

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BERNADINE H. DAIL and U.S. POSTAL SERVICE,
GENERAL POST OFFICE, New York, NY

*Docket No. 01-453; Submitted on the Record;
Issued January 9, 2002*

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation, effective February 29, 2000, on the grounds that she refused an offer of suitable work.

The Board has given careful consideration to the issue involved, the contentions of the parties on appeal and the entire case record. The Board finds that the decision of the hearing representative of the Office, dated November 9, 2000 and finalized on November 13, 2000, is in accordance with the facts and the law in this case, and hereby adopts the findings and conclusions of the Office hearing representative.¹

¹ Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. *Frank J. Mela, Jr.*, 41 ECAB 115 (1989). Under 5 U.S.C. § 8106(c)(2), the Office may terminate the compensation of an employee who refuses or neglects to work after suitable work is offered to, procured by, or secured for the employee. *Patrick A. Santucci*, 40 ECAB 151 (1988). To justify termination of compensation, the Office must show that the work offered was suitable, *Arthur C. Reck*, 47 ECAB 339 (1996), and must inform appellant of the consequences of refusal to accept such employment, *Maggie L. Moore*, 42 ECAB 484 (1991), *aff'd on recon.*, 43 ECAB 818 (1992). 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. 20 C.F.R. § 10.517(a) (1999). The determination of whether an employee is capable of performing the offered position is a medical question that must be resolved by medical evidence. *Camillo R. DeArcangelis*, 42 ECAB 941 (1991).

The November 13, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
January 9, 2002

David S. Gerson
Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member