basis depending on the machine the worker was assigned and that work required frequent and constant crouching. The supervisor also stated that frequent and continuous lifting was required of up to 25 pounds when picking up mail trays and bins from mail carts off the conveyor belt, and continuous carrying of up to 25 pounds was required when carrying mail trays and bins. The supervisor stated that the flexibility of the worker to be able to work a variety of sorting and coding machines was very important, that workers must be moved from one machine to another as the work demanded and if the work on the machine slowed down, a worker might be assigned to do case work but that was rare and for only brief periods of time.

A job analysis of the modified distribution clerk dated April 11, 2000, performed by the rehabilitation specialist and signed by appellant's supervisor, stated that the job involved sorting letters by hand according to zip codes and sorting bundles of magazines according to zip codes as needed. The job required occasional standing and walking, frequent sitting, no stooping, kneeling, crouching and crawling, occasional lifting of up to 20 pounds twice an hour and no carrying of any weight. In the conclusion, the rehabilitation specialist stated that the job allowed for a variety of accommodations including being able to stand or sit for longer or shorter periods of time and variation between sitting and standing. The lifting and carrying requirements were within the sedentary to light category and did not exceed 15 pounds.

By decision dated May 24, 2000, the Office found that appellant refused a suitable job offer as a modified clerk without justified reasons and thereby forfeited any continuing wage loss or schedule award benefits although medical benefits would continue. The Office stated that appellant's compensation benefits for wage loss and a schedule injury were terminated effective May 24, 2000.

Once the Office accepts a claim it has the burden of justifying termination or modification of compensation. Under section 8106(2) of Federal Employees' Compensation Act,[1] the Office may terminate 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 show that the work offered was suitable[3] and must inform appellant of the consequence of refusal to accept such employment. Section 10.124(c) of the Office's regulations provides that an employee who refuses or neglects to work after suitable work has been offered or secured 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.[4] To justify termination, the Office must show that the work offered was suitable and must inform appellant of the consequences of refusal to accept such employment.[5] The Board has held that

[1] 5 U.S.C. §§ 8101-8193.

[2] *Henry W. Sheperd, III*, 48 ECAB 382 (1997); *Patrick A. Santucci*, 40 ECAB 151 (1988).

[3] *Arthur C. Reck*, 47 ECAB 399 (1996).

[4] 20 C.F.R. § 10.124 (c); *see also Catherine G. Hammond*, 41 ECAB 375 (1990).

[5] *Karen L. Mayewski*, 45 ECAB 219 (1993).

acceptable reasons for refusing an offered position include withdrawal of the offer or medical evidence of inability to do the work or travel to the job.[6] The determination of whether appellant is capable of performing the offered position is a medical question that must be resolved by the medical evidence.[7]

The Board finds that the Office properly terminated appellant's compensation

The initial question in this case is whether the Office properly determined that the position was suitable. The Board finds that the weight of the medical evidence establishes that the position was within appellant's physical limitations. In his report dated September 27, 1999, Dr. Kramer opined that appellant could lift up to 15 pounds and could not perform repetitive lifting, bending or overhead work. In his report dated November 22, 1999, Dr. Kramer opined that appellant could work eight hours consisting of four hours of sitting work and four hours of standing work. The job description of modified clerk stated that the job involved working 8 hours day, with a maximum of 4 hours each of intermittent standing, walking, sitting and intermittent lifting of up to 15 pounds. The job of modified clerk is therefore within appellant's physical restrictions.

In rejecting the offer by the employing establishment, appellant stated that the position of modified clerk was "newly made up" and temporary and she was not going to trade her regular career position for a temporary position just because she got injured on the job. Appellant stated that Dr. Kramer's November 22, 1999 CA-17 stated that she could work eight hours with four hours sedentary on automation and on the OCR machine, and four hours standing or walking, with changes in positions as needed and support of a lumbar seat.

Appellant's contention is not that she is unable to perform the job she was offered but that she would underutilize her skills and capabilities, maintaining that she is capable of performing her regular work at least half a day and Dr. Kramer's November 22, 1999 report supports her contention. Her contention, however, is not supported by the evidence of record. Appellant herself acknowledged that her usual work involves working on three machines; however, she felt that she was capable of only handling the OCR machine. In the job analysis of the mail processor, the rehabilitation specialist stated that being able to operate a variety of machines such as the DBCS and BCS as well as the OCR was necessary and "very important." The rehabilitation specialist stated that, when working on the OCR machine, occasional to continuous bending was required. The rehabilitation specialist also stated that the job required frequent and continuous lifting of up to 25 pounds when picking up mail trays and bins from mail carts off the conveyor belt and continuous carrying of up to 25 pounds when carrying mail trays and bins. The job analysis of mail processor shows that it exceeds the physical restrictions placed on appellant by Dr. Kramer, who prescribed no repetitive lifting or bending and no lifting more than 15 pounds. Appellant refused a job offer that is within her physical restrictions contending that she could perform more demanding work. Her treating doctor's restrictions and the job analysis establish that she cannot perform her regular job duties. There is no evidence to

[6] *Lorraine C. Hall*, 51 ECAB ________ (Docket No. 98-280, issued April 14, 2000); *C.W. Hopkins*, 47 ECAB 725 (1996); *see Patsy R. Tatum*, 44 ECAB 490, 495 (1993).

[7] *Camillo R. DeArcangelis*, 42 ECAB 941 (1991).

show that the job of modified clerk which appellant was offered was temporary or makeshift.[8] Appellant's reasons therefore for refusing an offer of suitable employment were not justified and the Office properly terminated her compensation.

The decision of the Office of Workers' Compensation Programs dated May 24, 2000 is affirmed.

Dated, Washington, DC
June 18, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

[8] *See Elbert Hicks*, 49 ECAB 283, 284 (1998).