

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBYN R. BREWER and U.S. POSTAL SERVICE,
POST OFFICE, Carol Stream, IL

*Docket No. 02-157; Submitted on the Record;
Issued May 29, 2002*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective September 11, 2001 on the grounds that she neglected to work in a suitable position.

On October 14, 1997 appellant, then a 25-year-old letter carrier, sustained lumbar and sacroiliac strains due to lifting and carrying her mailbag. The Office paid her compensation for various periods.¹ The employing establishment offered appellant a job as a modified letter carrier and, by letter June 4, 1999, the Office advised appellant of its determination that the position was suitable.² The full-time position required lifting and carrying up to 10 pounds and reaching up to 4 hours per day; the position did not require climbing or twisting and allowed for alternating between sitting, standing and walking (engaging in each activity continuously for a maximum of 40 to 60 minutes). Appellant accepted the position on June 9, 1999 and started working on June 12, 1999.³ She stopped work and retired from the employing establishment effective July 8, 1999 indicating that she had "found another job." By letter dated August 4, 1999, the Office advised appellant that it had previously informed her of its determination that the modified letter carrier position was suitable. The Office further advised appellant that it was providing her with an opportunity to begin working in the position again. She did not return to work. By decision dated September 11, 2001, the Office terminated appellant's compensation effective September 11, 2001 on the grounds that she neglected to work in a suitable position.

¹ Appellant worked in several limited-duty positions. After a period of work stoppage, she began to participate in a vocational rehabilitation program.

² The Office further advised appellant of the consequences of not accepting the position or refusing to work in the position.

³ Appellant had initially rejected the position indicating that its duties were not within her work restrictions.

The Board finds that the Office properly terminated appellant's compensation effective September 11, 2001 on the grounds that she neglected to work in a suitable position.

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."⁴ However, to justify such termination, the Office must show that the work offered was suitable.⁵ 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.⁶

The evidence of record shows that appellant is capable of performing the modified letter carrier position offered by the employing establishment and determined to be suitable by the Office in June 1999. The position required lifting and carrying up to 10 pounds and reaching up to 4 hours per day; it did not require climbing or twisting and allowed for alternating between sitting, standing and walking (engaging in each activity continuously for a maximum of 40 to 60 minutes). The Office properly relied on the opinion of appellant's counselor in determining that appellant is vocationally and educationally capable of performing the position.⁷

In determining that appellant is physically capable of performing the modified letter carrier position, the Office properly relied on the opinion of Dr. Thomas R. Hurley, an attending Board-certified neurosurgeon, who in a report dated February 19, 1999, indicated that appellant had reached maximum medical improvement and was on permanent restrictions for light-duty status. In an accompanying work restriction form, he noted that appellant could lift or carry up to 10 pounds and could alternate between sitting, standing and walking (engaging in each activity continuously for a maximum of 40 to 60 minutes). The Board notes that these restrictions were within the job duties required by the modified letter carrier position. The record does not contain any medical evidence showing that appellant was not able to perform the duties of the modified letter carrier position.

For these reasons, the Office established that the modified letter carrier position was suitable. Therefore, the burden of proof shifted to appellant to show that her neglecting to work in the position was justified. Upon stopping work on July 8, 1999, appellant indicated that she had "found another job." Office procedure provides that an acceptable reason for refusing or neglecting to work in an offered position includes the situation when a claimant has found other work which fairly and reasonably represents his or her wage-earning capacity.⁸ However, despite requests by the Office, appellant did not provide any information about her other job.

⁴ 5 U.S.C. § 8106(c)(2).

⁵ *David P. Camacho*, 40 ECAB 267, 275 (1988); *Harry B. Topping, Jr.*, 33 ECAB 341, 345 (1981).

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

⁷ *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.8d (December 1993).

⁸ *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.5a(2) (July 1997).

Therefore, she did not show that such a job provided an acceptable reason for neglecting to work in the modified letter carrier position which had been determined to be suitable.

For these reasons, the Office properly terminated appellant's compensation effective September 11, 2001 on the grounds that she neglected to work in a suitable position.⁹

The decision of the Office of Workers' Compensation Programs dated September 11, 2001 is affirmed.

Dated, Washington, DC
May 29, 2002

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member

⁹ The Board notes that the Office complied with its procedural requirements prior to terminating appellant's compensation, including providing appellant with an opportunity to work again in the modified letter carrier position after informing her that her reasons for neglecting to work in the position were not valid. *See generally Maggie L. Moore*, 42 ECAB 484 (1991), *reaff'd on recon.*, 43 ECAB 818 (1992).