

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOYCE M. DOLL and U.S. POSTAL SERVICE,
POST OFFICE, Glassboro, NJ

*Docket No. 02-311; Submitted on the Record;
Issued September 25, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective January 9, 2001 on the grounds that she neglected suitable work.

On March 25, 1999 appellant, then a 33-year-old casual clerk, filed a claim alleging that she sustained a traumatic injury in the performance of duty on March 2, 1999 when she lifted tubs of mail. She indicated that she felt pain and numbness in her back, left leg, left foot and left toes. Appellant stopped work at the time of the injury.¹ The Office accepted the claim for a herniated lumbar disc. The Office also approved a lumbar discectomy, which was performed on October 15, 1999. The Office placed appellant on the periodic rolls and paid appropriate compensation benefits.

In a March 14, 2000 report, Dr. Stephen Horowitz, a Board-certified orthopedic surgeon, stated that appellant could return to work at a sedentary job with no heavy lifting and with the ability to change positions frequently.

In a June 13, 2000 report, Dr. Horowitz advised that appellant could return to work in a sedentary capacity if she avoided heavy lifting and did not have to sit or stand in the same position for long periods of time.²

In a June 20, 2000 report, Dr. Horowitz advised that appellant could not work for eight hours per day. In response to the question regarding whether there was any reason she could not

¹ Appellant returned in a limited-duty position on March 29, 1999 and was subsequently reported to be disabled on April 27, 1999 by her physician.

² Of record is a report dated April 11, 2000 from Dr. Bruce Wulfsberg, a Board-certified orthopedic surgeon, who performed a second opinion examination for the Office. On April 11, 2000 he indicated that appellant was totally disabled.

work eight hours per day, Dr. Horowitz filled in, “s/p [status post] lumbar spine surgery.” He proceeded to advise that appellant was fit for limited duty, six to eight hours per day. Dr. Horowitz prescribed work limitations of sitting, walking and standing no more than four hours per day, twisting no more than two hours per day and operating a motor vehicle no more than two hours per day. He also prescribed limitations on pushing or pulling (no more than 30 pounds two hours per day) and restricted lifting to no more than ten pounds, two hours per day. Dr. Horowitz also advised a 15-minute break every two hours.

In a July 7, 2000 report, Dr. Horowitz indicated that appellant was capable of returning to limited duties. He stated that appellant could perform work where she lifted no more than 10 pounds and did only minimal bending and carrying. Dr. Horowitz also reviewed the limited-duty assignment and agreed that the position was reasonable.

On December 5, 2000 the employing establishment offered appellant a position as a modified casual clerk. Appellant would be able to sit or stand, as she desired. She would be expected to sort through mail, do computer work and answer telephones. The physical requirements of the job were: sit, stand and walk up to four hours intermittently; lift up to one pound for up to one hour continuously and lift up to ten pounds for up to two hours intermittently; carrying up to one pound for up to one hour continuously and carry up to ten pounds for up to two hours intermittently; reach up to two hours intermittently; simple grasping up to eight hours; some manipulation up to eight hours; no bending, twisting or kneeling.³

On December 6, 2000 the Office advised appellant that it found the modified casual clerk position to be suitable to her capabilities and was currently available. She was advised that she should accept the position or provide an explanation for refusing the position within 30 days. Finally, the Office informed appellant that, if she failed to accept the offered position and failed to demonstrate that the failure was justified, her compensation would be terminated.

On December 15, 2000 the employing establishment received the offer from appellant and her signature indicating that she did not accept the modified casual clerk position. The record indicates that she refused the job because she “found a job that better suits my needs.”

By letter dated December 18, 2000, the Office informed appellant that her reasons for refusing the position were not acceptable and allowed an additional 15 days for her to accept the position.

After determining that the offered job remained available, by decision dated January 9, 2001, the Office terminated appellant’s compensation benefits effective that date finding that she had neglected suitable work after work was offered to her without providing a “reasonable, acceptable explanation.”

By letter January 11, 2001, appellant’s attorney requested a hearing, which was held on June 12, 2001.

³ The record reflects that the employing establishment had offered appellant a job some months earlier; which she accepted, however, this job was subsequently unavailable.

In a decision dated August 16, 2001, an Office hearing representative affirmed the Office's January 9, 2001 decision, termination of benefits.

The Board finds that the Office improperly terminated appellant's compensation on the grounds that she neglected suitable work.

Once the Office accepts a claim it has the burden of justifying termination or modification of compensation benefits.⁴ This includes cases in which the Office terminates compensation under section 8106(c)(2) of the Federal Employees' Compensation Act for refusal to accept suitable work.

Section 8106(c)(2)⁵ of the Act provides that a partially disabled employee who refuses or neglects to work after suitable work is offered to, procured by or secured for the employee is not entitled to compensation. Section 10.517(a)⁶ of the Office's regulations provides that an employee who refuses or neglects to work after suitable work has been offered to or secured for him or her has the burden to show that this refusal or failure to work was reasonable. After providing the two notices described in section 10.516⁷, the Office will terminate the employee's entitlement to further compensation under 5 U.S.C. §§ 8105, 8106 and 8107, as provided by 5 U.S.C. § 8106(c)(2). However, the employee remains entitled to medical benefits as provided by 5 U.S.C. § 8103. To justify termination, the Office must show that the work offered was suitable⁸ and must inform appellant of the consequences of refusal to accept such employment.⁹ According to Office procedures, certain explanations for refusing an offer of suitable work are considered acceptable.¹⁰

The Office Procedure Manual¹¹ provides that an acceptable reason for refusing an offered position includes: “[Appellant] found other work which fairly and reasonably represents his or her earning capacity (in which case compensation would be adjusted or terminated based on actual earnings).”

⁴ *Betty F. Wade*, 37 ECAB 556, 565 (1986); *Ella M. Garner*, 36 ECAB 238, 241 (1984).

⁵ 5 U.S.C. § 8106(c)(2).

⁶ 20 C.F.R. § 10.517(a).

⁷ 20 C.F.R. § 10.516.

⁸ *See Carl W. Putzier*, 37 ECAB 691 (1986); *Herbert R. Oldham*, 35 ECAB 339 (1983).

⁹ *See Maggie L. Moore*, 42 ECAB 484 (1991), *reaff'd on recon.*, 43 ECAB 818 (1992). *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.5d.(1) (July 1997).

¹⁰ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.5a.(1)-(5) (July 1997).

¹¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.5a.(2) (July 1997).

In the instant case, appellant advised the Office that she had found a job that better suited her needs. The Office can reject this reason only by finding that the job appellant had did not fairly and reasonably represent her wage-earning capacity.¹² The Office did not address whether appellant's new job reasonably represented her wage-earning capacity. Due to its failure to make a determination of whether appellant's position fairly and reasonably represented her wage-earning capacity, the Office has not shown that appellant's refusal to accept the modified casual clerk position offered by the employing establishment provided sufficient reason to terminate appellant's compensation. The Office, therefore, has not met its burden of proof to terminate appellant's compensation benefits.

Therefore, the Board finds that the Office improperly terminated appellant's compensation benefits effective January 9, 2001.

The August 16 and January 9, 2001 decisions of the Office of Workers' Compensation Programs are hereby reversed.

Dated, Washington, DC
September 25, 2002

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

¹² *Michael I. Schaffer*, 46 ECAB 845, 855 (1995).