U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WALTER L. EDWARDS and U.S. POSTAL SERVICE,
MIAMI MANAGEMENT SECTION CENTER, Miami, FL

Docket No. 00-987; Submitted on the Record;
Issued May 9, 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 monetary compensation entitlement on the grounds that he refused an offer of suitable work.

The case has been before the Board on a prior appeal. In a decision dated December 26, 1991, the Board found that the Office had improperly determined appellant's loss of wage-earning capacity for the period beginning May 7, 1990.[1] The history of the case is contained in the Board's prior decision and is incorporated herein by reference.[1]

In an April 28, 1997 report, Dr. Robert A. Bronfman, a second opinion Board-certified orthopedic surgeon, concluded that appellant was incapable of performing his usual employment as a letter carrier, but was not totally disabled. He opined that appellant was capable of working eight hours per day with restrictions including no lifting more than 10 pounds.

In a report dated November 28, 1997, Dr. I. Jack Miller, a Board-certified orthopedic surgeon, opined that appellant was disabled from performing his usual job, but that he was capable of doing light-duty work which did not require heavy physical work.

In a treatment note dated February 16, 1998, Dr. Miller noted that appellant had decreased flexion in his back, a positive right straight leg test and the neurological examination appeared to be within normal limits. He opined that appellant was unable to work.

On February 24, 1998 Dr. Bronfman reviewed the proposed job offer by the employing establishment which had restrictions of no kneeling or repeated bending, changing position every 30 minutes and amended the no lifting restrictions to nothing over 10 pounds. Dr. Bronfman approved the job offer with the amended lifting restrictions.

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[1] Docket No. 91-175 (issued December 26, 1991).

On February 27, 1998 the employing establishment offered appellant the position of modified clerk, which required picking up handfuls of mail less than three pounds, riffling mail pieces, removing incorrectly sorted mail and distributed and cased mail at eye level.

By letter dated March 13, 1998, the Office advised appellant that the offered position was determined to be suitable and that he had 30 days within which to accept it. The Office advised appellant of the provisions of 5 U.S.C. § 8106(c).

In a notification of ongoing treatment dated March 13, 1998, Dr. Miller checked that appellant was unable to work.

By response dated March 31, 1998, appellant rejected the offered position of modified clerk as his level of pain increases after one to two hours of work activities. Appellant also stated that he did not want to subject himself "to additional pain by working in pain" and that he did not want to subject himself "to added stress and agony."

By letter dated April 13, 1998, the Office found that appellant's reasons for refusal of the position were not justified and advised him that he had 15 days within which to accept the job. The Office advised that Dr. Bronfman had opined that appellant could work eight hours per day with restrictions and that Dr. Miller, appellant's attending physician, opined that appellant was capable of performing light-duty work.

Appellant did not accept the offered position. By decision dated June 23, 1998, the Office terminated appellant's compensation entitlement effective May 24, 1998 finding that he had refused an offer of suitable employment. The Office found that the weight of the medical evidence supported that appellant was capable of performing the duties of a modified clerk.

By letter dated July 7, 1998, appellant requested a written review of the record. In support of his request, appellant submitted copies of previously submitted medical reports and other documents contained in the record.

By decision dated January 6, 1999 and issued January 7, 1999, the hearing representative affirmed the June 23, 1998 termination decision, finding that the medical evidence clearly supported appellant's ability to perform the duties of the position and that there was no evidence which conflicted with Dr. Bronfman's opinion that appellant could perform the offered position. The hearing representative found that Dr. Miller's opinion was insufficient to establish a conflict as he provided no reasoning or supporting rationale for his conclusion that appellant was disabled.

The Board finds that appellant refused an offer of suitable work.

Under the Federal Employees' Compensation Act,[2] once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of compensation.[3] In this case, the Office terminated appellant's compensation under 5 U.S.C. § 8106(c) of the Act

[2] 5 U.S.C. §§ 8101-8193.

[3] *William A. Kandel*, 43 ECAB 1011 (1992).

which provides in pertinent part, "A partially disabled employee who … refuses or neglects to work after suitable work is offered … is not entitled to compensation."[4] However, to justify such termination, the Office must show that the work offered is suitable.[5] An employee who refuses or neglects to work after suitable work has been offered to him or her has the burden of showing that such refusal of work was justified.[6]

In the present case, the Office properly found the job offered by the employing establishment was suitable. Based upon the April 28, 1997 report by Dr. Bronfman indicating that appellant was capable of working eight hours per day with restrictions on sitting and lifting, the employing establishment compiled a job description of a modified clerk that was available and involved picking up handfuls of mail less than three pounds, riffling mail pieces, removing incorrectly sorted mail and distributed and to case mail at eye level. The job description stated that appellant would be able to change position every 30 minutes, no kneeling or repeated bending and no lifting over 10 pounds. On February 24, 1998 Dr. Bronfman signed a statement indicating that he had read the job description and concluded that the job was suitable for appellant with amending the lifting restriction to no lifting over 10 pounds. On February 27, 1998 the employing establishment offered appellant the position of modified clerk. By letter dated March 13, 1998, the Office advised appellant of the suitability of the position offered, that the job remained open and that appellant's failure to accept the offer, without justification, would result in the termination of his compensation and provided him 30 days within which to accept the position or submit his reasons for refusing.

Subsequently, appellant rejected the job offer by letter dated March 31, 1998 and he submitted a March 13, 1998 report by Dr. Miller which merely checked marked that appellant was unable to work. By letter dated April 13, 1998, the Office found appellant's reasons for refusing the job offer were not justified and provided him 15 days within which to accept the position or submit his reasons for refusal. He did not accept the job offer. Thereafter, the Office terminated appellant's compensation benefits effective June 23, 1998.

On July 7, 1998 appellant requested a written review of the record and submitted previously submitted medical evidence. The hearing representative affirmed the termination of benefits by decision dated January 6, 1999.

The Board finds that appellant's refusal to work was not justified. The job description of modified clerk was available and complied with the physical restrictions described in the April 28, 1997 report by Dr. Bronfman. Furthermore, Dr. Miller concluded that appellant was capable of performing light-duty work in a November 27, 1997 report. He subsequently, in reports dated February 16 and March 13, 1998, opined that appellant was unable to work. The Board has held that a medical opinion consisting solely of a conclusory statement regarding disability, without supporting rationale, is of little probative value.[7] Moreover, the April 28,

[4] 5 U.S.C. § 8106(c)(2).

[5] *Vivian J. Walker,* 51 ECAB ____ (Docket No. 98-799, issued April 4, 2000); *David P. Comacho,* 40 ECAB 267 (1988); *Harry B. Topping, Jr.*, 33 ECAB 341 (1981).

[6] 20 C.F.R. § 10.124; *see Catherine G. Hammond*, 41 ECAB 375 (1990).

[7] *See Marilyn D. Polk,* 44 ECAB 673, 678 (1993).

1997 report of Dr. Bronfman, the second opinion Board-certified orthopedic surgeon is well rationalized and on February 24, 1998 he indicated that appellant was capable of performing the offered position. The evidence of record establishes that appellant could perform the work of modified clerk, that it was available and within his restrictions. The Office, therefore, properly terminated benefits based on appellant's refusal to perform suitable work.

The decision of the Office of Workers' Compensation Programs dated January 6, 1999 is hereby affirmed.[8]

Dated, Washington, DC
May 9, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

[8] Appellant filed his appeal with the Board on January 4, 2000. Subsequently, on March 6, 2000 appellant requested reconsideration before the Office of the Office's January 6, 1999 decision and submitted additional medical evidence in support of his request. In a decision dated April 13, 2000, the Office found the additional evidence insufficient to support modification of the prior decision and because he had failed to timely file his reconsideration request. The Office's April 13, 2000 decision is null and void as both the Board and the Office cannot have jurisdiction over the same issue in the same case. 20 C.F.R. § 501.2(c); *Douglas E. Billings*, 41 ECAB 880 (1990). The Board further notes that the additional evidence submitted by appellant after the Office's June 26, 1998 decision, the last decision issued by the Office prior to appellant's appeal to the Board, represents new evidence which cannot be considered by the Board. The Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of the final decision before the Board. 20 C.F.R. § 501.2(c).