U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of REBECCA J. BRADLEY and U.S. POSTAL SERVICE,
POST OFFICE, Philadelphia, PA

Docket No. 01-1844; Submitted on the Record;
Issued July 22, 2002

DECISION and ORDER

Before COLLEEN DUFFY KIKO, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective March 19, 2001 based on her refusal of suitable work.

The Board finds that the Office did not meet its burden of proof to terminate appellant's compensation.

Appellant, then a 26-year-old mail clerk, sustained injury on June 17, 2000 while sitting on an in-house container that was hit by an over-the-road vehicle that had been hit by a tow-motor. Appellant sought medical treatment and did not return to work. The Office accepted appellant's claim for a lumbosacral strain and contusion and paid appropriate benefits.

On November 29, 2000 appellant's treating physician, Dr. Thomas Robinson, indicated on a work restriction evaluation form that appellant could return to light-duty work with restrictions of no reaching, pulling, lifting, squatting, kneeling, climbing, twisting or reaching above the shoulders. Walking was limited to a half hour, standing/sitting up to two hours and repetitive movements of wrist and elbows restricted to six hours in an eight-hour shift. Dr. Robinson wrote that appellant could not work eight hours per day due to "significant pain in her lower back associated with (rest illegible). Patient has radicular pain in (illegible)."

In a report dated December 5, 2000, Dr. Steven J. Valentino, a Board-certified orthopedic surgeon and an Office referral physician, reviewed the results of appellant's magnetic resonance imaging (MRI) and found appellant's condition to be "degenerative in nature and not causally connected to her work injury. The [MRI's] also do not clinically correlate with her symptom complex. Based on my independent medical examination on November 29, 2000, I find [appellant] has had sufficient time to recover from her work injury. The objective findings … concurred recovery from her lumbar strain to a full and complete degree without residual…. [S]he is capable of returning to gainful employment including her preinjury position without restriction…."

In a letter dated January 5, 2001, the employing establishment sent Dr. Robinson a description of a limited-duty job it expected to offer appellant asking for his review and comment. Dr. Robinson did not respond.

In a January 5, 2001 letter to appellant, the employing establishment offered her a light-duty job that included working from 1700 to 0150 and sitting and standing for 2 hours within an 8-hour shift.

In a January 18, 2001 letter, the Office informed appellant that it found the job offer from the employing establishment to "be suitable to your work capabilities". Included with the letter was the job description and notice to appellant that she had 30 days to accept or provide an explanation why she was refusing and the consequences for refusing a suitable offer of work. Appellant did not respond.

In a decision dated March 19, 2001, appellant's compensation was terminated for refusing suitable work.

On March 23, 2001 appellant requested reconsideration, arguing that she never received the suitable work offer. The Office denied modification in a decision dated May 25, 2001, finding that appellant's argument that she did not receive the job offer immaterial based on the fact that the letters containing the job offers from the employing establishment and the Office were sent to the same address as the termination letter.

The Board finds the Office improperly terminated appellant's compensation for refusing an offer of suitable work because the employing establishment did not make a job offer suitable to appellant's restriction.

Section 8106(c)(2) of the Federal Employees' Compensation Act provides in pertinent part, "A partially disabled employee who ... (2) refuses or neglects to work after suitable work is offered ... is not entitled to compensation."[1] However, to justify such termination, the Office must show that the work offered was suitable.[2] An employee who refuses or neglects to work after suitable work has been offered to him has the burden of showing that such refusal to work was justified.[3]

The position offered appellant and found acceptable by the Office does not comply with the work restrictions set by Dr. Robinson upon whose medical opinion the employing establishment relied on in making the job offer. Dr. Robinson's medical restrictions clearly state that appellant cannot work eight hours a day. In his November 29, 2000 form report, he noted that appellant could not work eight hours per day due to significant discomfort and pain in her lower back.

[1] 5 U.S.C. § 8106(c)(2).

[2] *David P. Camacho*, 40 ECAB 267, 275 (1988); *Harry B. Topping, Jr.*, 33 ECAB 341, 345 (1981).

[3] 20 C.F.R. § 10.124; *See Catherine G. Hammond*, 41 ECAB 375, 385 (1990).

The job offered consisted of an eight-hour work shift and indicated that she would be standing up to two hours of her eight-hour shift. The work duties of the selected position do not conform to appellant's medical limitations.

For these reasons, the Office improperly terminated appellant's compensation effective March 19, 2000 on the grounds that she refused an offer of suitable work.

The decisions of the Office of Workers' Compensation Programs dated May 25 and March 19, 2001 are reversed.

Dated, Washington, DC
July 22, 2002

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member