U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHARLENE H. WILLIAMS and U.S. POSTAL SERVICE,
POST OFFICE, New Orleans, LA

Docket No. 03-1180; Submitted on the Record;
Issued October 24, 2003

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs met its burden of proof in terminating compensation effective March 24, 2002 on the basis that appellant refused an offer of suitable employment.

On November 7, 2000 appellant, then a 47-year-old casual mail carrier, filed a traumatic injury claim alleging that she sustained a work-related injury on November 3, 2000 when a resident's iron door struck her right thumb. The Office accepted the claim for right thumb sprain and authorized medical treatment. Appellant immediately returned to modified duty. On December 7, 2000 her casual appointment expired and her employment was terminated.

Dr. Gordon Nutik, a Board-certified orthopedic surgeon, treated appellant for her hand injury. In a narrative report dated December 8, 2000, he diagnosed right trigger thumb and restricted her activity to lifting and pulling no more than 20 pounds with her right hand and limited tight gripping and grasping. Dr. Nutik noted that appellant had been undergoing physical therapy, but had experienced much improvement with her right thumb. He indicated that a trigger thumb release surgery might be needed, but that appellant wished to continue with conservative treatment. Dr. Nutik recommended that she continue with light duty. He did not treat appellant after December 4, 2000.

In March 2001, the Office referred appellant for rehabilitation services, which were provided for approximately one month. Her case worker indicated in the closure report that appellant continued to report pain and locking symptoms due to the accepted injury. The report noted that she needed to return to a physician to update her medical status in order to facilitate her return to work.

Dr. Joseph Rauchwerk, a Board-certified orthopedic surgeon, saw appellant on May 30, 2001 and in a June 5, 2001 report, he noted her complaints of bilateral thumb pain, locking of the right thumb and triggering of both thumbs, right more than left. He diagnosed post-traumatic chronic tenosynovitis of the right thumb and recommended steroid injections and surgical release

as discussed by Dr. Nutik. Dr. Rauchwerk indicated that appellant should be able to return back to her previous employment at the employing establishment once she "has her thumbs fixed."

On November 16, 2001 the employing establishment offered appellant a job as a modified casual mail carrier, within the work restrictions provided by Dr. Nutik. The position involved mail distribution, answering and screening calls, claims and inquiry research and filing will call mail, while sitting and standing intermittently. The duties of the position required no lifting over 10 pounds continuously, 20 pounds intermittently and no fine manipulation.

On November 20, 2001 appellant, through counsel, refused the job offer, noting Dr. Rauchwerk's medical recommendation that she return to work once her thumbs were fixed.

By letter dated December 27, 2001, the Office advised appellant of its determination that the modified casual carrier position was suitable and provided appellant 30 days to either accept the position or provide a justifiable explanation for refusing it.

On January 2, 2002 appellant, through counsel, requested an examination with Dr. Eric George, a Board-certified plastic surgeon and hand specialist, which was authorized by the Office on January 18, 2002.

On February 4, 2002 the Office advised appellant that it had not received a response to its letter dated December 27, 2001 indicating that the offered position was suitable and the Office provided an additional 15 days for her to accept the job.

Thereafter, the Office received a report from Dr. George dated February 7, 2002. He evaluated appellant and found that she had a fairly classic presentation of bilateral trigger thumbs and de Quervain's tenosynovitis for which he recommended steroid injections. He indicated that, in the interim, appellant could work with light use of the hands pending her response to steroids.

By decision dated March 7, 2002, the Office terminated appellant's compensation effective March 24, 2002 on the grounds that she refused an offer of suitable work.

In a letter dated March 13, 2002, appellant requested an oral or written hearing.[1] Her counsel indicated that she wished to undergo surgery with Dr. George for the accepted condition. The Office authorized the procedure on May 23, 2002 and surgery was scheduled for June 19, 2002. On June 5, 2002 Dr. George cancelled appellant's surgery. In a June 5, 2002 report, he indicated that she returned that day with questions regarding her prognosis post surgery and he advised her that in four weeks following surgery for de Quervain's and tenovaginitomy of the thumb she would be placed at maximum medical recovery, with no permanent partial impairment and a full release. Dr. George stated that appellant informed him that if she was to be fully released she did not wish to have the surgery. He noted that the

[1] The record reflects that this request for an appeal was initially made to the Board; however, a letter with the same date was received in the district Office by appellant's counsel advising that surgery was scheduled for appellant and requesting that benefits continue until she was released to maximum medical improvement. Consequently, the case with the request for appeal was returned to the district Office.

surgery was cancelled at that time and concluded that appellant could return to full unrestricted capacity in the work environment.

The hearing was set for November 20, 2002; however, due to scheduling conflicts the request was changed to an examination of the written record. By decision dated January 23, 2003, an Office hearing representative found that appellant refused an offer of suitable employment and affirmed the Office's March 7, 2002 decision.

The Board finds that the Office properly terminated appellant's compensation based on her refusal 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.[2] As the Office, in this case, terminated appellant's compensation under 5 U.S.C. § 8106(c), the Office must establish that she refused an offer of suitable work.

Section 8106(c) of the Federal Employees' Compensation Act[3] provides that a 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) of the applicable regulations[4] 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.[5]

In this case, appellant stopped working modified duty after the injury, not because of the thumb injury, but because her temporary appointment expired. The employing establishment subsequently offered her the position of modified casual carrier on November 16, 2001 based on the December 8, 2000 work restrictions outlined by Dr. Nutik, a Board-certified orthopedic surgeon, who treated appellant for the accepted injury in December 2000.

In his December 8, 2000 report, Dr. Nutik diagnosed right trigger thumb and noted that physical therapy had not improved her condition and that appellant might need release surgery. He provided that appellant could work with restrictions of no lifting over 10 pounds continuously or 20 pounds intermittently and no fine manipulation. The duties of the November 16, 2001 modified position included mail distribution, answering and screening calls, claims and inquiry

[2] *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

[3] 5 U.S.C. § 8106(c)(2).

[4] 20 C.F.R. § 10.517(a) (2000).

[5] *Arthur C. Reck*, 47 ECAB 339, 341-42 (1995). *Also see Maggie Moore*, 42 ECAB 484 (1991), *reaff'd on recon.*, 43 ECAB 818 (1992). Federal (FECA) Procedure Manual, Part 2 -- *Claims, Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.10 (July 1997).

research and filing will call mail while sitting and standing intermittently. The position required no lifting over 10 pounds continuously, 20 pounds intermittently and no fine manipulation. The medical evidence of record is sufficient to establish that the offered position is medically suitable.

Following the offer of employment appellant argued that she could not perform modified duty. She asserted that Dr. Rauchwerk, who saw her on May 30, 2001, noted that she could only return to her previous employment once the thumbs were fixed. Dr. George evaluated appellant at her request on February 7, 2002 and noted that she had developed bilateral trigger thumbs and diagnosed flexor tenosynovitis of both thumbs and de Quervain's tenosynovitis. He recommended steroid injections as well and noted that appellant could work light duty with light use of the hands, while determining whether injections would be beneficial. Following steroid treatment, Dr. George indicated that there was a slight improvement in appellant's condition and that surgery was the next recommended option. Appellant however ultimately refused surgery indicating that she did not want to undergo the procedure if she was to be fully released to duty afterwards.

The record demonstrates that following the Office's acceptance of appellant's claim the Office paid medical expenses. She was not temporarily disabled from work due to residuals of the accepted injury but because her appointment expired. On November 16, 2001 the employing establishment offered appellant a limited-duty position as a modified casual mail carrier. In a narrative report dated December 8, 2000, Dr. Nutik outlined physical restrictions that were within the physical requirements of the limited-duty position of modified causal mail carrier, offered by the employing establishment on November 16, 2001. On November 20, 2001 appellant refused the job offer on the basis that she could only return to work once her thumbs were fixed. On December 27, 2001 the Office complied with the procedural requirements by advising appellant of the suitability of the position offered, that the job remained open and that her failure to accept the offer, without justification, would result in the termination of her compensation. The Office provided appellant 30 days within which to either accept the position offered or submit her reasons for refusal and then with an additional 15 days. She did not provide any explanation for refusing the position and on March 7, 2002 the Office terminated appellant's compensation benefits.

The Board finds that the Office met its burden of proof in terminating appellant's monetary compensation benefits.[6] The evidence of record establishes that the Office provided appellant with an opportunity to accept the position following notification of its suitability determination. The Office advised appellant of the penalty for refusing to accept an offer of suitable employment and the insufficiency of her reasons for rejecting the job offer. Appellant did not accept the job offer. She did not demonstrate, nor did she submit sufficient evidence establishing that the position was outside her physical limitations as recommended by her attending physician.

As appellant failed to introduce sufficient argument or medical evidence establishing that she was not physically capable of performing the duties of the modified casual mail-clerk

[6] *See Stephen R. Lubin*, 43 ECAB 564 (1992).

position as offered, the Office properly terminated appellant's compensation for refusing an offer of suitable work.

The January 23, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
October 24, 2003

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member