U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LINDA SAUCEDO and U.S. POSTAL SERVICE,
POSTAL INSPECTION SERVICE, North Houston, TX

Docket No. 01-1507; Submitted on the Record;
Issued June 10, 2002

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's wage-loss compensation, effective February 26, 2000, on the grounds that she refused an offer of suitable employment.

The Board has given careful consideration to the issue involved, the contentions of the parties on appeal and the entire case record. The Board finds that the decision of the hearing representative of the Office dated December 19, 2000 is in accordance with the facts and the law in this case and hereby adopts the findings and conclusions of the Office hearing representative regarding the issue of suitable employment.[1]

On March 12, 2001 appellant filed a request for reconsideration. In a decision dated April 12, 2001, the Office denied modification of the prior decision dated December 19, 2000.

Appellant did not submit additional medical evidence on reconsideration. The only issue raised on reconsideration was whether the information provided in the January 13, 2000 limited-duty job offer was sufficiently detailed and in conformance with established legal precedent. Appellant argued that the January 13, 2000 job offer was deficient because it did not provide information regarding the appropriate pay rate, it failed to describe the physical requirements of the assigned duties, and it did not advise of the date appellant was expected to respond to the

[1] Once the Office accepts a claim it has the burden of justifying termination or modification of compensation. *Frank J. Mela, Jr.*, 41 ECAB 115 (1989). Under 5 U.S.C. § 8106(c)(2) 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. *Patrick A. Santucci*, 40 ECAB 151 (1988). To justify termination of compensation the Office must show that the work offered was suitable, *Arthur C. Reck*, 47 ECAB 339 (1996), and must inform appellant of the consequences of refusal to accept such employment, *Maggie L. Moore*, 42 ECAB 484 (1991), *reaff'd on recon.*, 43 ECAB 818 (1992). An employee who refuses or neglects to work after suitable work has been offered or secured has the burden of showing that such refusal or failure to work was reasonable or justified. 20 C.F.R. § 10.517(a) (1999). The determination of whether an employee is capable of performing the offered position is a medical question that must be resolved by medical evidence. *Camillo R. DeArcangelis*, 42 ECAB 941 (1991).

offered position. These same arguments were previously raised before the Office hearing representative and implicitly rejected in her December 19, 2000 decision.

Section 10.507(d) provides that a job offer must include "a description of the duties of the position, the physical requirements of those duties, and the date by which the employee is either to return to work or notify the employer of his or her decision to accept or refuse the job offer."[2] The regulation does not specifically mandate the inclusion of pay rate information in the position description. With respect to the date appellant was expected to return to work, the January 13, 2000 job offer clearly indicated "You are expected to report … to begin this limited[-]duty work no later than Monday, January 31, 2000 at 8:00 AM." Appellant was further advised that if she believed she was unable to perform the duties for medical reasons related to her injury, she should provide written medical evidence no later than her expected report date.

The January 13, 2000 job offer included a list of 15 "General Duties," the majority of which are of a sedentary nature. The described duties include, among other things, reviewing case files, conducting inquiries, retrieving data, creating spreadsheets and databases, analyzing data and crime statistics, making presentations, answering telephones, photocopying, envelope stuffing, basic computer skills, including typing and data entry and general office work.

Regarding the physical requirements of the offered position, the employing establishment incorporated by reference the December 16, 1999 Form OWCP-5 prepared by the impartial medical examiner, Dr. Martin L. Bloom. Additionally, the employing establishment attached a copy of the December 16, 1999 Form OWCP-5 to its job offer and noted that, while postal inspectors are generally required to work an average of 10 hours per day, appellant was limited to working an 8-hour day. As the medical documentation did not indicate when appellant would be able to resume 10-hour workdays, the employing establishment advised that this matter would have to be resolved at a later date.

While it is true that the January 13, 2000 job offer did not specifically describe the physical requirements of each of the 15 "General Duties" outlined therein, the employing establishment clearly expressed its intent to abide by the physical limitations imposed by the impartial medical examiner.[3] It is reasonable to infer that, by incorporating the December 16, 1999 Form OWCP-5, the employing establishment would not require appellant to drive or sit in a vehicle in excess of the 4-hour limitation for operating of a motor vehicle imposed by the impartial medical examiner. The fact that the job description did not specifically set forth, for example, the physical requirements of answering telephones, photocopying or reviewing case files, does not preclude a finding that the offered position is suitable.

On January 20, 2000 appellant signed the limited-duty job offer indicating: "I accept this limited[-]duty job offer as soon as my treating physician indicates it is safe and releases me to do so." Appellant did not decline the offered position based on any alleged technical deficiencies in

[2] 20 C.F.R. § 10.507(d).

[3] The impartial medical examiner did not preclude appellant from performing any specific activities nor did he impose any weight restrictions with respect to pushing, pulling or lifting. All limitations imposed were with respect to the duration of various activities.

the position description. Also, there is no indication from the record that the employing establishment was unable to provide appellant with an ergonomic workstation, as recommended by the impartial medical examiner.

In light of the foregoing discussion, the Office properly concluded that appellant's arguments on reconsideration were insufficient to warrant modification of the prior decision terminating wage-loss compensation.

The decisions of the Office of Workers' Compensation Programs dated April 12, 2001 and December 19, 2000 are hereby affirmed.

Dated, Washington, DC
June 10, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member