

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MADGE L. DAWSON and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Denver, CO

*Docket No. 00-1739; Submitted on the Record;
Issued June 26, 2002*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective August 14, 1999 on the grounds that she refused an offer of suitable work.

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 her has the burden of showing that such refusal to work was justified.³

On August 17, 1996 appellant, then a 56-year-old registered nurse, sustained a right radial fracture due to a fall at work. On August 21, 1996 she underwent a surgical open reduction with bone grafting and internal and external fixation, which was authorized by the Office.⁴ Appellant received compensation from the Office for periods of disability. In September 1998, she began to participate in a vocational rehabilitation program and, in April 1999, the employing establishment offered appellant a job as a medical clerk. The position involved interpreting the care needs of triage and emergency room patients and directing them to the appropriate administrative and medical staff. An onsite analysis of the position revealed that it required lifting and carrying up to five pounds, limited typing, writing and reaching, and

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).

⁴ Appellant developed right shoulder problems after her August 17, 1996 injury and underwent a surgical manipulation procedure on February 24, 1997. It has not been accepted that appellant's right shoulder condition is employment related.

alternating between sitting, walking and standing.⁵ Appellant refused the medical clerk position indicating that she was physically and emotionally unable to perform its duties. By letter dated June 7, 1999, the Office advised appellant of its determination that the medical clerk position was suitable.

By decision dated August 12, 1999, the Office terminated appellant's compensation effective August 14, 1999 on the grounds that she refused an offer of suitable work. By decision dated March 23, 2000, an Office hearing representative affirmed the Office's August 12, 1999 decision. The Office hearing representative found that the Office had properly terminated appellant's compensation effective August 14, 1999 as the evidence at that time showed that appellant had refused an offer of suitable work. The Office hearing representative further found that appellant submitted medical evidence after the Office's August 12, 1999 decision which suggested that she had an emotional condition which prevented her from performing the medical clerk position offered by the employing establishment. He remanded the case to the Office so that appellant could be referred to a specialist for evaluation of her emotional condition, to be followed by a *de novo* decision concerning her ability to work as a medical clerk.

The Board finds that the Office properly terminated appellant's compensation effective August 14, 1999 on the grounds that she refused an offer of suitable work.

The evidence of record shows that appellant is capable of performing the medical clerk position offered by the employing establishment in April 1999 and determined to be suitable by the Office in May 1999. The medical clerk position was selected by appellant's vocational rehabilitation counselor and the Office properly relied on the opinion of appellant's counselor in determining that appellant is vocationally and educationally capable of performing the position.⁶

The medical evidence of record shows that appellant was physically capable of performing the duties of the medical clerk position. On November 16, 1998 Dr. John J. Aschberger, a physician Board-certified in physical medicine and rehabilitation to whom appellant was referred by her vocational rehabilitation counselor, carried out a functional capacity evaluation. Dr. Aschberger determined that appellant could perform limited-duty work with restrictions on lifting more than 20 pounds, repetitive reaching with her right shoulder, reaching overhead, engaging in fine manipulation with her right hand and extensive writing. In a report dated January 27, 1999, Dr. Robert J. Bess, an attending Board-certified orthopedic surgeon, indicated that appellant could return to work with limited reaching and lifting. As noted above, the medical clerk position required very light physical activities to include lifting up to five pounds and limited typing, writing and reaching.

⁵ The record shows that the position provided for on-the-job training, the support and aid of coworkers, and the flexibility of modifying duties as necessary to accommodate appellant's needs.

⁶ See Federal (FECA) Procedure Manual, Part 2 -- Claim, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.8d (December 1993). Appellant had extensive experience working as a registered nurse for the employing establishment and many of the duties of the medical clerk position would be similar to those performed by a registered nurse.

The description of the duties of the medical clerk position was shown to Dr. Aschberger and, on April 17, 1999, he indicated that appellant was able to perform the job. The job description was also shown to Dr. Steven Oboler, a Board-certified internist for the employing establishment, who, on April 19, 1999, also indicated that appellant was capable of performing the medical clerk position. In a report dated July 28, 1999, Dr. Bess indicated that appellant was capable of performing the medical clerk position and noted that working would be beneficial to her state of mind.⁷

In a report dated June 21, 1999, Dr. Eric Westerman, an attending osteopath, indicated that appellant could not perform the duties of the medical clerk position due to her “ongoing pain, depression and cognitive dysfunction.” In a report dated June 30, 1999, Dr. Westerman stated that due to appellant’s “ongoing fatigue, difficulty with cognition and pain with any form of repetitive motion” she would not be able to perform the medical clerk position. He asserted that the position required “rather significant repetitive motion tasks as filing, typing and lifting” and that its duties were not “modifiable.”⁸ These reports, however, are of limited probative value on the relevant issue of the present case in that Dr. Westerman did not provide adequate medical rationale in support of his conclusions regarding appellant’s ability to work.⁹ Dr. Westerman did not provide any notable findings on examination or diagnostic testing to support his opinion on appellant’s condition; as an osteopath, Dr. Westerman would not be qualified to provide a medical opinion on appellant’s emotional condition. Moreover, it does not appear that Dr. Westerman had an accurate picture of the duties required by the medical clerk position as the position required only very limited physical activities.¹⁰

⁷ Dr. Bess indicated that he would defer to other physicians regarding appellant’s reported hypertension, thyroid problems and depression. At the time of the termination of appellant’s compensation, the record did not contain a rationalized medical opinion showing that she could not perform the medical clerk position due to these conditions. In a report dated July 12, 1999, Dr. Stuart Kassan, an attending Board-certified internist, discussed appellant’s multiple medical problems; however, he provided no indication that they prevented her from performing the medical clerk position. In a report dated June 30, 1999, Dr. Bess indicated that appellant could not perform a job that requires “typing, filing and making life and death decisions” and noted that it was “hard for me to believe that they would require her to make life and death decisions.” The description of the medical clerk position does not show that appellant would be required to make “life and death decisions” and Dr. Bess did not explain how appellant would not be able to perform the extremely limited typing and filing duties required by the position.

⁸ In a report dated August 31, 1999, Dr. Westerman provided a similar assessment of appellant’s ability to work.

⁹ See *Leon Harris Ford*, 31 ECAB 514, 518 (1980) (finding that a medical report is of limited probative value if unsupported by medical rationale).

¹⁰ See *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979) (finding that a medical opinion must be based on a complete and accurate factual and medical history).

For these reasons, the evidence of record shows that appellant was capable of performing the medical clerk position at the time it was offered¹¹ and the Office properly terminated her compensation effective August 14, 1999 on the grounds that she refused an offer of suitable work.¹²

The March 24, 2000 and August 12, 1999 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC
June 26, 2002

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

¹¹ The Board notes that the Office complied with its procedural requirements prior to terminating appellant's compensation, including providing appellant with an opportunity to accept the medical clerk position after informing her that her reasons for initially refusing the position were not valid. *See generally Maggie L. Moore*, 42 ECAB 484 (1991); *reaff'd on recon.*, 43 ECAB 818 (1992).

¹² After its August 12, 1999 decision terminating appellant's compensation, the Office received additional medical evidence which suggested that she had an emotional condition which prevented her from performing the medical clerk position offered by the employing establishment. In a report dated December 1, 1999, Dr. Shauna Casemant, an attending clinical psychologist, diagnosed major depression and generalized anxiety disorder and indicated that appellant was unable to work. The Board has carefully reviewed this evidence and notes that the Office properly determined that it necessitated that the case be remanded to the Office for a specialist's opinion on this matter to be followed by an appropriate decision.