

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HAZEL N. CLARK and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, St. Louis, MO

*Docket No. 02-1832; Submitted on the Record;
Issued November 21, 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 benefits for refusal to accept suitable work.

The Office accepted appellant's claim for right carpal tunnel syndrome and release. Appellant did not work since February 17, 2000 and underwent right carpal tunnel release surgery on August 21, 2000.

On July 18, 2001 the employing establishment contacted three of appellant's treating physicians to obtain their approval as to whether appellant could perform the light-duty work of an information receptionist or information clerk. In accordance with the job description, the letters to the doctors stated that the physical requirements of the job were no lifting over five pounds, intermittent sitting in an eight-hour day, intermittent standing one hour per day with sitting or standing as needed, intermittent walking one hour per day, no reaching above the shoulder, no climbing, no kneeling and no bending/stooping or twisting. They also were intermittent simple grasping as in answering the telephone and taking messages 6 hours a day and intermittent fine manipulation which included keyboarding for 4 hours per day which might be accomplished with no more than intervals of 20 minutes at a stretch, with intervals doing other nonrepetitive tasks. Dr. Alan C. Braverman, a Board-certified internist with a specialty in cardiovascular disease, and Dr. Bruce A. Kraemer, a Board-certified plastic surgeon, in separate responses, signed their approval of the job which was received by the Office on August 10, 2001. In a note dated July 23, 2001, Dr. Elizabeth S. Tracy, a Board-certified internist, stated that she could not approve or disapprove the position since she had not seen appellant since March 21, 2001. She stated that she knew appellant was still seeing Dr. Kraemer for carpal tunnel syndrome and the light-duty job was suitable for appellant's other medical problems.

On August 24, 2001 the employing establishment offered appellant the job of information clerk which appellant declined. An email note dated September 27, 2001 from the employing establishment to the Office stated that appellant denied the job offer of August 24, 2001 stating "Still attending rehabilitation clinic, still under physician's care."

On October 4, 2001 the Office stated that the position of information clerk was available and within appellant's physical limitations. The Office informed appellant that she had 30 days to either accept the position or provide reasons for refusing it.

Appellant submitted a letter dated October 26, 2001 in which she explained that, even after her surgery, she still had pain in her right hand, fingers, wrist, arm, elbow, shoulder and neck. She stated that she felt pain combing her hair, carrying bags or packages weighing over two and a half pounds, and fastening buttons or closing zippers when she dressed herself. Appellant stated that her arm and right hand felt cold and numb at night, she had muscle cramps and stiffness in the right hand and arm especially in the morning, and her grip strength had decreased as in feeling pain when she tried to use a knife while eating. Appellant stated that keyboarding in the past had caused lots of pain to her fingers, hands, wrist, arms, elbows, shoulders and neck and she would not be able to do that kind of work. She also stated that the job required writing and using a telephone which would also cause her pain. Appellant stated that the position of information clerk was located near revolving doors and the draft from the doors would be harmful for her. In a letter to Dr. Kraemer dated October 5, 2001, appellant reiterated the problems she was having with her right hand, wrist, arm, shoulder and neck and explained her reservations about being able to perform the job of information clerk.

By letter dated November 15, 2001, the Office stated that it received appellant's correspondence dated October 5 and October 26, 2001 and although appellant gave reasons for refusing the job offer, she did not provide any medical evidence from her treating physicians stating that the position was not suitable. The Office gave appellant 15 days to respond to the job offer.

In a report dated December 13, 2001, Dr. Kraemer performed a physical examination and evaluated nerve conduction studies, stating that one study showing appellant slowing across the elbow areas bilaterally, but the more recent one failed to show any significant ulnar neuropathy. He stated that, given the discrepancies, he recommended that appellant undergo bilateral median and ulnar nerve conduction studies to determine if there was persistent elbow neuropathy. Dr. Kraemer stated that there was no need for surgical intervention.

By decision dated January 29, 2002, the Office terminated appellant's compensation benefits effective February 1, 2002 for her refusal to accept suitable work.

The Board finds that the Office properly terminated appellant's compensation benefits effective February 1, 2000 for refusal to accept suitable work.

Once the Office accepts a claim, it has the burden of justifying termination of modification of compensation benefits by establishing that the accepted disability has ceased or that it is no longer related to the employment.¹ This burden of proof is applicable when the Office terminates compensation under 5 U.S.C. § 8106(c) for refusal to accept suitable work. Under this section of the Federal Employees' Compensation Act, the Office may terminate the compensation of an employee who refuses or neglects to work after suitable work is offered to,

¹ *H. Adrian Osborne*, 48 ECAB 556 (1997); *David W. Green*, 43 ECAB 883 (1992).

procured by, or secured for the employee.² The Board has recognized that section 8106(c) serves as a penalty provision as it may bar an employee's entitlement to compensation based on a refusal to accept a suitable offer of employment and, for this reason, will be narrowly construed.³ The issue of whether an employee has the physical ability to perform a modified position offered by the employing establishment is primarily a medical question that must be resolved by the medical evidence.⁴

In this case, appellant's treating physicians, Dr. Kraemer and Dr. Braverman, approved the job of information receptionist or information clerk indicating that the job's physical requirements which consisted in part of intermittent simple grasping as in answering the telephone and taking messages 6 hours a day, intermittent fine manipulation including keyboarding for 4 hours per day with no more than 20-minute intervals at a stretch, and no lifting over 5 pounds were within appellant's physical restrictions. In appellant's October 5, 2001 letter to Dr. Kraemer and her October 26, 2001 letter to the Office, appellant explained that she still suffered pain in her right hand, arm, wrist, elbow, shoulder and neck, that she felt pain combing her hair, lifting more than two and half pounds, using a knife while eating and using zippers and buttons. She stated that she felt that she could not perform the offered job which involved keyboarding, writing, using a telephone and working in a drafty environment.

Appellant, however, did not present any medical evidence stating that the job of information receptionist or information clerk exceeded her physical restrictions. In his December 13, 2001 report, Dr. Kraemer performed a physical examination, evaluated nerve conduction studies and recommended obtaining an additional nerve conduction study but he did not address appellant's ability to perform the offered job. Since the medical evidence of record establishes that appellant was physically able to perform the job of information receptionist or information clerk, and the evidence establishes that the job was available and within appellant's vocational experience, the Office properly terminated appellant's compensation benefits for her refusal to accept suitable work.

² 5 U.S.C. § 8106(c)(2).

³ See *Susan L. Dunnigan*, 49 ECAB 267 (1998); *Stephen R. Lubin*, 43 ECAB 564 (1992).

⁴ See *John E. Lemker*, 45 ECAB 258 (1993); *Camillo R. DeArcangelis*, 42 ECAB 941 (1991).

The January 29, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
November 21, 2002

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member