

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JEANETTE SHEPPARD and U.S. POSTAL SERVICE,
POST OFFICE, Philadelphia, PA

*Docket No. 00-2650; Oral Argument Held May 8, 2002;
Issued June 21, 2002*

Appearances: *Jeffrey P. Zeelander, Esq.*, for appellant; *Miriam D. Ozur, Esq.*,
for the Director, Office of Workers' Compensation Programs.

DECISION and ORDER

Before MICHAEL J. WALSH, COLLEEN DUFFY KIKO,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation pursuant to 5 U.S.C. § 8106(c) effective May 24, 1998 on the grounds that she refused an offer of suitable work.

This is appellant's second appeal before the Board on this issue. By decision dated November 24, 1999,¹ the Board affirmed the Office's decisions dated May 15 and September 11, 1998 finding that the Office properly terminated appellant's compensation entitlement under 5 U.S.C. § 8106(c) effective May 24, 1998 on the grounds that she refused an offer of suitable work. The facts and circumstances of the case are set out in the prior decision and are hereby adopted by reference.

By letter dated June 15, 2000 appellant, through her representative, requested reconsideration of her claim. Her representative argued that the job offer was not in accordance with the opinion of Dr. Plutzer, the impartial medical specialist, who recommended that appellant work at a different location and not at the Point Breeze Station. The representative claimed that the job offer indicated that "if working in 19145 area will case mail;" he stated that the 19145 area was the Point Breeze Station and therefore, appellant would have to work in that area.

In support of his argument appellant's representative submitted a copy of a page from the telephone book showing that the Point Breeze Station bears the zip code of 19145. He also submitted a copy of a July 3, 1998 letter that constituted advance notice of her termination from employment, issued by the manager of the Point Breeze Station and a copy of a certified letter

¹ Docket No. 99-399, issued November 24, 1999.

dated August 14, 1998 officially giving 30 days advanced notice of the termination, also signed by the manager of the Point Breeze Station.² The record also contains a July 26, 2000 notice of separation indicating that appellant was being terminated from her assignment at the Point Breeze Station.

By letter dated June 16, 2000, the Office submitted the June 15, 2000 letter and attachments to the employing establishment for review and comment. In response, the employing establishment stated:

“[Appellant] was offered a retail/window clerk (pool) position on April 3, 1998. The position description specifically gives the work location as the Main Post Office, 2970 Market Street, Philadelphia, RA 19104. [Appellant’s] only affiliation with the 19145, Point Breeze office, would be the casing of mail for that facility, the task being completed at the Main Post Office.

“In response to a Congressional inquiry, clarification of this issue was accomplished by letter dated May 8, 1998 from Joseph DiDio, Manager, Philadelphia Injury Compensation Office, to Liz Werthan, Administrative Assistant to Congressman Chaka Fattah. The response date of the job offer was then extended from April 24 to May 18, 1998 in order to give [appellant] every opportunity to respond favorably to the job offer. However, [she] did not return to work nor respond to the job offer.”

The employing establishment submitted a copy of the May 8, 1998 letter which noted that: “[t]he job offer made to [appellant] is located at the Main Post Office, located [at] 2970 Market Street, Philadelphia, PA, 19104. Any casing of mail will [be] done at the Market Street facility.”

By letters dated July 20 and August 4, 2000, appellant’s representative argued that the job offer as issued was not suitable because it required that appellant work at the Point Breeze Station.

By decision dated August 11, 2000, the Office reviewed appellant’s claim on the merits and denied modification of its prior decision. The Office reviewed the job offer and noted that the location of the assignment was provided as “Main Post Office, 2970 Market Street, Philadelphia, PA, 19104” and noted “[n]eeds to be moved to another work location;” “can work eight hours a day.” The Office also noted that one copy of the job offer was marked with an arrow and the handwritten words: “new work location.” The Office also stated that the later documents from the employing establishment at the Point Breeze Station suggesting that appellant was to be terminated from employment were not inconsistent with the job offer made by the employing establishment: “that is the location where she last performed services and never reported to the Market Street location....”

² Appellant was being terminated for failure to follow instructions/failure to be regular in attendance/AWOL.

The Board finds that the Office properly terminated appellant's wage-loss compensation entitlement pursuant to 5 U.S.C. § 8106(c) effective May 24, 1998 on the grounds that she had refused an offer of suitable work.

Section 8106(c) of the Federal Employees' Compensation Act³ provides that "a partially disabled employee who ... (2) refuses or neglects to work after suitable work is offered ... is not entitled to compensation."⁴

Therefore, the Office may terminate the monetary wage-loss compensation of an employee who refuses or neglects to work after being offered suitable work.⁵ However, to justify such termination, the Office must show that the work offered was, in fact, suitable.⁶ Once the Office establishes that the work offered was suitable, the burden shifts to the employee who refused to work to show that such a refusal was justified.⁷

Following the Board's prior decision, appellant's representative argued that the position offered did not comply with the medical activity restrictions provided by the impartial medical examiner since the offered position required that appellant might have to work in the "19145" zip code, where she would encounter personnel from that station. He stated that the job offer provided that "if working in 19145 area will case mail." Appellant's representative argued that the 19145 zip code was the Point Breeze Station where appellant had previously worked and therefore, the position offered was not suitable. Appellant's representative also submitted documents which indicated that her employment at the Point Breeze Station was terminated for cause, to support his argument that the position offered was not suitable.

The Board finds that the evidence of record supports that the position offered was suitable to appellant's partially disabled condition.

The job offer, on its face, specifically provided that this position was at a "new location." As the Board noted in the previous decision, after reviewing the entire case record; "appellant's rehabilitation job offer was limited to the Market Street duty station and did not involve contact with the Commerce Station or the Point Breeze Station or their personnel and did not involve appellant being moved to another work location other than Market Street."

Although appellant's representative argues that "if working in 19145 area will case mail" means that appellant would have to work at the Point Breeze Station, he provided no evidence to support this interpretation of the document. The employing establishment specifically noted that the job offer indicated that appellant's only affiliation with the 19145 Point Breeze office, would

³ 5 U.S.C. §§ 8101-8193.

⁴ 5 U.S.C. § 8106(c).

⁵ *Herman L. Anderson*, 36 ECAB 235 (1984).

⁶ *Carl W. Putzier*, 37 ECAB 691 (1986).

⁷ 20 C.F.R. § 10.517; *see also Catherine G. Hammond*, 41 ECAB 375 (1990).

be casing of mail for that facility. This was specified in a May 8, 1998 letter to appellant's Congressional representative.

Furthermore, although appellant submitted subsequent documents involving her termination from employment which were generated by the Point Breeze Station, this does not support that appellant would have continued to have contact with the Point Breeze Station. As pointed out by the Office, these documents emanated from the location where she last performed services with the employing establishment and had nothing to do with her rehabilitation job offer. Appellant never reported to work or accepted a position at the Market Street location.

Since the Board previously determined that the position offered appellant was suitable to her partially disabled condition and since appellant has not submitted sufficient new evidence to prove that the position was not suitable or that her refusal was justified, the Office properly terminated her monetary compensation entitlement effective May 24, 1998, pursuant to section 8106(c) of the Act.

Accordingly, the decision of the Office of Workers' Compensation Programs dated August 11, 2000 is hereby affirmed.

Dated, Washington, DC
June 21, 2002

Michael J. Walsh
Chairman

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member