

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SUSAN U. SHANNON and U.S. POSTAL SERVICE,
POST OFFICE, San Anselmo, CA

*Docket No. 02-675; Submitted on the Record;
Issued October 24, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation on the grounds that she refused an offer of suitable work.

On October 25, 1996 appellant, then a 38-year-old mail carrier, filed an occupational disease claim, alleging that she developed tendinitis in both hands and wrists on or about July 10, 1996, attributed to her work duties of pushing mail carts, opening doors, casing and handling thick bundles of mail. The Office accepted the claim for bilateral tendinitis and depressive disorder. Appellant began limited duty after filing her claim and worked until January 1998. She subsequently filed a claim for recurrence of disability due to the employment injury, which was accepted by the Office. Appellant was placed on the periodic rolls and received compensation.

Dr. Glen Pfeffer, a Board-certified orthopedic surgeon and referral physician, evaluated appellant on September 8, 1998 and found that she could return to limited-duty work, avoiding duties that require any continuous use of the hands. Dr. Pfeffer submitted a work capacity evaluation, which indicated that appellant could perform no repetitive wrist movements or operate a motor vehicle for more than one hour. He indicated that upon her return to work appellant was limited to four hours a day for two weeks and then she could work eight hours a day.

Dr. David Nelson, a Board-certified orthopedic surgeon, who treated appellant for the bilateral tendinitis evaluated her on November 10, 1998 and found that although appellant continued to suffer from residuals of the accepted employment injury, she was capable of returning to work within specified restrictions.

Dr. Stephen Schneider, a Board-certified psychiatrist also evaluated appellant for her emotional condition on December 4, 1998 and opined in his December 12, 1998 report that, although she needed further psychiatric treatment and medication, appellant was capable of

performing her usual and customary postal duties. The Office later referred appellant to Dr. Robert Hepps, a Board-certified psychiatrist and referral physician. He evaluated her on February 4, 1999 and agreed with Dr. Schneider that appellant would benefit from psychotherapy and medications, however, from a psychiatric standpoint, appellant was not disabled from work.

The employing establishment subsequently arranged a full-time limited-duty position as a modified carrier, based on the restrictions outlined by the above physicians, which the Office determined to be suitable.

On January 15, 1999 the Office offered appellant the position of modified carrier and provided her 30 days to accept the position or provide reasons for refusing the offer of employment. The Office advised appellant that her compensation would be terminated pursuant to section 8106(c)(2) of the Federal Employees' Compensation Act if she refused a suitable offer of employment without justification.

Appellant responded to the Office in letters dated February 2 and 11, 1999, that she was dissatisfied with Dr. Nelson's treatment and requested a change in physicians. In a letter dated February 16, 1999, the Office determined that appellant's reasons for refusing the offer of employment were unjustified and informed appellant that she had 15 days to accept the position without penalty. She did not accept the offer within the requisite time period.

By decision dated March 4, 1999, the Office terminated appellant's entitlement to compensation on the grounds that she refused a suitable offer of employment. She remained entitled to medical care for her accepted conditions.

Appellant requested reconsideration and received merit reviews on July 7, 1999, February 15 and August 10, 2000 and November 8, 2001, each denying modification on the grounds that the evidence was insufficient to warrant modification.

The Board finds that the Office properly terminated appellant's compensation benefits on the grounds that she refused an offer of suitable work.

It is well settled that once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.¹ As the Office in this case terminated appellant's compensation under 5 U.S.C. § 8106(c), the Office must establish that appellant refused an offer of suitable work.

Section 10.517(a)² of the Office's regulations provides that an employee who refuses or neglects to work after suitable work has been offered or secured for the employee, has the burden of showing that such refusal or failure to work was reasonable or justified and shall be provided with the opportunity to make such showing before a determination is made with respect to termination of entitlement to compensation.³ To justify termination of compensation, the Office

¹ See *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

² 20 C.F.R. § 10.517(a).

³ See *Arthur C. Reck*, 47 ECAB 339 (1996).

must show that the work offered was suitable and must inform appellant of the consequences of refusal to accept such employment.⁴

The Board finds that the Office complied with its procedural requirements in advising appellant that the position was found suitable and providing her with the opportunity to accept the position or provide her reasons for refusing.⁵ The record reflects that appellant did respond to the Office's notice in letters dated February 2 and 11, 1999, where she reported her dissatisfaction with Dr. Nelson's treatment and requested a change in physicians. Appellant did not address the suitability of the offered position in her response to the Office notice.

In various requests for reconsideration of the termination decision, appellant outlined several arguments and submitted voluminous reports, which, she argued supported her continued disability. Appellant first argued that she had been willing to undergo vocational rehabilitation and return to a position in a nonhostile work environment and had requested vocational rehabilitation but received no response. Appellant also argued that she suffered emotional trauma due to loss of functioning of her arms, abusive treatment received from her former supervisors and the lack of appropriate medical treatment. She argued that she never refused to return to work but that she requested that the employing establishment assign her to a duty station other than the station from which her injury originated and abusive treatment by management occurred. Appellant indicated that when that request was denied, she then requested that the designated hours be changed so that she would not have to drive in rush hour traffic with her hand and arm condition, however, she noted that request was also denied. She argued that a medical evaluation was never performed, restrictions and limitations were never outlined, a fitness-for-duty determination was never made and the required CA-17 form, for reemployment was never filed. Appellant further argued that the position was not unsuitable because it required her to drive more than one hour a day as outlined in the physical restrictions listed on her OWCP-5 form and that there is no public transportation from her home to the employing establishment. She later argued that she was unable to combine driving with mass transit to commute to and from work as suggested by the Office. Appellant further argued that the fact that she performed odd jobs and traveled to Nepal was not indicative that she was able to return to the employing establishment in the offered position. The Board notes that appellant did not provide any of these reasons for refusing the limited-duty position within the time allotted by the Office after it issued its notice of proposed termination.

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.⁶ The Board has stated that the weight of the medical evidence is determined by its reliability, its probative value and its convincing quality. The opportunity for and thoroughness of examination, the accuracy and completeness of the doctor's knowledge of

⁴ *Id.*

⁵ See *Bruce Sanborn*, 49 ECAB 176 (1997).

⁶ See *Maurissa Mack*, 50 ECAB 498 (1999); *Robert Dickerson*, 46 ECAB 1002 (1995).

the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of his opinion are factors which enter into such evaluation.⁷

In terminating appellant's compensation on March 4, 1999, the Office relied on contemporaneous reports of Drs. Pfeffer, Nelson, Schneider and Hepps. Each physician indicated that from both a physical and psychiatric standpoint, appellant was capable of returning to limited-duty work. The physical requirements of the offered modified carrier position included answering telephones and handling mail carrier complaints while remaining seated. The requirements of the position were in accord with the physical restrictions outlined by Dr. Pfeffer in his work capacity evaluation dated September 8, 1998, which noted that appellant was restricted from repetitive wrist movements and operation of a motor vehicle for more than one hour a day. The Board finds that the weight of the medical evidence establishes that the modified carrier position was within appellant's physical and psychiatric limitations and consistent with the recommendations of Drs. Nelson, Pfeffer, Schneider and Hepps.

Appellant submitted physician progress notes, which referenced an earlier statement of Dr. Schneider dated December 12, 1998 that "at least three to six months of psychiatric care is indicated" and Dr. Hepps' statement that "she certainly has industrially caused psychiatric diagnosis, which require treatment." The Board finds that these progress notes submitted by appellant only indicate that she required treatment for a psychiatric condition but did not establish that appellant was not capable of returning to work on January 15, 1999. The Office relied on psychiatric reports from both these physicians in offering appellant the limited-duty position and they each found that she could return to work within certain restrictions.

Appellant submitted a March 4, 1999 report by Dr. Nelson, who indicated that she had psychological barriers, which might prevent her return to work, but noted that appellant should return to work on the date recommended by her treating physician instead of on his recommendation. Dr. Nelson stated that if appellant returned to work prior to her treating physician's recommended date, she would "end up with even more somatoform disorder than currently." He is an orthopedic surgeon and not a psychiatrist. Dr. Nelson has offered his opinion of appellant's work capability from a physical standpoint in this case, however, as he is not a psychiatrist, his opinion regarding appellant's psychiatric condition lacks probative value. The reports of Drs. Schneider and Hepps, Board-certified psychiatrists, represent the weight of the evidence in this regard, who indicate that appellant was capable of returning to work with the employing establishment. The Board, therefore, finds that the position offered appellant was consistent with appellant's medical limitations.

As the Office adhered to all of the procedural requirements in making a job offer and provided appellant with significant opportunity to accept the offer and further as the weight of the medical evidence established that appellant was capable of returning to work at the time the position was offered, the Office properly terminated benefits.

⁷ *Melvina Jackson*, 38 ECAB 43 (1987); *Naomi A. Lilly*, 10 ECAB 560 (1959).

The November 8, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
October 24, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member