

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BELINDA M. THORNTON and U.S. POSTAL SERVICE,
POST OFFICE, Jacksonville, FL

*Docket No. 02-614; Submitted on the Record;
Issued November 5, 2002*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective November 6, 2000 on the grounds that she refused an offer of suitable work.

On February 2, 1995 appellant, then a 39-year-old casual employee, with the postal service filed a notice of traumatic injury and claim for compensation (Form CA-1) alleging that her left foot was run over by a cage.

In support of her claim, appellant submitted a February 3, 1995 report, from Dr. Sam A. Rukab with a diagnosis of nondisplaced transverse fracture at the base of her fifth metatarsal. She was placed in a cast and released for light-duty deskwork.

In a March 24, 1995 decision, the Office accepted appellant's claim for a fractured left foot.

In a March 27, 1995 progress note, Dr. Rukab wrote that x-rays showed appellant's foot was healing well and he could not find the source of her continued pain. He kept her on light duty for three more weeks.

On April 6, 1995 appellant requested a change of treating physicians.

On April 17, 1995 appellant was returned to full duty with no restrictions.

On April 18, 1995 she went to the local emergency room with complaints of foot pain, but the source of the pain was never identified.

In a May 2, 1995 report, Dr. Hiram Carrasquilla, an orthopedic surgeon, reviewed results from a magnetic resonance imaging scan and indicated that they were normal. Dr. Carrasquilla continued appellant on light duty.

In a July 25, 1995 report, Dr. Carrasquilla referred appellant to a pain clinic and prescribed physical therapy.

In a report received on September 1, 1995, Dr. Jawed Hussain, the director of a pain clinic, diagnosed chronic pain syndrome, reflex sympathetic dystrophy, left foot and insomnia.

In a March 14, 1996 decision, the Office expanded appellant's claim to include reflex sympathetic dystrophy.

On July 11, 1996 appellant accepted a modified light-duty assignment.

In a February 8, 1997 decision, the Office completed a loss of wage-earning-capacity analysis for appellant's modified mailhandler position.

In a January 9, 1997 decision, Dr. Hussain diagnosed appellant with reflex sympathetic dystrophy of the left foot, chronic pain syndrome and hypertension. Her work restrictions included occasionally lifting 10 pounds and sedentary work.

In a January 21, 1998 report, Dr. John Arthur Muenz diagnosed appellant with depression, complex regional pain syndrome, chronic pain syndrome a history of reflex sympathetic dystrophy somatoform disorder and indicated that she had symptom magnification.

In March 4, 1998 report, Dr. Hussain continued appellant on her work restrictions.

On June 1, 1998 a functional capacity evaluation was performed that indicated significant symptom magnification.

In a duty status report dated June 3, 1998, Dr. Hussain listed appellant's restrictions as lifting 10 pounds intermittently; she could sit for 8 hours a day, stand, walk, bend for 2 hours a day with no pushing or pulling over 20 pounds.

In an August 17, 1998 letter, the employing establishment gave appellant a modified job offer that complied with Dr. Hussain's physical restrictions. Appellant accepted the job with a scheduled start date of February 13, 1999.

On January 28, 1999 Dr. Hussain updated appellant's work restrictions expanding the time she could bend or stoop to three to five hours per day.

In a February 26, 1999 letter, the employing establishment indicated that appellant appeared for work with a tripod walker that was considered a job hazard for her position and she was not allowed to work.

In progress notes dated April 14, July 26, August 24 and October 5, 1999, Dr. Hussain confirmed that appellant needed a walker but was nonresponsive to the Office inquiry if another form of assistance, such as a wheelchair, would suffice.

In a February 7, 2000 second-opinion report, Dr. Steve Lancaster, Board-certified in orthopedic surgery, indicated that appellant could sit for 8 hours a day, walk and stand for 1 hour

with a 10 pounds lifting restriction. She could not squat, kneel or climb and needed a 10 minute break every hour.

In a March 9, 2000 letter, responding to an Office inquiry, Dr. Lancaster indicated that appellant could use a wheel chair at work in lieu of a tripod walker.

In an August 9, 2000 letter, the employing establishment modified its job offer to appellant to comply with Dr. Lancaster's restrictions, which appellant accepted. The effective date of the offer was October 21, 2000.

In an August 22, 2000 report, Dr. Hussain indicated that he had reviewed the modified job offer and found that appellant could perform the job.

In a November 7, 2000 letter, the employing establishment indicated that appellant left her orientation session after four hours and did not return.

In a November 7, 2000 letter to appellant, the Office notified her that both Drs. Hussain and Lancaster indicated that she could perform the modified job and that unless appellant sustained a recurrence of disability she would be subject to the penalties of refusing an offer of suitable work. Appellant was also given her due process notice.

In a December 14, 2000 telephone call from the employing establishment, the Office was notified that appellant had not returned to work.

In a December 26, 2000 decision, the Office found that appellant refused an offer of suitable work and terminated her compensation.

The Board finds that the Office properly terminated appellant's compensation effective November 6, 2000, for refusing 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 him has the burden of showing that such refusal to work was justified.³

The medical evidence of record establishes that appellant is capable of performing the modified mailhandler position offered by the employing establishment and determined to be suitable by the Office. The position involves sitting for eight hours and limited walking, standing and stooping to one hour per day.

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).

In determining that appellant is physically capable of performing the modified mail clerk position, the Office properly relied in the opinions of Dr. Hussain, appellant's treating physician and Dr. Lancaster, a Board-certified orthopedic surgeon.

On August 22, 2000 Dr. Hussain reviewed the description of the modified mail clerk position offered by the employing establishment and determined that appellant was able to perform the position.

The Board finds that the modified mail clerk position offered by the employing establishment is medically suitable. As noted above, once the Office has established that a particular position is suitable, an employee who refuses or neglects to work after suitable work has been offered to him has the burden of showing that such refusal to work was justified. Appellant submitted no evidence in support of her refusal of the modified mail clerk position. For these reasons the Office properly terminated appellant's compensation on the grounds that she refused an offer of suitable work.⁴

The December 26, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
November 5, 2002

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

⁴ 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 offered 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).