

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of REBA BECK and U.S. POSTAL SERVICE,  
POST OFFICE, Kansas City, MO

*Docket No. 01-206; Submitted on the Record;  
Issued May 29, 2002*

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DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective February 11, 2000 on the grounds that she refused an offer of suitable work.

On June 11, 1997 appellant, then a 59-year-old postmaster, sustained a fracture of her right proximal humerus due to a fall at work. On October 27, 1998 appellant underwent an arthroplasty of her right shoulder which was authorized by the Office. She stopped work on June 11, 1997 and received compensation for periods of disability.<sup>1</sup> On November 3, 1999 the employing establishment offered appellant a limited-duty position in Rolla, Missouri as a modified distribution clerk. The full-time position required intermittent lifting up to 10 pounds for no more than 2 hours per day and intermittent reaching and engaging in repetitive motion for no more than 2 hours per day. The position did not require reaching above the shoulders.

By letter dated December 8, 1999, the Office advised appellant of its determination that the position offered by the employing establishment was suitable. The Office informed appellant that she had 30 days to accept the position or provide an explanation for not accepting it. Appellant informed the Office that she could not accept the job because her right arm condition rendered her incapable of driving between her home and the work site. By letter dated January 11, 2000, the Office advised appellant that the reasons she gave for not accepting the offered position were found to be unacceptable. The Office informed appellant that she had 15 days to accept the position.<sup>2</sup> By decision dated February 11, 2000, the Office terminated appellant's compensation effective that date on the grounds that she refused an offer of suitable work. By decision dated and finalized October 2, 2000, an Office hearing representative affirmed the Office's February 11, 2000 decision.

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<sup>1</sup> Appellant retired from the employing establishment effective January 1, 1999.

<sup>2</sup> Appellant did not accept the offered position within the allotted time period.

The Board finds that the Office improperly terminated appellant's compensation effective February 11, 2000 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."<sup>3</sup> However, to justify such termination, the Office must show that the work offered was suitable.<sup>4</sup> 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.<sup>5</sup>

The evidence of record does not show that appellant was physically capable of performing the modified distribution clerk position offered by the employing establishment in November 1999 and determined to be suitable by the Office in December 1999. The work site of the offered position in Rolla, Missouri was approximately 35 miles from appellant's home in Steelville, Missouri. The record does not provide any indication that alternate transportation to the work site of the offered position was available.<sup>6</sup> Therefore, it must be presumed that appellant would have been required to drive her vehicle to and from the work site of the offered position.

The Office did not present sufficient medical evidence to show that appellant could drive to and from the work site of the offered position. In various reports, dated between late 1998 and early 1999, Dr. Larry Marti, an attending Board-certified orthopedic surgeon, indicated that appellant could not engage in driving due to her right arm problems.<sup>7</sup> On November 8, 1999 Dr. Marti reviewed the description of the modified distribution clerk position offered by the employing establishment and determined that the position was not appropriate for appellant at that time. With respect to his reasoning, Dr. Marti indicated that reference should be made to a notation he made on-the-job description; the notation stated, "Driving, cause problems reaching because of height."

The record also contains a July 14, 1999 form report in which Dr. Marti indicated that appellant could operate a motor vehicle for two hours per day.<sup>8</sup> However, Dr. Marti did not provide a rationalized opinion explaining how appellant's condition had changed such that she

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<sup>3</sup> 5 U.S.C. § 8106(c)(2).

<sup>4</sup> *David P. Camacho*, 40 ECAB 267, 275 (1988); *Harry B. Topping, Jr.*, 33 ECAB 341, 345 (1981).

<sup>5</sup> 20 C.F.R. § 10.124; *see Catherine G. Hammond*, 41 ECAB 375, 385 (1990).

<sup>6</sup> It should be noted that, according to Office procedure, a job offer must contain an adequate description of the duties to be performed and the specific physical requirements of the position; *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Determining Wage-Earning Capacity*, Chapter 2.814.4a (December 1993).

<sup>7</sup> In a report dated November 6, 1998, Dr. Marti recommended that appellant not drive her vehicle. In a report dated December 2, 1998, he stated his preference that appellant not drive at that time. In an undated work restriction report received by the Office on January 25, 1999, Dr. Marti noted that appellant "cannot drive safely."

<sup>8</sup> In this report, Dr. Marti also indicated that appellant could lift up to 10 pounds for no more than 2 hours per day and reach and engage in repetitive motion for no more than 2 hours per day

was able to drive for two hours per day. Moreover, appellant was offered the modified clerk position on November 3, 1999 and, for the purpose of accessing suitability of the offered position, Dr. Marti's November 8, 1999 report provides a more contemporaneous opinion of appellant's ability to drive than his July 14, 1999 report.

The record does not contain medical evidence clearly showing that appellant could perform the driving which is required by the modified distribution clerk position and therefore the Office did not meet its burden of proof to establish that appellant could perform the offered position. Therefore, the Office improperly terminated appellant's compensation effective February 11, 2000 on the grounds that she refused an offer of suitable work.

The October 2 and February 11, 2000 decisions of the Office of Workers' Compensation Programs are reversed.

Dated, Washington, DC  
May 29, 2002

Alec J. Koromilas  
Member

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member