United States Department of Labor
Employees' Compensation Appeals Board

LEVERT A. PARKS, Appellant	)	
and	)	**Docket No. 05-1698**
	)	**Issued: January 17, 2006**
U.S. POSTAL SERVICE, POST OFFICE, Austin, TX, Employer	)	

Appearances:
Levert A. Parks, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On August 9, 2005 appellant timely appealed a merit decision dated April 26, 2005 in which the Office of Workers' Compensation Programs denied modification of a September 7, 2004 termination decision. Appellant also appealed a May 24, 2005 nonmerit decision in which the Office denied his request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this claim and the nonmerit issue.

ISSUES

The issues are: (1) whether the Office properly terminated appellant's compensation pursuant to 5 U.S.C. § 8106(c)(2) on the grounds that he refused an offer of suitable work; and (2) whether the Office properly denied appellant's request for reconsideration of the merits of his claim under 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On January 16, 2002 appellant, then a 63-year-old custodian, was emptying a container of books when he felt a pull in his back. The Office accepted his claim for a lumbar strain and

subsequently accepted the condition of displacement of lumbar intervertebral disc without myelopathy. Appellant stopped work on January 16, 2002 and was eventually placed on the periodic rolls for wage-loss compensation.

The record reflects that appellant had previously been treated by Dr. Stephen Cox, a specialist in emergency medicine, Dr. Frosty D. Moore, a Board-certified orthopedic surgeon, and Dr. John P. Obermiller, a Board-certified physiatrist. Dr. Jeanne Cook, a Board-certified family practitioner and appellant's current treating physician, opined that appellant was totally disabled from chronic pain.

The Office referred appellant, together with a statement of accepted facts and a series of questions, to Dr. Terry Beal, a Board-certified orthopedic surgeon, for a second opinion. In a February 17, 2004 report, Dr. Beal noted the history of injury, reviewed the medical records, which included objective testing, and set forth his examination findings. He agreed with the Office's accepted diagnoses of lumbar strain and lumbar disc disease without myelopathy. Dr. Beal advised that appellant had some limitation of motion with regard to the lumbar spine which "could be due to the effects of the work injury" or, more likely, was due from his preexisting arthritic condition of the lumbar spine. He stated, however, that, although there was some moderate residual impairment from the work injury, appellant's spine was stable with no evidence of myelopathy. Dr. Beal opined that appellant would be able to perform a sedentary position. In a work capacity evaluation form, Dr. Beal noted that appellant would be able to work five to six hours in a modified limited-duty position. Restrictions were provided in the number of hours of sitting, standing, walking, twisting and bending and in the amount of weight and number of hours in which pushing, pulling, lifting, squatting, kneeling and climbing could be performed. Weight restrictions were between 25 and 40 pounds and a 15-minute break was required every 2 hours.

The Office provided a copy of Dr. Beal's February 17, 2004 report to both Dr. Obermiller and Dr. Cook and requested that they indicate whether they agreed with his determination that appellant was capable of working five to six hours per day in a limited-duty capacity.

On March 22, 2004 Dr. Obermiller signed the Office's form letter indicating that he agreed with Dr. Beal's findings.

Dr. Cook, however, did not agree with Dr. Beal and submitted an April 1, 2004 report. She indicated that her review of appellant's medical record demonstrated that appellant's other physicians, Drs. Cox, Moore and Obermiller, had found that appellant was not physically capable of working. Dr. Cook stated that, although appellant had findings of degenerative joint disease on magnetic resonance imaging (MRI) scan, he denied having back pain or decreased mobility in his back prior to the work-related accident and that it would be difficult to attribute his back pain and decreased range of motion to a "preexisting arthritic condition" as Dr. Beal stated. Dr. Cook noted that, while appellant's complaints of pain were subjective, chronic pain could prevent a person from successfully returning to work. On several occasions, appellant's activity and ability to perform activities of daily living were limited due to back pain. Dr. Cook opined that a return to work would have a high probability of increasing appellant's pain which would result in a decreased ability to function in all areas of his life and the inability to perform even sedentary job duties.

On April 3, 2004 the employing establishment offered appellant a sedentary position as a modified distribution clerk based on Dr. Beal's restrictions at its Chimney Corners Station. The sedentary position consisted of filling out forms, assisting customers, cutting labels from returned mail for bulk customers, sorting bulk rate mail prior to destruction and writing up notices. The physical requirements of the job required standing two hours and sitting four to six hours a day writing.

During a telephone conference on April 22, 2004, the Office advised appellant that the opinions of Dr. Obermiller and Dr. Beal constituted the weight of the medical opinion and that the employing establishment had offered a suitable job. Appellant was provided with a copy of the Office's memorandum of conference and afforded 15 days in which to make comments or corrections. He was also provided with a copy of the modified-duty assignment.

In a letter dated April 22, 2004, the Office notified appellant that the position of modified clerk was suitable to his work capabilities and was currently available. It notified him of the provisions of 5 U.S.C. § 8106(c)(2) and gave appellant 30 days either to accept the position or to provide an explanation for refusing it. Attached to the letter was a copy of the April 3, 2004 modified position.

In an April 28, 2004 letter, appellant refused the job offer. He advised that the job offer violated his medical restrictions and was too vague in terms of the physical demands of the position. Appellant noted that he had no training for the position being offered, which was in the clerk craft. Copies of medical reports and medical evaluations, previously of record were submitted. The medical records advised that he was totally disabled due to significant problems with the back, which included a spondylosis and intervertebral disc problems with myelopathy. Progress and duty status reports from Dr. Cook were also received in which she found that appellant was totally disabled due to lumbar discopathy and spinal stenosis.

In an August 20, 2004 letter, the Office notified appellant that the position was suitable and remained available. It further stated that he had not provided an acceptable reason for refusing to accept the offered position, that no further reasons would be considered, and failure to accept the position and arrange for a report to work within 15 days would result in the termination of his entitlement to wage-loss and schedule award benefits.

By decision dated September 7, 2004, the Office terminated appellant's wage-loss benefits effective October 3, 2004 on the basis that he refused an offer of suitable work.

In a September 29, 2004 letter, appellant requested reconsideration. He alleged that the employing establishment did not make a legitimate job offer and that Delores Campos, the human resource specialist, had no knowledge of a job offer. He contended that neither Supervisor Frank Recio nor the manager of customer service operations, Donna Brott, had any knowledge of the job offer when they were contacted on September 26, 2004. Evidence previously of record was submitted together with progress reports of appellant's condition. In a September 1, 2004 letter, appellant related that he had contacted Ms. Campos, the human resource specialist, who had no knowledge of the job offer and was referred to the Office of Personnel Management for optional retirement. He argued that he had not received a job offer

identifying a work location, reporting time and a duty assignment and, thus, could not have his doctors evaluate his ability to return to work.

In a March 28, 2005 letter, the employing establishment advised that appellant received sufficient notification of the job offer, the location of the job and where he was supposed to report to work. The employing establishment stated that appellant, instead, contacted Ms. Campos, who worked in a unit that had no knowledge of the job offer. The employing establishment stated that appellant was clearly instructed to contact the station manager or the injury compensation office, but failed to follow instructions. The employing establishment noted that, although the injury compensation office had moved, if appellant had contacted the station manager at Chimney Corners Station as instructed, he would have gotten to the proper channels.

By decision dated April 26, 2005, the Office denied modification of the September 7, 2004 decision.

In an undated letter received May 19, 2005, appellant requested reconsideration of the April 26, 2005 decision. He argued that Dr. Cook had challenged Dr. Beal and Dr. Obermiller's assessment of his ability to return to work. Appellant also contended that he never received notification from the injury compensation office to contact the station manager or the injury compensation office with regard to any job offer. A copy of Dr. Cook's April 1, 2004 report was submitted.

By decision dated May 24, 2005, the Office denied appellant's request for reconsideration without a review of the merits.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.[1] In this case, the Office terminated appellant's compensation under section 8106(c)(2) of the Federal Employees' Compensation Act, which 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.[2] 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.[3] Section 8106(c) will be narrowly construed as it serves as a penalty provision, which may bar an employee's entitlement to compensation based on a refusal to accept a suitable offer of employment.[4]

Section 10.517(a) of the Act's implementing regulations provides that an employee who refuses or neglects to work after suitable work has been offered or secured by the employee, has

[1] *Linda D. Guerrero*, 54 ECAB 556 (2003); *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

[2] 5 U.S.C. § 8106(c)(2); *see also Geraldine Foster*, 54 ECAB 435 (2003).

[3] *Ronald M. Jones*, 52 ECAB 190 (2000); *Arthur C. Reck*, 47 ECAB 339, 341-42 (1995).

[4] *Joan F. Burke*, 54 ECAB 406 (2003); *see Robert Dickerson*, 46 ECAB 1002 (1995).

the burden of showing that such refusal or failure to work was reasonable or justified.[5] Pursuant to section 10.516, the employee shall be provided with the opportunity to make such a showing before a determination is made with respect to termination of entitlement to compensation.[6]

ANALYSIS -- ISSUE 1

The Office terminated appellant's wage-loss compensation benefits, effective October 3, 2004, on the grounds that he refused an April 3, 2004 offer of suitable work. The Office found that the weight of the medical evidence established that the position was within his physical capabilities. This evidence consists of a February 17, 2004 medical report from Dr. Beal, an Office referral physician, who examined appellant and stated that he was capable of working a modified position four to six hours with restrictions. Dr. Obermiller, a Board-certified physical and medical rehabilitation specialist, concurred with Dr. Beal. Although Dr. Cook disagreed with the assessment of both Dr. Beal and Dr. Obermiller regarding appellant's physical condition, she offered insufficient medical rationale to explain why appellant remained totally disabled. Dr. Cook opined that a return to work would increase the probability of appellant's chronic pain which would result in a decreased ability to function in all areas of his life as well as an inability to perform even sedentary job duties. However, it is well established that a fear of future injury is not a sufficient basis on which to reject an offer of suitable work.[7]

The record reflects that the modified-duty clerk position offered to appellant on April 3, 2004 conformed to the work restrictions set by Dr. Beal. Moreover, these physical restrictions were reviewed by Dr. Obermiller, an attending physician, who stated that he agreed with the evaluation and assessment of Dr. Beal. The clear weight of the medical opinion evidence, as represented by the reports of Dr. Beal and Dr. Obermiller, establish that appellant was no longer totally disabled for work and that he had the physical capacity to perform the modified duties as listed in the April 3, 2004 job offer for five to six hours a day.

Appellant rejected the offered position on April 28, 2004, contending that it was not within his physical restrictions and that the offer was insufficiently descriptive in terms of its substance and form. He made similar assertions in a September 29, 2004 letter. However, appellant did not submit any additional medical evidence supporting his assertion that he was physically unable to perform the position. Medical progress reports received from Dr. Cook failed to explain the basis for finding that he remained totally disabled for work. Dr. Cook's medical progress reports do not address the issue of whether the offered position was within appellant's work restrictions.

Regarding appellant's assertion that the job offer did not adequately describe the proposed duties or sufficient details pertaining to the logistics of the position, the Board finds that the position description is sufficiently detailed to advise appellant of the assigned tasks and

[5] 20 C.F.R. § 10.517(a); *see Ronald M. Jones, supra* note 3.

[6] 20 C.F.R. § 10.516.

[7] *See, e.g., Antoinette Florian*, Docket No. 04-2227 (issued May 4, 2005), citing *Edward P. Carroll*, 44 ECAB 331 (1992).

where the position was located. Therefore, appellant has not established a reasonable basis for refusing the offered position.

The Office properly advised appellant in its August 20, 2004 letter that his reasons for refusing the offered position were not valid and that he must either accept the position within 15 days or face termination of his compensation benefits. However, appellant did not accept the position prior to the issuance of the September 7, 2004 decision terminating his monetary compensation benefits. As the weight of the medical evidence at the time of the September 7, 2004 decision established that appellant could perform the duties of the offered position, appellant did not offer sufficient justification for refusing the offered position. Therefore, the Board finds that the Office met its burden of proof to terminate appellant's compensation benefits effective October 3, 2004 as he refused an offer of suitable work.[8]

Following the Office's termination of compensation benefits, the burden of proof in this case shifted to appellant,[9] who requested reconsideration and argued in his letters of September 1 and 29, 2004 that he did not have a legitimate job offer identifying the specific logistics of the position such as a work location, reporting time and a duty assignment. The employing establishment specifically stated that had appellant contacted the station manager of the Chimney Corners Station listed on the job offer instead of personnel, he would have been directed to the proper channels to receive all the information regarding the position. Therefore, appellant has not established sufficient cause for refusing the offered position in this regard.

Thus, the Office's September 7, 2004 and April 26, 2005 decisions are correct under the law and facts of this case.

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of the Act[10] vests the Office with discretionary authority to determine whether it will review an award for or against compensation.[11] Thus, the Act does not entitle a claimant to a review of an Office decision as a matter of right.[12]

Section 10.608(a) of the Code of Federal Regulation provides that a timely request for reconsideration may be granted if the Office determines that the claimant has presented evidence and/or argument that meets at least one of the standards described in section 10.606(b)(2).[13] The application for reconsideration must be submitted in writing and set forth arguments and contain

[8] *Karen L. Yaeger*, 54 ECAB 323 (2003).

[9] *Talmadge Miller*, 47 ECAB 673, 679 (1996).

[10] 5 U.S.C. § 8128(a) ("the Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application").

[11] *Raj B. Thackurdeen*, 54 ECAB 396 (2003); *Veletta C. Coleman*, 48 ECAB 367, 368 (1997).

[12] 20 C.F.R. § 10.608(a).

[13] 20 C.F.R. § 10.606(b)(1)-(2); *see Sharyn D. Bannick*, 54 ECAB 537 (2003).

evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.[14]

Section 10.608(b) provides that, when a request for reconsideration is timely but fails to meet at least one of these three requirements, the Office will deny the application for reconsideration without reopening the case for a review of the merits.[15]

ANALYSIS -- ISSUE 2

In the present case, appellant did not show that the Office erroneously applied or interpreted a specific point of law; he did not advance a relevant legal argument not previously considered by the Office; and he has not submitted relevant and pertinent medical evidence not previously considered by the Office. Appellant submitted a copy of Dr. Cook's April 1, 2004 report which was of record and previously considered. Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.[16] Appellant also repeated his contentions that he never received a valid job offer. However, this is an argument appellant presented previously to the Office.

Thus, appellant's request did not contain any new and relevant evidence for the Office to review nor did it show that the Office erroneously applied or interpreted a specific point of law; or advance a relevant legal argument not previously considered by the Office. The Board finds that the Office properly refused to reopen appellant's claim for reconsideration.

CONCLUSION

The Board finds that the Office properly terminated appellant's monetary compensation benefits on the grounds that he refused an offer of suitable work. The Board also finds that the Office properly refused to reopen appellant's case for reconsideration on the merits of his claim under 5 U.S.C. § 8128(a).

[14] 20 C.F.R. § 10.608(b).

[15] *Id*.

[16] *Howard A. Williams*, 45 ECAB 853 (1994).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decisions dated May 24 and April 26, 2005, September 7, 2004 are affirmed.

Issued: January 17, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board