

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JERRY INMAN and DEPARTMENT OF THE ARMY,  
ENGINEERING & HOUSING, Fort Polk, LA

*Docket No. 03-476; Submitted on the Record;  
Issued April 24, 2003*

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DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,  
DAVID S. GERSON

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits on December 12, 2001 on the grounds that he refused an offer of suitable work.

Appellant, a 34-year-old welder, filed a notice of traumatic injury on February 3, 1986 alleging that he injured his low back in the performance of duty. The Office accepted appellant's claim for low back strain on March 2, 1987 and authorized a lumbar laminectomy on July 20, 1987. Appellant returned to work on May 2, 1988.

Appellant filed a second notice of traumatic injury on October 4, 1989 alleging that he fell from a ladder in the performance of duty injuring his left shoulder and right side. Appellant returned to work on October 17, 1989 and filed a notice of recurrence of disability on November 13, 1989. The Office accepted appellant's claim for contusion of the left shoulder and herniated disc C5-6 on November 6, 1989. The Office entered appellant on the periodic rolls on April 9, 1990. The Office authorized a cervical fusion on March 26, 1991.

Appellant underwent a laminectomy and discectomy of L5-S1 on December 9, 1997. He had further surgery on December 16, 1997 to repair a dural leak. On July 28, 1998 appellant underwent a retroperitoneal exposure anterior lumbar interbody fusion.

Appellant's attending physician, Dr. R. Dale Bernauer, a Board-certified orthopedic surgeon, provided appellant's work restrictions on January 16, 2001. The employing establishment offered appellant a light-duty position on June 6, 2001 as an emergency services dispatcher working eight hours a day. Dr. Bernauer reviewed this position on September 8, 2001 and opined that appellant could perform the duties of this position four hours a day. On September 26, 2001 the employing establishment modified this position description to provide

that appellant would work four hours a day.<sup>1</sup> Appellant declined this position on October 16, 2001 and offered reasons for his denial.

In a letter dated October 22, 2001, the Office informed appellant that the offered position for four hours a day was suitable and allowed him 30 days to accept the position or offer his reasons for refusal. The Office informed appellant of the penalty provisions of the Federal Employees' Compensation Act.

Appellant responded to the Office's letter on November 14, 2001 and reported his current symptoms. Appellant further stated that he could not perform the duties of the offered position as he had claustrophobia and the position required work in a small room. By letter dated November 16, 2001, the Office informed appellant that his reasons for refusing the position were not acceptable and allowed him an additional 15 days to accept the position. By decision dated December 12, 2001, the Office terminated appellant's compensation benefits finding that the position of part-time emergency services dispatcher was suitable work.

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits as he 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.<sup>2</sup> 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 8106(c) of the Act<sup>3</sup> 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 of the applicable regulations<sup>4</sup> 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. To justify termination of compensation, the Office must show that the work offered was suitable and must inform appellant of the consequences of refusal to accept such employment.<sup>5</sup> In this case, the Office properly followed its procedures in reaching its December 12, 2001 decision.

Appellant's attending physician, Dr. Bernauer, a Board-certified orthopedic surgeon, listed appellant's work restrictions on January 16, 2001. He stated that appellant could not lift over 20 pounds and could not stoop, crawl or climb. The employing establishment offered

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<sup>1</sup> Although the employing establishment modified the body of the position description to include the change to four hours a day, the acceptance and denial page still listed the position as full time.

<sup>2</sup> *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

<sup>3</sup> 5 U.S.C. § 8106(c)(2).

<sup>4</sup> 20 C.F.R. § 10.517(a).

<sup>5</sup> *Arthur C. Reck*, 47 ECAB 339, 341-42 (1995).

appellant a light-duty position based on these restrictions. Dr. Bernauer concluded that appellant could perform the duties of this position for four hours a day. He noted that appellant could not work eight hours a day as he had a bone spur pressing on a nerve.

The offered position of emergency services dispatcher is a sedentary position where an employee is seated or standing at a desk or alarm panel. The work is performed in an office setting and requires lifting of 5 to 10 pounds. On October 23, 2001 Dr. Bernauer completed a work restriction evaluation and indicated that appellant could work four hours a day, sitting and performing repetitive movements of the wrists and elbows. He indicated that appellant could lift up to 10 pounds for 1 hour, walk for 1 hour, stand for 1 hour and reach for 1 hour. Dr. Bernauer found that appellant could not twist, push, pull, squat, kneel or climb.

The medical evidence in the record establishes that the offered position was within appellant's physical ability. Dr. Bernauer concluded that appellant could perform the duties for four hours a day. Appellant did not submit any additional medical evidence establishing that this position was beyond his physical capacity. Therefore the Board finds that the medical evidence establishes that the position of part-time emergency services dispatcher was suitable for appellant.

The Office evaluated the reasons appellant submitted for refusing the position and found that those reasons were unacceptable. Appellant alleged that he could not perform the duties of the position as he was claustrophobic and the position required him to work in a small room. Appellant has not, however, submitted any medical evidence to the record which substantiates that this condition would medically prohibit his performance of the duties of the offered position. Appellant has therefore not offered claustrophobia as an acceptable reason for refusing the suitable work offer.<sup>6</sup> Appellant also alleged that coworkers had treated him poorly when he returned to the previous light-duty position and that the employing establishment failed to provide him with information regarding his status in the event of a reduction-in-force. The Board has previously held that fear of future injuries is not compensable<sup>7</sup> and that issues of job security were not acceptable reasons for refusing an offered position.<sup>8</sup>

As the medical evidence included in the record establishes that the position offered was suitable and as appellant has failed to provide an acceptable reason for refusing the offered position, the Board finds that the Office met its burden of proof to terminate appellant's compensation benefits as he refused a suitable work position.

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<sup>6</sup> *Id.* at 344.

<sup>7</sup> *Gaetan F. Valenza*, 39 ECAB 1349, 1356 (1988).

<sup>8</sup> *Susan L. Dunnigan*, 49 ECAB 267, 270 (1998).

The December 12, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
April 24, 2003

Alec J. Koromilas  
Chairman

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member