

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MARY L. ALEXANDER and U.S. POSTAL SERVICE,  
CENTRAL FACILITY, Chicago, IL

*Docket No. 01-1670; Submitted on the Record;  
Issued January 17, 2002*

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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 on the grounds that she refused suitable work.

On September 19, 1997 appellant, then a 55-year-old maintenance operations support clerk, sustained a fractured left hip in the performance of duty. She underwent surgery on September 22, 1997 and November 16, 1999.

In a report dated September 13, 1999, Dr. Steven Gitelis, appellant's attending orthopedic surgeon, stated that x-rays of appellant's left hip revealed severe arthritis with heterotopic bone formation. He recommended a left total hip arthroplasty and indicated that appellant was disabled.

On November 16, 1999 appellant underwent a total hip arthroplasty.

In a report dated April 26, 2000, Dr. Gitelis indicated that appellant could return to sedentary work using a raised stool on May 1, 2000.

On June 8, 2000 the employing establishment offered appellant a limited-duty office supply clerk position for eight hours a day effective June 12, 2000, consistent with her medical restrictions. The employing establishment provided a list of duties, including preparing work orders and inventory requisitions, entering data, maintaining files and records and providing general computer support. The job was described as sedentary and required no lifting, pushing, pulling, climbing, squatting, kneeling or bending.

By letter dated June 22, 2000, the Office advised appellant that the office supply clerk position was found to be suitable for her work capabilities and that she had 30 days in which to accept the position or provide an explanation of her reasons for refusing it. She was advised that a partially disabled employee who refused or neglected to work after suitable work was offered was not entitled to further compensation.

In a letter dated July 12, 2000, appellant stated that she refused the employing establishment's job offer because she had applied for regular retirement on June 6, 2000 due to her fear of falling again and having to undergo more surgery.

By letter dated July 19, 2000, the Office advised appellant that her reasons for refusing the position were unacceptable and gave her an additional 15 days in which to accept the position.

By decision dated September 20, 2000, the Office terminated appellant's compensation effective that date on the grounds that she had refused an offer of suitable work.

By letter dated September 28, 2000, appellant requested an oral hearing.

On January 9, 2001 a hearing was held and appellant testified.

By decision dated March 15, 2001, the Office hearing representative affirmed the Office's September 20, 2000 decision.

By letter dated April 18, 2001, appellant requested reconsideration. She argued that she had not been given a written description of the specific duties and physical requirements of the position offered and that her physician did not approve the job offer. Appellant stated that she retired from the employing establishment to care for her ill father and added that she feared falling again and having to undergo additional surgery.

By decision dated May 2, 2001, the Office denied the reconsideration request on the grounds that the evidence submitted was insufficient to warrant modification of its prior decision.

The Board finds that the Office properly terminated appellant's compensation on the grounds that she refused suitable work.

The Federal Employees' Compensation Act states that "a partially disabled employee who ... refuses to or neglects to work after suitable work is offered to, procured by or secured for him, is not entitled to compensation."<sup>1</sup>

The record shows that appellant's attending physician, Dr. Gitelis, released appellant to work on May 1, 2000. The only restriction was that appellant should do sedentary work using a raised stool. On June 8, 2000 the employing establishment provided a description of the duties and physical requirements of the limited-duty position. The job provided for sedentary work using a raised stool as Dr. Gitelis had specified. Appellant refused the offer on June 12, 2000 and voluntarily took regular retirement as of June 30, 2000.

Although appellant alleged that she retired for medical reasons, she did not submit medical evidence to support this contention. There is no evidence of record that indicates that

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<sup>1</sup> 5 U.S.C. § 8106(c)(2).

appellant retired because of disability or health reasons. The Board has consistently held that electing to receive retirement benefits is not an acceptable reason for refusing suitable work.<sup>2</sup>

Upon consideration of all the evidence in the case record, the Board finds that the Office properly terminated appellant's compensation on the grounds that she refused suitable work.

The decisions of the Office of Workers' Compensation Programs, dated May 2 and March 15, 2001 and September 20, 2000, are affirmed.

Dated, Washington, DC  
January 17, 2002

David S. Gerson  
Member

Bradley T. Knott  
Alternate Member

Priscilla Anne Schwab  
Alternate Member

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<sup>2</sup> See *Stephen R. Lubin*, 43 ECAB 564, 568 (1992); *Donald M. Parker*, 39 ECAB 289, 294-95 (1987); see also Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.10d (July 1997).