U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VALENCIA D. DAVIDSON and U.S. POSTAL SERVICE,
M.L. SELLERS PROCESSING & DELIVERY CENTER, San Diego, CA

Docket No. 00-2223; Submitted on the Record;
Issued April 4, 2002

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
MICHAEL E. GROOM

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof to establish that appellant refused an offer of suitable work; and (2) whether appellant has any continuing medical residuals from her accepted conditions of left eyebrow laceration and postconcussion syndrome.

Appellant, a 29-year-old mail processor, filed a notice of traumatic injury alleging on September 7, 1994 she sustained a concussion and a laceration of her left eyebrow when a gate fell on her during the performance of her federal duties. The Office accepted appellant's claim for left eyebrow laceration and head concussion. The Office expanded appellant's claim to include left shoulder impingement syndrome on February 14, 1996.

By decision dated February 4, 1999, the Office terminated appellant's compensation and medical benefits for the conditions of head concussion and left eyebrow laceration on the grounds that appellant had no disability nor medical residuals as a result of these conditions. In a second decision issued February 4, 1999, the Office terminated appellant's compensation benefits finding that she refused an offer of suitable work. Appellant requested reconsideration of these decisions on February 3, 2000. By decision dated April 28, 2000, the Office denied modification of its February 4, 1999 decisions.

The Board finds that the Office failed to meet its burden of proof to terminate appellant's compensation benefits on the grounds that she refused an offer of suitable work. The Board further finds that the Office failed to terminate appellant's medical benefits for the condition of head concussion.

It is well settled that once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.[1] After it has determined that an employee

[1] *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.[2] Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.[3] To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.[4]

As the Office in this case terminated appellant's medical benefits for her conditions of eyebrow laceration and head concussion, as well as wage-loss benefits under 5 U.S.C. § 8106(c), the Office must establish that appellant refused an offer of suitable work and that she no longer has residuals of the above-mentioned employment-related conditions.

Section 8106(c) of the Federal Employees' Compensation Act[5] provides that a partially disabled employee who refuses or neglects to work after suitable work is offered to, procured by, or secured for the employee is not entitled to compensation. Section 10.516 of the applicable regulations[6] provides that an employee who refuses or neglects to work after suitable work has been offered or secure for the employee, 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. To justify termination of compensation, the Office must show that the work offered was suitable and must inform appellant of the consequences of refusal to accept such employment.[7]

The issues in both decisions rendered by the Office involve a medical question that must be resolved by medical evidence. Under the Office's procedures pertaining to suitable work, if the record documents a medical condition which has arisen since the compensable injury and this condition disables the claimant from the offered job, the job will be considered unsuitable, even if the subsequently acquired condition is not work related.[8]

In this case, the Office accepted appellant's claim for a head concussion, facial laceration and left shoulder impingement syndrome. In support of her claim for additional disability, appellant submitted a report dated June 25, 1998 from Dr. Barbara J. Schrock, a clinical psychologist, who submitted a detailed report noting appellant's history of injury as well as

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[2] *Id.*

[3] *Furman G. Peake,* 41 ECAB 361, 364 (1990).

[4] *Id.*

[5] 5 U.S.C. § 8106(c)(2).

[6] 20 C.F.R. § 10.516.

[7] *Arthur C. Reck,* 47 ECAB 339, 341-42 (1995).

[8] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity,* Chapter 2.814.4(b)(4) (December 1993) provides that "If medical reports in the file document a condition which has arisen since the compensable injury and this condition disables the claimant from the offered job, the job will be considered unsuitable even if the subsequently acquired condition is not work related."

reviewing her medical history and diagnostic tests. Based on the tests administered, she diagnosed diffuse bilateral brain damage with focal overlay of right hemisphere and frontal lobe impairments and concluded that these conditions were caused by the accepted head concussion. Dr. Schrock stated:

> "In traumatic brain injury of this sort, it is not unusual for CT [computerized tomography] [scan], MRI [magnetic resonance imaging] [scan] and neurological exam[inations] to be read as normal. The damage is microscopic and intracellular. This woman had clear and frank localized brain damage consistent with traumatic brain injury."

Dr. Schrock concluded that appellant's diagnosed conditions would have a significant impact on her ability to complete tasks with time constraints or tasks that require rapid mental processing. She offered work restrictions stating, "[T]he patient's performance will be optimized by allowing her to complete tasks at her own rate, working for a short period of time with several breaks and not requiring rapid decisions to be made." Dr. Schrock found both continuing medical residuals of the accepted employment injury and disability resulting in work restrictions as a result of these residuals

The Office referred Dr. Schrock's findings to Dr. Sanjay Chauhan, a Board-certified neurologist and second opinion physician. In his previous reports, Dr Chauhan concluded that appellant had no physical limitations and no residuals of her minor closed-head trauma. He stated that appellant was not unconscious nor confused following her injury and concluded that the injury to appellant's head was not significant. Dr. Chauhan attributed appellant's continued complaints to symptom magnification.

On December 21, 1998 Dr. Chauhan addressed Dr. Schrock's findings and concluded that if such findings were not the result of symptom magnification, then the diagnoses must be the result of other factors than the accepted employment injury.[9] He stated: "There is widespread medical and neurological literature on this type of minor head trauma, including psychiatric journals and neurological journals. The literature clearly states that there cannot be any neurological or psychological damage from a trivial or minor closed head injury that someone may have suffered."

Section 8123(a) of the Act[10] provides, "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination." The Board finds that there is an unresolved conflict of medical opinion evidence regarding the issues of whether appellant has any continuing medical residuals as a result of her accepted head injury and whether appellant has a subsequently acquired condition which could prevent her from performing the offered position or whether appellant has a head condition as a result of her employment injury, which

[9] As previously noted, the fact that the condition may not be employment related does not absolve the Office of the responsibility to determine if the condition impacts appellant's ability to perform the duties of the "suitable work" position offered by the employing establishment.

[10] 5 U.S.C. §§ 8101-8193, 8123(a).

would render the offered position unsuitable. Appellant's physician, Dr. Schrock, found that appellant had sustained brain damage as a result of her employment injury, that this damage was not readily discernable on diagnostic studies such as MRI and CT scans and that appellant had disability resulting from this injury which would result in restrictions for work. Dr. Chauhan, the Office's second opinion physician, found that appellant did not have any continuing condition or disability resulting from her employment injury and that her continued complaints were the result of symptom magnification. Due to this unresolved conflict in the medical evidence, the Office failed to meet its burden of proof to either terminate appellant's medical benefits for the accepted condition of head concussion or to terminate appellant's compensation benefits on the grounds that she refused an offer of suitable work.

The April 28, 2000 decision of the Office of Workers' Compensation Programs is hereby reversed.

Dated, Washington, DC
April 4, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member