

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

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V.B., Appellant )

and )

U.S. POSTAL SERVICE, POST OFFICE, )  
Alexandria, LA, Employer )

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**Docket No. 07-1755  
Issued: June 12, 2008**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On June 20, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' March 14, 2007 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 properly terminated appellant's compensation effective October 29, 2005 on the grounds that she refused an offer of suitable work.

**FACTUAL HISTORY**

In late 1987 the Office accepted that appellant, then a 40-year-old distribution clerk, sustained bilateral shoulder tendinitis secondary to impingement syndrome and bilateral rotator cuff tears due to her repetitive job duties. Appellant underwent a left rotator cuff repair on January 29, 1988 and a right rotator cuff repair on July 18, 1997. Both procedures were authorized by the Office. Appellant retired from the employing establishment effective

June 1989 and worked in private employment for more than 10 years. The Office received a new claim from appellant for wage loss in late 2003. After developing the medical evidence establishing employment-related disability, it paid compensation for continued wage loss.

On June 18, 2004 Dr. Christopher K. Hull, an attending Board-certified orthopedic surgeon, performed a left rotator cuff repair with subacromial decompression. On December 15, 2004 he indicated that appellant could not tolerate any work duties that required raising her arms above her waist.

On May 25, 2005 Dr. Hull indicated that appellant had reached maximum medical improvement by May 4, 2005 with respect to her upper extremity conditions. He stated that appellant could work eight hours per day with restrictions including lifting up to 20 pounds, performing normal hand functions up to three hours per day, sitting up to four hours, standing up to two hours, walking up to two hours, and performing repetitive activities for up to one hour. Dr. Hull indicated that appellant could not work in cold weather and stated that she could not squat, bend, kneel, twist, climb or reach above her shoulder.

On August 25, 2005 the employing establishment offered appellant a modified full-time job as a mail processing clerk in Alexandria, LA. The position involved such duties as sorting mail weighing no more than 20 pounds for up to one hour per day, keying mail for two to four hours per day and answering telephones and stamping mail for two to four hours per day. The job did not require appellant to lift more than 20 pounds, perform normal hand functions more than three hours per day, sit more than four hours, stand more than two hours, walk more than two hours, or perform intermittent repetitive activities more than one hour. The position description specifically prohibited appellant from reaching above her shoulders.

On August 29, 2005 appellant indicated that she was not accepting or rejecting the offered position. She stated that she had been on disability retirement since 1989. Appellant noted that she lived in Arlington, TX, and did not wish to move back to Alexandria, LA.

In a September 9, 2005 letter, the Office advised appellant of its determination that the mail processing clerk position offered by the employing establishment was suitable. It advised appellant that her compensation would be terminated if she did not accept the position or provide good cause for not doing so within 30 days from the date of the letter. In an October 11, 2005 letter, an employing establishment official stated that the employing establishment attempted to look for work in appellant's current area of residence in Texas, but was unable to find appropriate work.

In an October 25, 2005 letter, the Office advised appellant that she had not shown good cause for not accepting the mail processing clerk position. It advised appellant that her compensation would be terminated if she did not accept the position within 15 days from the date of the letter. Appellant submitted a November 2, 2005 report in which Dr. Hull discussed the performance of a functional capacity assessment.

In a November 10, 2005 decision, the Office terminated appellant's compensation effective October 29, 2005 on the grounds that she refused an offer of suitable work. It indicated that appellant had not shown good cause for not accepting the suitable work offered to her.

Appellant requested a hearing before an Office hearing representative. She submitted statements in which she argued that Dr. Hull felt she was not ready to return to work. Appellant repeated her claims that her residence in Texas prevented her from accepting the position. At the January 25, 2007 hearing, she provided similar arguments. Appellant also submitted medical reports detailing her medical treatment between March 2006 and January 2007. In a March 14, 2007 decision, the Office hearing representative affirmed the November 10, 2005 decision.

### **LEGAL PRECEDENT**

Section 8106(c)(2) of the Federal Employees' Compensation 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."<sup>1</sup> However, to justify such termination, the Office must show that the work offered was suitable.<sup>2</sup> 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.<sup>3</sup> If possible, the employer should offer suitable reemployment in the location where the employee currently resides. If this is not practical, the employer may offer suitable reemployment at the employee's former duty station or other location.<sup>4</sup>

### **ANALYSIS**

The Office accepted that appellant sustained bilateral shoulder tendinitis secondary to impingement syndrome and bilateral rotator cuff tears due to her repetitive job duties and paid her compensation for periods of disability. It terminated appellant's compensation effective October 29, 2005 on the grounds that she refused an offer of suitable work.

The evidence of record shows that appellant was capable of performing the mail processing clerk position offered by the employing establishment in August 2005 and determined to be suitable by the Office in September 2005. The position involved such duties as sorting mail weighing no more than 20 pounds, keying mail, answering telephones and stamping mail. The job did not require appellant to lift more than 20 pounds, perform normal hand functions more than three hours per day, sit more than four hours, stand more than two hours, walk more than two hours or perform intermittent repetitive activities more than one hour. The position description specifically prohibited appellant from reaching above her shoulders. The record does not reveal that the position was temporary or seasonal in nature.<sup>5</sup>

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<sup>1</sup> 5 U.S.C. § 8106(c)(2).

<sup>2</sup> *David P. Camacho*, 40 ECAB 267, 275 (1988); *Harry B. Topping, Jr.*, 33 ECAB 341, 345 (1981).

<sup>3</sup> 20 C.F.R. § 10.124; *See Catherine G. Hammond*, 41 ECAB 375, 385 (1990).

<sup>4</sup> 20 C.F.R. § 10.508.

<sup>5</sup> *See* Federal (FECA) Procedure Manual, Part 2 -- Claim, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.4b (July 1997).

In determining that appellant was physically capable of performing the mail processing clerk position, the Office properly relied on the May 25, 2005 opinion of Dr. Hull, an attending Board-certified orthopedic surgeon. On May 25, 2005 Dr. Hull indicated that appellant had reached maximum medical improvement by May 4, 2005 with respect to her upper extremity conditions. The work restrictions provided by Dr. Hull would allow her to perform the duties of the offered position. Dr. Hull indicated that appellant could not work in cold weather and stated that she could not squat, bend, kneel, twist or climb, but there is no indication that the mail processing clerk position would require such duties.<sup>6</sup> The Board finds that the mail processing clerk position offered by the employing establishment is suitable. As noted, 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. The Board has carefully reviewed the evidence and argument submitted by appellant in support of her refusal of the offered position and notes that it is not sufficient to justify her refusal of the position. Appellant submitted a November 2, 2005 report in which Dr. Hull discussed the performance of a functional capacity assessment, but this report does not provide an opinion that appellant could not perform the mail processing clerk position when it was offered in August 2005. She also submitted medical reports detailing her medical treatment between March 2006 and January 2007, but these reports also do not provide an opinion regarding her ability to work when the position was offered.

For these reasons, the Office properly terminated appellant's compensation effective October 29, 2005 on the grounds that she refused an offer of suitable work.<sup>7</sup>

### CONCLUSION

The Board finds that the Office properly terminated appellant's compensation effective October 29, 2005 on the grounds that she refused an offer of suitable work.

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<sup>6</sup> Appellant argued that the offered position was not suitable because she lived in Arlington, TX and should have been offered a position in her former duty station, Alexandria, LA. However, the employing establishment satisfied the requirements of 20 C.F.R. § 10.508 because it made an attempt to find work in appellant's area of residence, although ultimately that attempt proved unsuccessful. *See supra* note 4 and accompanying text.

<sup>7</sup> 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 offered position after informing her that she had not given a valid reason for not accepting the position; *see generally Maggie L. Moore*, 42 ECAB 484 (1991); *reaff'd on recon.*, 43 ECAB 818 (1992).

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' March 14, 2007 decision is affirmed.

Issued: June 12, 2008  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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

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