

appellant sustained right carpal tunnel syndrome; she underwent a right carpal tunnel release on August 21, 2000 and began receiving compensation for temporary total disability.

On August 24, 2001 the employing establishment offered appellant a full-time light-duty position. By decision dated January 29, 2002, the Office determined that appellant had refused an offer of suitable work. Pursuant to 5 U.S.C. § 8106(c)(2), the Office terminated wage-loss compensation benefits effective February 1, 2002.

Appellant filed an appeal with the Board, which was docketed as No. 02-1832. The Board affirmed the January 29, 2002 Office decision, finding that the weight of the medical evidence established that the offered position was medically suitable.¹ The Board noted that attending physicians, Dr. Alan Braverman, a Board-certified internist, and Dr. Bruce Kraemer, a Board-certified plastic surgeon, reviewed the offered job description and opined that appellant was capable of performing the position. The history of the case as set forth in the Board's prior decision is incorporated herein by reference.

In a letter dated October 27, 2003, appellant requested reconsideration of her claim. She submitted a report dated October 4, 2003 from Dr. Syed Ali, a neurologist, who indicated that he was responding to a note from appellant that was given to him at appellant's previous visit on August 7, 2003; he did not provide results on examination. He noted that a May 30, 2001 nerve conduction study was consistent with mild carpal tunnel syndrome and was concurrent with appellant's clinical symptomology.² According to Dr. Ali, appellant had noted that she had been diagnosed in May 2001 with tennis elbow. Dr. Ali opined that carpal tunnel syndrome and tennis elbow would be aggravated by chronic repetitive movements of the hand and wrist, and further stated, "I do not believe [appellant] will be able to perform any kind of work, which does involve the use of [her] hands or wrist and the elbows and the arms in the repetitive fashion." According to Dr. Ali, appellant mentioned the use of the computer and keyboarding for four to eight hours for intermittent months from August 2000 to July 2002, and that he believed that the use of the computer and the keyboard during this period was clearly responsible for appellant's symptoms.

By decision dated January 9, 2004, the Office reviewed the case on its merits and denied modification of the prior decisions.

LEGAL PRECEDENT

An employee who refuses or neglects to work after suitable work has been offered or secured for her has the burden of showing that such refusal or failure to work was justified.³

¹ Docket No. 02-1832 (issued November 21, 2002).

² On reconsideration, appellant submitted a copy of the May 30, 2001 report, as well as a July 13, 2000 nerve conduction study.

³ *Gloria J. Godfrey*, 52 ECAB 486 (2001); *Catherine G. Hammond*, 41 ECAB 375, 385 (1990); 20 C.F.R. § 10.517(a).

ANALYSIS

In its prior decision, the Board affirmed the termination of wage-loss compensation effective February 1, 2002 pursuant to 5 U.S.C. § 8106(c)(2). With respect to the current appeal, it is appellant's burden of proof to establish that her refusal to accept the offered light-duty position was justified. In support of her request for reconsideration, appellant submitted the October 4, 2003 report of Dr. Ali. This report is of diminished probative value to the issue presented, as it does not provide a complete and accurate history, nor provide a reasoned medical opinion with respect to appellant's ability to perform the offered position as of February 1, 2002. Dr. Ali appears to indicate that appellant worked intermittently at keyboarding from August 2000, which is not supported by the record. According to the evidence, appellant stopped working on February 17, 2000 and was offered a position as an information clerk. Appellant did not accept the offer, and the issue is whether appellant could perform the offered light-duty position. Dr. Ali does not demonstrate his familiarity with the offered position or its physical requirements. Moreover, he does not provide a reasoned medical opinion regarding appellant's ability to perform the duties of the offered position as of February 1, 2002.

The Board accordingly finds that the evidence submitted is not sufficient to establish that the refusal to accept the suitable job offer was justified. It is appellant's burden of proof, and the Board finds that appellant did not meet her burden in this case.

CONCLUSION

The Board finds that the evidence submitted with the request for reconsideration is not sufficient to establish that the offered position was outside appellant's work restrictions. Appellant has not established that her refusal to accept the offered position was justified and therefore the Office properly denied modification of the suitable work termination in this case.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 9, 2004 is affirmed.

Issued: August 13, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member