U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of AZZIE P. ROBINSON and U.S. POSTAL SERVICE,
POST OFFICE, Richmond, VA

Docket No. 00-2446; Submitted on the Record;
Issued June 27, 2001

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
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 October 19, 1998 appellant, then a 41-year-old flat sorter, filed a claim alleging that on that date she injured her left shoulder while lifting and pulling a tray.[1] The Office accepted the claim for left shoulder impingement.

On March 20, 2000 the employing establishment offered appellant a modified flat sorter operator position. By letter dated April 6, 2000, the Office advised appellant that it considered the offered position to be suitable. The Office noted the provisions of 5 U.S.C. § 8106(c)(2) and granted appellant 30 days to accept the position or provide reasons for refusing. In a letter dated May 5, 2000, the Office advised appellant that she had not provided acceptable reasons for refusing the position; appellant was granted an additional 15 days to accept the position.

In a decision dated May 23, 2000, the Office terminated appellant's compensation on the grounds that she had refused an offer of suitable work.

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.[2] To justify such a termination, the Office

[1] Appellant had an accepted right hand sprain on September 25, 1993 and was working in a modified position as of October 19, 1998.

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

must show that the work offered was suitable.[3] 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.[4]

A job description for the offered position of modified flat sorter operator was sent to appellant's attending physician, Dr. Chad Manke, an orthopedic surgeon. On March 22, 2000 Dr. Manke submitted the job description with a note indicting that he approved of the offered position. The record therefore contains probative medical evidence indicating that the offered position was within appellant's work restrictions. The Board finds that the offered position was medically and vocationally suitable in this case.

Appellant responded to the Office's April 6, 2000 letter finding the offered position suitable by submitting a May 2, 2000 statement that she wanted a second opinion examination. She further stated that she felt the job was not suitable because of her medical condition. With respect to the reasons offered by appellant for not accepting the position,[5] the Board finds that the Office properly found the reasons unacceptable. The record indicates that the Office did previously attempt to secure a second opinion examination regarding appellant's continuing employment-related disability. In a letter dated October 27, 1999, a rehabilitation nurse indicated that appellant had been seen briefly by a second opinion referral physician, but the physician reported he could not provide an evaluation.[6] The attempted referral, however, was prior to the job offer by the employing establishment. As noted above, appellant's attending physician, Dr. Manke, reviewed the offered position and indicated that he approved of the offered position. To the extent that appellant argues that the Office was obligated to secure additional medical evidence, the Board finds no support for this argument. Her attending physician reviewed the job offer and approved the modified position. This constitutes probative medical evidence that appellant could perform the offered position and the Office is not required to secure additional medical evidence on this issue. With respect to appellant's assertion that the job was medically unsuitable, this is a medical issue and the probative evidence, represented by Dr. Manke, indicates that the position was found medically suitable. Appellant submitted reports from Dr. Michael Johnson, a chiropractor, but these reports are of no probative medical value. Section 8101(2) of the Federal Employees' Compensation Act provides that the term "'physician' … includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist."[7] Since Dr. Johnson did not diagnose a subluxation as

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

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

[5] Appellant asserted that she was neither accepting nor refusing the position, but her letter clearly indicates her intent not to accept the position within the 30-day period provided in the April 6, 2000 Office letter.

[6] There is also a December 29, 1999 letter purporting to schedule an examination with the same second opinion physician on January 14, 2000. Appellant indicated that she was not aware of any scheduled examination.

[7] 5 U.S.C. § 8101(2).

demonstrated by x-rays, he is not considered a physician under the Act and his reports are of no probative medical value.[8]

The Office properly found that the reasons offered by appellant were not sufficient to justify refusal of the offered position. Under 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.[9] 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.[10]

The Office followed appropriate procedures in this case. The Board finds that the record indicates that the offered position was suitable and appellant failed to provide acceptable reasons for refusal of the offered job. Accordingly, appellant's compensation is properly terminated under 5 U.S.C. § 8106(c)(2).[11]

The decision of the Office of Workers' Compensation Programs dated May 23, 2000 is affirmed.

Dated, Washington, DC
June 27, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

[8] *See Jack B. Wood*, 40 ECAB 95, 109 (1988).

[9] *Maggie L. Moore*, 42 ECAB 484 (1991), *reaff'd on recon.,* 43 ECAB 818 (1992).

[10] *Id.*

[11] The Board is limited to review of evidence that was before the Office at the time of the final decision. 20 C.F.R. § 501.2(c). Any evidence submitted after this date cannot be reviewed on this appeal.