

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PATRICIA P. ISAAC and U.S. POSTAL SERVICE,
POST OFFICE, New Orleans, LA

*Docket No. 03-368; Submitted on the Record;
Issued March 20, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

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

On April 16, 2001 appellant, then a 54-year-old clerk, filed a notice of occupational disease and claim for compensation (Form CA-2), alleging that she sustained bilateral carpal tunnel syndrome causally related to her federal employment.¹ The Office accepted the claim for bilateral carpal tunnel syndrome; appellant underwent carpal tunnel release surgery on August 22 and October 3, 2001

On January 11, 2002 the employing establishment offered appellant a light-duty clerk position. The job offer indicated that the position required intermittent lifting of up to five pounds, no keying or typing and incorporated the prior work restrictions, including no pushing or pulling, no climbing, kneeling or stooping. On January 12, 2002 appellant advised the employing establishment that she was rejecting the offer. She indicated to the employing establishment that she wanted to go back to her office job in consumer affairs.

By letter dated June 28, 2002, the Office advised appellant that it found the offered position to be suitable. Appellant was notified that she had 30 days to either accept the position or provide reasons for refusing the offer. The Office also advised appellant of the provisions of 5 U.S.C. § 8106(c)(2).

In a decision dated August 20, 2002, the Office terminated compensation effective September 8, 2002.

The Board finds that the Office properly terminated appellant's compensation pursuant to 5 U.S.C. § 8106(c)(2).

¹ Appellant had been working in a light-duty modified general clerk position since 1995.

5 U.S.C. § 8106(c) provides in pertinent part: “A partially disabled employee who ... refuses or neglects to work after suitable work is offered ... is not entitled to compensation.” It is the Office’s burden to terminate compensation under section 8106(c) for refusing to accept suitable work or neglecting to perform suitable work.² To justify such a termination, the Office must show that the work offered was suitable.³ 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.⁴

In this case, an attending physician, Dr. Frederick Keppel, an orthopedic surgeon, submitted a work capacity evaluation (Form OWCP-5c) dated October 23, 2001, indicating that appellant could work eight hours a day with restrictions. Dr. Keppel indicated that appellant should be limited to intermittent lifting, pushing and pulling of five pounds, with no squatting, kneeling or climbing. The record also contains a copy of the October 23, 2001 form report with a note dated June 5, 2002 from Dr. Keppel, stating that he agreed with the above restrictions.

The offered position in this case was a light-duty position with intermittent lifting of up to five pounds, no pushing or pulling, no keying or typing and no climbing, kneeling or stooping. There is no indication that the position was outside the established physical restrictions. The Board finds that the Office properly determined that the position was medically suitable.

With respect to the procedural requirements of termination under section 8106(c), the Board has held that the Office must inform appellant of the consequences of refusal to accept suitable work and allow appellant an opportunity to provide reasons for refusing the offered position.⁵ If appellant presents reasons for refusing the offered position, the Office must inform the employee if it finds the reasons inadequate to justify the refusal of the offered position and afford appellant a final opportunity to accept the position.⁶

In this case, the Office issued a letter dated June 28, 2002, advising appellant of the consequences of refusing an offer of suitable work and allowing an opportunity to accept or provide reasons for declining. Appellant did not accept the position or provide the Office with reasons for refusing the offered position. The Board accordingly finds that the Office properly terminated compensation under 5 U.S.C. § 8106(c)(2) on the grounds that she refused an offer of suitable work.

On appeal, appellant has raised the issue of a schedule award under 5 U.S.C. § 8107. On June 7, 2002 appellant filed a claim for compensation (Form CA-7), indicating that she was claiming a schedule award. In the August 20, 2002 Office decision, the Office found that appellant “is not entitled to any further compensation for wage loss or [s]chedule [a]ward.” The

² *Henry P. Gilmore*, 46 ECAB 709 (1995).

³ *John E. Lemker*, 45 ECAB 258 (1993).

⁴ *Catherine G. Hammond*, 41 ECAB 375, 385 (1990); 20 C.F.R. § 10.517(a).

⁵ *Maggie L. Moore*, 42 ECAB 484 (1991), *reaff’d on recon.*, 43 ECAB 818 (1992).

⁶ *Id.*

Office did not provide further clarification on the schedule award issue. It is well established that, once compensation is terminated pursuant to section 8106(c)(2), it is a bar to receipt of compensation for a schedule award after the date of termination.⁷

A schedule award, however, would be payable from the date of maximum medical improvement and a suitable work termination does not bar a schedule award for a period prior to the termination date.⁸ It has yet to be determined whether the medical evidence supports an employment-related permanent impairment, with a date of maximum medical improvement that is prior to September 8, 2002. On return of the case record, the Office should adjudicate this aspect of the claim.

The decision of the Office of Workers' Compensation Programs dated August 20, 2002 is affirmed.

Dated, Washington, DC
March 20, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

⁷ *Stephen R. Lubin*, 43 ECAB 564 (1992).

⁸ *Id.*; see also *Ronald P. Morgan*, 53 ECAB ___ (Docket No. 01-1053, issued February 14, 2002).