United States Department of Labor
Employees' Compensation Appeals Board

G.J., Appellant	)	
and	)	**Docket No. 06-442**
	)	**Issued: November 20, 2006**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Brockton, MA, Employer	)	

Appearances:
John L. Whitehouse, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 19, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' December 8, 2005 merit decision concerning the termination of her compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether the Office met its burden of proof to terminate appellant's compensation effective January 9, 2003 on the grounds that she refused an offer of suitable work.

FACTUAL HISTORY

On November 17, 1995 appellant, then a 38-year-old pharmacy technician, filed an occupational disease claim alleging that she sustained an upper extremity condition due to the

repetitive duties of her job. She stopped work on October 2, 1995.[1] The Office accepted that appellant sustained reflex sympathetic dystrophy affecting both upper extremities and paid appropriate compensation for periods of disability.

Appellant continued to be treated by attending physicians who indicated that she reported experiencing pain in her trunk and upper extremities and diagnosed reflex sympathetic dystrophy or de Quervain's syndrome. The physicians provided limited objective findings on examination and diagnostic testing.[2]

In a report dated February 23, 2000, Dr. Panos Panagakos, an attending Board-certified orthopedic surgeon, stated that appellant reported severe weakness in both hands with dysfunction, including an inability to lift or hold things. He stated that on examination appellant exhibited tenderness "everywhere" but that the temperature, skin condition and hair growth of her hands seemed "to be OK." Dr. Panagakos posited that he could not make a diagnosis of reflex sympathetic dystrophy and stated that he was unable to provide any specific diagnosis.

In a report dated July 31, 2002, Dr. Mazen Eneyni, an attending Board-certified neurologist, stated that appellant used her upper extremities to carry bags into the examination room but would not move her left arm at all once they began discussing her arms. He noted that appellant exhibited no upper extremity weakness when tested indirectly, that reflexes were all present and symmetric and that sensory examination was normal. Dr. Eneyni indicated that, although appellant reported arm tenderness, there were no skin or nail changes and that the skin on the palmar aspect of her hands was rough "as if she was gardening." He indicated that her mental status seemed to be normal apart from "appearing to be a little depressed" and diagnosed possible reflex sympathetic dystrophy.

In a form report dated September 12, 2002, Dr. Roy Freeman, an attending Board-certified neurologist, found that appellant could work for four hours per workday while sitting, walking, standing, twisting, squatting, kneeling, climbing or operating a motor vehicle for four hours per day, lifting less than five pounds for two hours per day, and pushing, pulling or reaching above her shoulders for two hours per day.[3] He determined that appellant could engage in repetitive motion of her wrists or elbows for 30 minutes per day, that she should have a 5- to 10-minute break every hour, and that she should be allowed to change her working position on a frequent basis.[4]

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[1] The Office previously accepted that appellant sustained a left wrist contusion, de Quervain's disease of the left thumb, and left wrist ganglion due to a November 1, 1988 employment injury and a left wrist sprain and left reflex sympathetic dystrophy due to her work duties in 1993.

[2] The reports occasionally indicated that appellant had swelling in her wrists.

[3] Dr. Freeman stated that appellant could not work eight hours per day due to the musculoskeletal injury to her upper extremities and wrote "unknown" in response to a question regarding how many hours per day she could work. He indicated that appellant could perform a number of tasks for four hours per day.

[4] On May 31, 2001 and May 15, 2002 Dr. Freeman had completed other form reports with similar work restrictions, although he indicated that appellant could engage in repetitive motion of her wrists or elbows for two hours per day and that she should have a five-minute break every hour.

On October 28, 2002 the employing establishment offered appellant a limited-duty position as a telephone operator. The position involved receiving and transferring incoming telephone calls for four hours per day, five days per week, a task which required limited depression of keys on a computer keyboard. The physical requirements of the position required sitting, walking and standing for up to 4 hours; reaching, including reaching above the shoulder, for up to 2 hours; twisting and operating a motor vehicle for up to 4 hours; engaging in repetitive wrist and elbow motion for up to 30 minutes; pushing and pulling for up to 2 hours; lifting less than 5 pounds; and squatting, kneeling and climbing for up to 4 hours. Appellant could take breaks for 5 to 10 minutes every hour and would be allowed to frequently change positions.

By letter dated November 5, 2002, the Office advised appellant of its determination that the position of telephone operator was suitable to her physical limitations and provided her with 30 days to accept the position or provide a valid reason for not accepting it. The Office informed appellant that the Federal Employees' Compensation Act provided that her compensation would be terminated if she refused or neglected to work after suitable work was offered to her.

Appellant submitted an October 9, 2002 report in which Dr. Gursewak S. Sandhu, an attending Board-certified orthopedic surgeon, noted a prior diagnosis of de Quervain's syndrome of the left thumb in 1989. Dr. Sandhu noted that appellant did not exhibit any swelling or redness although she complained of tenderness at the first dorsal compartment of the left wrist and at the left thumb. He stated, "It is difficult for me to elicit any significant signs to say that it is a carpometacarpal joint arthritis."

By letter dated November 7, 2002 and received November 19, 2002, appellant advised the Office that she would be accepting the telephone operator position. On December 10, 2002 the employing establishment advised the Office that appellant's starting date was December 4, 2002 but that she failed to report for work. By letter dated December 19, 2002, the Office advised appellant that she had not provided an acceptable reason for not reporting to work in the telephone operator position and informed her that she had 15 days to accept the position or risk the termination of her wage-loss benefits.

On December 26, 2002 the Office received a December 17, 2002 letter in which appellant claimed that the offered position required repetitive motion which would worsen her medical condition. She indicated that she had been experiencing panic attacks but asserted that she would be able to return to work after she had received medical treatment. The Office contacted the employing establishment on January 8, 2003 and was advised that appellant had not reported to work and that the telephone operator position continued to be available.

By decision dated January 9, 2003, the Office terminated appellant's compensation effective January 9, 2003 on the grounds that she refused an offer of suitable work.

Appellant requested a hearing before an Office hearing representative which was held on July 1, 2003. She testified that she would have attempted to perform the telephone operator position if her emotional condition had not prevented her from doing so.

Appellant contended that her panic attacks made it impossible for her to return to work in late 2002. She submitted a July 29, 2003 report in which Dr. Donald W. Steele, an attending clinical psychologist, stated that he first saw her in 1996 at which time she was "exhibiting symptoms of stress and anxiety." Dr. Steele indicated that appellant sustained pain and disability from employment-related reflex sympathetic dystrophy after experiencing several traumatic incidents within an eight-month period, including the sudden death of her husband, the death of her father, and the loss of her house, belongings and favorite dog in a fire. He stated:

> "In addition to being unable to work because of the pain, in November 1995, [appellant] began to experience intense anxiety and panic as a result of her shame that she continued to be the victim of so many bad events. However, the lack of visibility to outsiders of her severe pain caused her to fear she was being judged. She became severely anxious and developed panic attacks. The route of the panic attacks appears to be fear of being judged negatively by her coworkers.
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> "When [appellant] was instructed to report to a job in December 2002 she was immobilized by panic. This manifested itself with chest pains, shortness of breath, depression and anxiety.
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> "I believe that [appellant's] panic attacks and symptoms of anxiety are related to the reflex sympathetic dystrophy in the following way: she had a series of traumas in her life; death of her husband and father and loss of her house and dog in a fire and then the injury that caused her such tremendous pain. When she could no longer function because of the pain she became depressed and anxious. Her formerly supportive colleagues treated her with annoyance and avoidance and she began to feel highly anxious at work.
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> "I believe that the severe and chronic reflex sympathetic dystrophy pain was the final problem in a string of traumas that broke [appellant] so she began having serious doubts about herself and her relationships to her coworkers. The panic attacks made it impossible to return to work in December 2002."

Appellant also submitted a December 24, 2002 report in which Dr. Alan Rosansky, an attending Board-certified psychiatrist, stated that she reported having "increased disability anxiety attacks" related to receiving a notice to return to work. Dr. Rosansky diagnosed generalized anxiety and listed "return to work" as a stressor.

By decision dated and finalized September 29, 2003, the Office hearing representative affirmed the January 9, 2003 decision. She determined that the July 29, 2003 report of Dr. Steele was not sufficient to establish that appellant had a preexisting emotional condition which prevented her from accepting the telephone operator position. The Office hearing representative remanded the case to the Office for referral to a Board-certified psychiatrist for further evaluation of appellant's emotional condition.

In late October 2003, the Office referred appellant to Dr. Charles Morin, a Board-certified psychiatrist and neurologist. Appellant's attorney advised the Office that appellant was in a nursing home and was not able to submit to a medical examination.

Appellant's attorney submitted a February 3, 2004 report in which Dr. Steele stated that he first saw appellant in the mid 1990s and that, after a hiatus, he saw her between July 18, 2002 and August 7, 2003. She reported "intense anxiety and depression" associated with chronic and intense pain from carpal tunnel syndrome and reflex sympathetic dystrophy. Appellant reported that her panic attacks were accompanied by altered breathing, palpitations, and chest pain and that she experienced sleep disturbances. Dr. Steele stated that his diagnosis had been major depression, panic disorder with agoraphobia, and anxiety disorder and indicated that these diagnoses were based on symptoms of sadness, weepiness, isolation, chest pain, numbness/tingling, sleep disturbance and appetite loss. He noted:

> "[Appellant] was weepy at times, showed sad [e]ffect, lack of concentration. [Her] demeanor was slow and subdued. [Appellant] reported wanting to work but in addition to the pain felt panic and anxiety when approaching the [employing establishment] or even the thought of returning to the [employing establishment]. She felt somewhat angry and betrayed as well having been told that she was a burden to her department now that she was disabled and that she would be a drag on the efficiency and productivity of the unit. [Appellant] began [t]o develop anxiety disorder and agoraphobia which manifested itself in isolation and a fear of being in public places including work. [Her] pain made it difficult to do her job and the anxiety she had as a result of being misjudged by her superiors made it humiliating and unpleasant and frightening for her to reenter the workplace."
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> "[Appellant] is a patient who has suffered an accident at work which caused severe pain and disability. As a result of the physical pain she developed a sense of helplessness and sadness which led to depressive feelings. Additionally she developed anxiety and panic disorder about her abilities when she was made to feel she was no longer a productive member of her team."

The Office referred the case record to Dr. Harry L. Senger, a Board-certified psychiatrist serving as an Office medical consultant. In a report dated February 23, 2004, Dr. Senger stated that he had reviewed the relevant medical evidence including the reports of Dr. Steele. He indicated that the symptoms listed in Dr. Steele's reports supported the diagnoses of chronic major depressive disorder and anxiety disorder, not otherwise specified. Dr. Senger posited that Dr. Steele did not describe the frequency, duration and nature of appellant's panic attacks in sufficient detail to warrant the diagnosis of panic disorder. He stated that appellant's emotional condition was "not described as sufficient to support her not being able to return to the limited-duty job offer in December 2002 (beyond her becoming anxious about returning to work)."[5]

[5] Dr. Senger stated that there was insufficient data in the record to show that appellant's employment-related upper extremity condition contributed to her emotional condition.

By decision dated March 3, 2004, the Office affirmed the termination of appellant's compensation effective January 9, 2003 on the grounds that she refused an offer of suitable work.

Appellant, through her attorney, submitted a December 9, 2004 report from Dr. Steele, who stated that he had reviewed Dr. Senger's February 23, 2004 report and the Office's March 3, 2004 decision. He reviewed the notes of his sessions with appellant and found descriptions of symptoms of panic attacks to include chest pain, dizziness, loss of breath, hyperventilation, loss of focus, inability to drive, inability to go into work, and feeling out of control. Dr. Steele indicated that appellant's panic attacks were triggered by thoughts of going to work and caused her to avoid work and isolate herself in a trailer park. He noted that review of appellant's treatment notes showed that she related her problems to a perception that coworkers were "angry and avoidant of her due to her reflex sympathetic dystrophy" and the statements of a supervisor who told her that it was "two strikes against him" to have her and another problem employee. Appellant related that, although her husband was an alcoholic, she was happy with him and was active in dog raising and softball when he was alive. Dr. Steele posited that appellant was suffering from panic disorder or post-traumatic stress symptoms due to how she was treated at work when she developed reflex sympathetic dystrophy.[6]

By decision dated and finalized March 17, 2005, an Office hearing representative affirmed the March 3, 2004 decision.

Appellant appealed her case to the Board. In an order remanding case dated September 6, 2005, the Board returned the case to the Office for reconstruction and proper assemblage of the case record, to be followed by issuance of an appropriate decision preserving appellant's appeal rights.

By decision dated December 8, 2005, the Office affirmed the termination of appellant's wage-loss compensation effective January 9, 2003 on the grounds that she refused an offer of suitable work.

LEGAL PRECEDENT

Section 8106(c)(2) of the Act provides in pertinent part, "A partially disabled employee who ... (2) refuses or neglects to work after suitable work is offered ... is not entitled to compensation."[7] However, to justify such termination, the Office must show that the work offered was suitable.[8] An employee who refuses or neglects to work after suitable work has been offered to her has the burden of showing that such refusal to work was justified.[9]

[6] Appellant's attorney also resubmitted copies of previously submitted medical reports.

[7] 5 U.S.C. § 8106(c)(2).

[8] *David P. Camacho*, 40 ECAB 267, 275 (1988); *Harry B. Topping, Jr.*, 33 ECAB 341, 345 (1981).

[9] 20 C.F.R. § 10.124; *see Catherine G. Hammond*, 41 ECAB 375, 385 (1990).

ANALYSIS

The Office accepted that appellant sustained reflex sympathetic dystrophy affecting both upper extremities and paid appropriate compensation for periods of disability. In October 2002, the employing establishment offered appellant a limited-duty position as a telephone operator. The position involved receiving and transferring incoming telephone calls for four hours per day, five days per week, a task which required limited depression of keys on a computer keyboard.[10]

The Board finds that the evidence of record establishes that appellant was capable of performing the telephone operator position offered by the employing establishment in October 2002. The position was determined to be suitable by the Office in November 2002. The record does not reveal that the telephone operator position was temporary or seasonal in nature.[11]

The Office properly based its determination that the telephone operator position was suitable on the opinion of Dr. Freeman, an attending Board-certified neurologist. In a form report dated September 12, 2002, Dr. Freeman determined that appellant could work for four hours per workday while sitting, walking, standing, twisting, squatting, kneeling, climbing or operating a motor vehicle for four hours per day, lifting less than five pounds for two hours per day, and pushing, pulling, or reaching above her shoulders for two hours per day. He indicated that appellant could engage in repetitive motion of her wrists or elbows for 30 minutes per day, that she should have a 5- to 10-minute break every hour, and that she should be allowed to change her working position on a frequent basis.[12]

The medical opinion of Dr. Freeman establishes that appellant was capable of performing the limited duties of the telephone operator position offered by the employing establishment in October 2002. The work restrictions recommended by Dr. Freeman were within the physical requirements of the telephone operator position. The record does not contain any medical evidence from around the time the position was offered to appellant showing that she was unable to perform the duties of the position.[13]

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[10] The physical requirements of the position required sitting, walking and standing for up to 4 hours; reaching, including reaching above the shoulder, for up to 2 hours; twisting and operating a motor vehicle for up to 4 hours; engaging in repetitive wrist and elbow motion for up to 30 minutes; pushing and pulling for up to 2 hours; lifting less than 5 pounds; and squatting, kneeling and climbing for up to 4 hours. Appellant could take breaks for 5 to 10 minutes every hour and would be allowed to frequently change positions.

[11] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.4b (July 1997). The Board notes that here is no indication that appellant was not vocationally able to perform the telephone operator position.

[12] On May 31, 2001 and May 15, 2002 Dr. Freeman had completed other form reports with similar work restrictions.

[13] The medical reports from 2002 show extremely limited objective findings on examination. For example, in a July 31, 2002 report, Dr. Eneyni, an attending Board-certified neurologist, stated that appellant exhibited no upper extremity weakness when tested indirectly, that reflexes were all present and symmetric, and that sensory examination was normal. He indicated that although appellant reported arm tenderness, there were no skin or nail changes and that the skin on the palmar aspect of her hands was rough "as if she was gardening."

As noted above, once the Office has established that a particular position is suitable, an employee who refuses or neglects to work after suitable work has been offered to her has the burden of showing that such refusal to work was justified. Appellant argued that the telephone operator position required repetitive upper extremity motion which she was not capable of performing and that her emotional condition, which caused her to experience panic attacks, prevented her from returning to work. The Board has carefully reviewed the evidence and argument submitted by appellant in support of her refusal of the telephone operator position. Appellant's contentions do not justify her refusal of the position.[14]

Appellant submitted an October 9, 2002 report in which Dr. Sandhu, an attending Board-certified orthopedic surgeon, discussed her upper extremity condition. Dr. Sandhu did not provide any indication that appellant had work restrictions that would prevent her from performing the telephone operator position.[15]

Prior to the January 9, 2003 termination of her compensation, the only medical report of record which mentioned appellant's emotional state was a July 31, 2002 report in which Dr. Eneyni indicated that her mental status seemed to be normal apart from "appearing to be a little depressed." The record did not contain any report which provided a clear opinion that appellant had a preexisting emotional condition which prevented her from performing the limited duties of the telephone operator position.

After the January 9, 2003 termination of appellant's compensation, she submitted several reports in which Dr. Steele, an attending clinical psychologist, argued that she was unable to return to any form of work in late 2002. These reports, however, are of limited probative value on the relevant issue of the present case in that Dr. Steele did not provide adequate medical rationale in support of his conclusions.[16]

In a July 29, 2003 report, Dr. Steele stated that he first saw appellant in 1996 at which time she was "exhibiting symptoms of stress and anxiety." He indicated that beginning in November 1995, in addition to experiencing pain from employment-related reflex sympathetic dystrophy, appellant began to experience intense anxiety and panic as a result of her shame from experiencing bad events in her personal life, including the death of her husband and father, and from the perception that her supervisors and coworkers judged her because they did not think that her physical injury was serious. Dr. Steele indicated that when appellant was instructed to return to work in late 2002 she was "immobilized by panic" which manifested itself with chest

[14] In November 2002, appellant advised the Office that she had told an attorney from the employing establishment that she would be accepting the telephone operator position, but there is no clear indication in the record that she formally accepted the position. She never returned to work for the employing establishment.

[15] Dr. Sandhu noted that appellant did not exhibit any swelling or redness although she complained of tenderness at the first dorsal compartment of the left wrist and at the left thumb. He stated, "It is difficult for me to elicit any significant signs to say that it is a carpometacarpal joint arthritis."

[16] *See Leon Harris Ford,* 31 ECAB 514, 518 (1980) (finding that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

pains, shortness of breath, depression and anxiety and stated that her panic attacks made it impossible for her return to work at that time.

The Board notes that Dr. Steele did not adequately describe appellant's emotional condition at the time that the telephone operator position was offered to her in October 2002. He suggested that appellant had panic attacks in late 2002 which prevented her from returning to work, but he did not provide adequate detail regarding the nature, frequency, and duration of such attacks. Dr. Steele indicated that he treated appellant in late 2002 but did not provide any specific clinical findings of her panic attacks during this period. In fact, the record does not contain any medical report from late 2002, whether from Dr. Steele or any other physician, which addresses appellant's emotional condition during that period. Dr. Steele did not adequately explain how appellant's emotional condition would have made it impossible for her return to the limited duties of the telephone operator position in late 2002.

In a February 3, 2004 report, Dr. Steele stated that when he first saw appellant in the mid 1990s she reported "intense anxiety and depression" associated with chronic and intense pain from carpal tunnel syndrome and reflex sympathetic dystrophy. He indicated that appellant reported that her panic attacks were accompanied by altered breathing, palpitations, and chest pain and that she experienced sleep disturbances. Dr. Steele noted, "She reported wanting to work but in addition to the pain felt panic and anxiety when approaching the [employing establishment] or even the thought of returning to the [employing establishment]…. [Appellant's] pain made it difficult to do her job and the anxiety she had as a result of being misjudged by her superiors made it humiliating and unpleasant and frightening for her to reenter the workplace." In a December 9, 2004 report, he stated that he had reviewed the notes of his sessions with appellant and found descriptions of symptoms of panic attacks to include chest pain, dizziness, loss of breath, hyperventilation, loss of focus, inability to drive, inability to go into work and feeling out of control.

While these additional reports of Dr. Steele provide some further description of the symptoms which accompanied appellant's panic attacks, he still did not provide adequate description of the nature, frequency and duration of her panic attacks. Given the vague nature of his description of appellant's panic attacks it is not always clear what specific period of attacks he is describing. Dr. Steele noted that he made reference to his own clinical reports, presumably from late 2002, but he did not provide any significant description of the contents of these reports. The medical record does not contain any report which clearly explains how appellant's medical condition in late 2002 prevented her from returning to work in the telephone operator position offered by the employing establishment.[17]

[17] Appellant also submitted a December 24, 2002 report in which Dr. Alan Rosansky, an attending Board-certified psychiatrist, stated that she reported having "increased disability anxiety attacks" related to receiving a notice to return to work. Dr. Rosansky diagnosed generalized anxiety and listed "return to work" as a stressor. Dr. Rosansky did not, however, provide a clear opinion that appellant could not perform the telephone operator position in late 2002.

For these reasons, the Office properly terminated appellant compensation effective January 9, 2003 on the grounds that she refused an offer of suitable work.[18]

CONCLUSION

The Board finds that the Office properly terminated appellant's compensation effective January 9, 2003 on the grounds that she refused an offer of suitable work.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' December 8, 2005 decision is affirmed.

Issued: November 20, 2006
Washington, DC

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

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

[18] The Board notes that the Office complied with its procedural requirements prior to terminating appellant's compensation, including providing appellant with an opportunity to accept the telephone operator position after informing him that her reasons for initially refusing the position were not valid; *see generally Maggie L. Moore*, 42 ECAB 484 (1991), *reaff'd on recon.*, 43 ECAB 818 (1992).