

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BARBARA J. KOEHLER and DEPARTMENT OF AGRICULTURE,
AGRICULTURAL MARKETING SERVICE, Glen Ellyn, IL

*Docket No. 01-871; Submitted on the Record;
Issued July 22, 2002*

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 effective June 30, 1998 on the grounds that she refused an offer of suitable work.

On March 6, 1990 appellant, then a 33-year-old meat grader, sustained an injury to her back when she was struck by a meat tree pushed down a rail. The Office accepted that appellant sustained a low back strain and an aggravation of preexisting spondylolisthesis. She performed light- to medium-duty positions at the employing establishment from December 10, 1990 to January 31, 1991 and from August 5 to 19, 1991.

By decision dated June 1, 1992, the Office terminated appellant's compensation for refusing a meat grading clerk position in California. This decision was reversed by an Office hearing representative in an August 16, 1993 decision.

On March 23, 1998 the employing establishment offered appellant a position as a meat grader in Lexington, Nebraska. By letter dated March 23, 1998, the Office advised appellant that it had found this position suitable, that she had 30 days to accept the position or provide an explanation of reasons for refusing it and that if she failed to accept the offer and present justification, her compensation would be terminated.

On April 23, 1998 appellant accepted the employing establishment's offer.

On May 11, 1998 appellant called the employing establishment and advised that she was "having problems" with a dental implant and was going to the dentist, that she was going to an accountant to get her taxes done and that she had personal errands to perform. The employing establishment advised appellant that these were not sufficient reasons for not reporting for work, that she should call when she had a new date to report to work and that she would be carried in an absent-without-leave status until she reported for work.

By letter dated May 13, 1998, the Office advised appellant that the reasons provided in her May 11, 1998 telephone conversation with the employing establishment were not sufficient to justify not reporting for work and that she had 15 days to report for work or have her compensation terminated.

By letter dated June 2, 1998, the employing establishment advised appellant that she could report for work no later than June 22, 1998. In a letter dated June 6, 1998 appellant stated that she had a bleeding gum problem that required dental care.

By decision dated June 30, 1998, the Office terminated appellant's compensation effective that date on the grounds that she refused an offer of suitable work.

By letter dated July 29, 1998, appellant requested a hearing. By letter dated June 15, 1999, she requested a review of the written record.

By decision dated August 16, 1999, an Office hearing representative found that appellant was not entitled to compensation after June 30, 1998 on the grounds that she refused an offer of suitable work.

By letter dated October 27, 1999, appellant requested reconsideration, submitted a medical report and requested authorization to see a mental health provider. By decision dated February 15, 2000, the Office found appellant's request insufficient to warrant review of its prior decisions.

By letter dated August 12, 2000, appellant requested reconsideration and submitted a January 17, 2000 statement contending that she had a mental disability and suffered from major depression, post-traumatic stress disorder and generalized anxiety disorder. She submitted a January 18, 2000 report from Dr. Victoria L. Fetter, who diagnosed paranoia, delayed post-traumatic stress disorder, masked depression and generalized anxiety disorder. Dr. Fetter stated:

“[Appellant] is incapable of any gainful employment. Her delusions of persecution would seriously interfere with her ability to work collaboratively with superiors or with peers. It is noteworthy that [appellant], until the work accident sustained in 1990, had been able to cope successfully with whatever challenges presented themselves to her.”

By decision dated November 15, 2000, the Office found that the additional evidence was insufficient to warrant modification of its prior decisions.

The Board finds that the Office properly terminated appellant's compensation effective June 30, 1998 on the grounds that she refused an offer of suitable work.

Under section 8106(c)(2) of the Federal Employees' Compensation Act, 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.¹ To justify termination of compensation,

¹ 5 U.S.C. § 8106(c)(2) provides in pertinent part: “A partially disabled employee who ... (2) refuses or neglects to work after suitable work is offered to, procured by or secured for her; is not entitled to compensation.”

the Office must establish that the work offered was suitable.² Section 10.516 of the Code of Federal Regulations³ provides that an employee who refuses or neglects to work after suitable work has been offered or secured 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.⁴

The offer made by the employing establishment on March 23, 1998 was suitable. It contained a description of the duties, the location, the reporting date and the physical requirements. These physical requirements, which included lifting and moving less than 30 pounds, did not exceed the work tolerance limitations set forth in a October 4, 1996 report from Dr. Michael C. Collopy. Although the offer was not in appellant's commuting area, appellant had signed a position agreement with the employing establishment on January 7, 1982 that stated: "I have been informed and fully understand that this position, agricultural commodity grader (meat), requires mobility and that incumbents of this position are required to accept reassignments to meet the needs of the [employing establishment]." Given this agreement and the employing establishment's willingness to pay customary relocation expenses, the fact that the offer was in Lexington, Nebraska, not in Wisconsin where appellant was working when she was injured, does not render the offer unsuitable.

The Office advised appellant that it had found the offer suitable and of the penalty for refusing suitable work. She accepted the offer, but did not report for work. Appellant did not contend that she was not physically capable of performing the position, but instead stated that she needed dental care and that she had to complete her taxes and other unspecified personal errands. These are not acceptable reasons for refusing an offer of suitable work.⁵

The Office then advised appellant that she had 15 days to accept the offer or have her compensation terminated. The employing establishment extended this deadline another three weeks, but appellant did not return to work. The Office met its burden of proof to terminate appellant's compensation.

The report from Dr. Fetter that appellant submitted with her most recent request for reconsideration does not establish that the employing establishment's offer was not suitable, nor does it present an acceptable reason for refusing the offer. Although Dr. Fetter stated that appellant was unable to work because of a psychiatric condition, her report does not address appellant's condition in 1998, when she refused the offer of suitable work.

² *David P. Camacho*, 40 ECAB 267 (1988).

³ 20 C.F.R. § 10.516

⁴ *See Camillo R. DeArcangelis*, 42 ECAB 941 (1991).

⁵ *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.5 (July 1997) for a list of acceptable and unacceptable reasons for refusing suitable work.

The November 15, 2000 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
July 22, 2002

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member