

**United States Department of Labor
Employees' Compensation Appeals Board**

JUDITH G. DAMBACHER, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Springfield, IL, Employer**

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**Docket No. 04-1281
Issued: September 28, 2004**

Appearances:
Judith G. Dambacher, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member

JURISDICTION

On April 15, 2004 appellant filed a timely appeal of the Office of Workers' Compensation Programs' merit decision dated November 6, 2003 terminating her compensation benefits and denying her request for a schedule award on the grounds that she had refused an offer of suitable work. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether the Office met its burden of proof to terminate appellant's compensation benefits on the grounds that she refused an offer of suitable work; and (2) whether the Office properly denied appellant's claim for a schedule award due to her accepted employment injury.

FACTUAL HISTORY

On August 24, 2001 appellant, then a 60-year-old distribution clerk, filed a notice of occupational disease alleging that she had developed bilateral carpal tunnel syndrome due to her

employment duties. The Office accepted appellant's claim for bilateral carpal tunnel syndrome on September 25, 2001 and authorized surgeries on December 13, 2001 and May 22, 2002. On November 19, 2002 the Office entered appellant on the periodic rolls.

Appellant requested a schedule award on July 29, 2003.

Appellant's attending physician, Dr. Mark Greatting, a Board-certified orthopedic surgeon, released appellant to return to light-duty work effective August 1, 2003. Appellant's work restrictions included no lifting over 5 pounds with either hand and no lifting over 10 pounds with both hands, and no forceful or repetitive pinching or gripping with either hand.

On August 14, 2003 appellant informed the Office of her medical release but stated that she had elected to retire under the Civil Service Retirement System. In a letter dated August 15, 2003, the Office advised appellant of her right to elect between optional retirement benefits and compensation benefits.

The employing establishment offered appellant a limited-duty distribution clerk position on September 5, 2003 which required lifting no more than 5 pounds with 1 hand and no more than 10 pounds with both hands as well as no grasping or fine manipulation. Appellant rejected this position on that date stating that she "decided to retire."

In a letter dated September 16, 2003, the Office informed her that the limited-duty distribution clerk position was within her work abilities, was still available and was considered to be suitable work. The Office allowed appellant 30 days to accept the position or offer her reasons for refusal and informed her of the penalty provisions of the Federal Employees' Compensation Act including the termination of wage-loss and schedule award benefits. However, the Office did not address the reason appellant had previously offered for refusing the position. The Office also provided appellant with a benefit election form on the same date.

On September 30, 2003 appellant elected to receive retirement benefits effective September 11, 2003.

By decision dated November 6, 2003, the Office terminated appellant's compensation benefits on the grounds that she refused an offer of suitable work. The Office addressed appellant's decision to retire for the first time and concluded that this was not an acceptable reason to refuse suitable work. The Office further terminated appellant's right to schedule award benefits.

LEGAL PRECEDENT -- ISSUE 1

It is well settled that once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.¹ 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 Act² provides that a partially disabled

¹ *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

² 5 U.S.C. § 8106(c)(2).

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 regulation³ 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.⁴

The Office's regulations also state:

“[The Office] shall advise the employee that it has found the offered work to be suitable and afford the employee 30 days to accept the job or present any reasons to counter [the Office's] finding of suitability. If the employee presents such reasons, and [the Office] determines that the reasons are unacceptable, it will notify the employee of that determination and that he or she has 15 days in which to accept the offered work without penalty. At that point in time, [the Office's] notification need not state the reasons for finding that the employee's reasons are not acceptable.”⁵

ANALYSIS -- ISSUE 1

In this case, appellant's attending physician, Dr. Greatting, a Board-certified orthopedic surgeon, opined that appellant could return to work on August 1, 2003 with restrictions on lifting, pinching and gripping. The employing establishment developed a limited-duty distribution clerk position which was consistent with appellant's work restrictions and was therefore suitable. Appellant refused the position stating that she had decided to retire. The Office then informed her by letter dated September 16, 2003 that the position was suitable and allowed her 30 days to submit acceptable reasons for refusing the position. The Office did not address appellant's previously offered reason for refusing the position. Appellant submitted additional evidence regarding her retirement. By decision dated November 6, 2003, the Office informed appellant for the first time that her reason for refusing the position, the desire to retire, was not acceptable.

As the Office did not comply with its regulations, it failed to meet its burden of proof to terminate appellant's compensation benefits. The Office is required to inform a claimant that the reasons offered for refusing the position are unacceptable and allow an additional 15 days for the claimant to accept the position. In this case, appellant stated on September 5, 2003 that she refused the position in order to retire, but the Office did not inform her at any time prior to the termination of her compensation benefits that this was an unacceptable reason for refusing

³ 20 C.F.R. § 10.517(a).

⁴ *Arthur C. Reck*, 47 ECAB 339, 341-42 (1995).

⁵ 20 C.F.R. § 10.516.

suitable work. Following the Office's September 16, 2003 letter informing appellant that the position was suitable, appellant again submitted information regarding her intention to retire rather than return to work in the suitable work position. The Office again failed to inform her that retirement was an unacceptable reason for refusing suitable work and consequentially not allow her the requisite additional 15 days to accept the position prior to terminating appellant's compensation benefits.⁶

CONCLUSION

As the Office failed to comply with the applicable regulations in terminating appellant's compensation benefits, the Board finds that the Office failed to meet its burden of proof to terminate appellant's compensation and schedule award benefits on the grounds that she refused an offer of suitable work.

ORDER

IT IS HEREBY ORDERED THAT the November 6, 2003 decision of the Office of Workers' Compensation Programs is reversed.

Issued: September 28, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

⁶ Due to the disposition of this issue, it is not necessary for the Board to address whether the Office properly denied appellant's request for a schedule award.