

appellant's right upper extremity use to handwriting for four weeks. Appellant sustained a nonemployment-related left leg fracture in August 2008. Dr. Townsend released her to return to modified work with no repetitive overhead activities and no lifting over 10 pounds on August 18, 2008. In a note dated October 27, 2008, he found that appellant was medically stationary and that she was restricted to no repetitive overhead activities and 15 pounds lifting limit.

The employing establishment offered appellant a light-duty position on November 7, 2008 with physical requirements of driving and walking, light lifting under 15 pounds, light pulling and pushing and dismount delivery. On November 24, 2008 Dr. Townsend reviewed the job offer and found it suitable. In a letter dated December 5, 2008, the Office informed appellant that the offered position was suitable to her physical limitations and allowed her 30 days to accept the position or provide her reasons for refusal.

Appellant submitted a note dated December 18, 2008 from Dr. Townsend stating that she was unable to perform the duties of mail truck driving due to the "repetitive activities of opening and closing doors of the mail truck." Dr. Townsend repeated this statement in a separate note of the same date.

In a letter dated January 16, 2009, the Office informed appellant that Dr. Townsend's restriction, based on her complaint of pain, was not supported by medical reasoning. It allowed her an additional 15 days to accept the offered position. Appellant did not return to work.

By decision dated February 5, 2009, the Office terminated appellant's wage-loss and schedule award benefits based on her refusal of suitable work.

Dr. Townsend completed a note on February 9, 2009 and stated that appellant reported continued pain in her right shoulder with repetitive activities such as opening the door on her mail truck. He found less than full strength on manual muscle testing of the supraspinatus muscle and limited her reaching to three hours a day and pushing, pulling and lifting to 15 pounds. Dr. Townsend stated that these restrictions were permanent. He provided a work capacity evaluation dated February 9, 2009.

Appellant requested reconsideration. In a note dated July 2, 2009, Dr. Townsend provided restrictions of no overhead activities, no lifting over five pounds and advised that she was unable to move the sliding door on mail vehicles. He stated that appellant was suited for a desk or office job.

The employing establishment noted the force required for closing the rear cargo door was up to 17 pounds of force, the vehicle cargo door required up to 9 pounds of force, the driver door required up to 14 pounds of force and the shelf door required up to 15 pounds of force. The employer discussed this with appellant and offered to allow her to deliver mail using a different vehicle. The employing establishment also stated that the mail could be staged in the vehicle so that use of the rear door was not needed.

By decision dated November 2, 2009, the Office denied modification of the February 5, 2009 termination decision.

Appellant requested reconsideration on December 30, 2009. On December 14, 2009 Dr. Townsend stated that he reviewed the position description of letter carrier offered by the employing establishment on November 24, 2008 and that it did not include the need to open and close the door on the delivery vehicles. He subsequently amended his work restrictions to avoid repetitive activities of opening and closing the vehicle door. Dr. Townsend did not find the modified assignment suitable, as appellant was required to repetitively open and close the door. He stated, "These are not additional work restrictions but part of the original restrictions that I would have included had I been aware of them." Dr. Townsend noted that appellant continued to exhibit pain and weakness with positive impingement signs.

In a letter dated February 5, 2010, the Office requested that Dr. Townsend further address why appellant could not use her left arm to open the mail truck. Dr. Townsend responded on February 15, 2010. He stated that appellant could use her right arm for opening and closing the mail truck, but that he continued to restrict repetitive reaching out in front of her body or overhead activities with her right shoulder due to persistent impingement signs and weakness in the supraspinatus muscle.

By decision dated March 5, 2010, the Office denied modification of its prior decisions.

LEGAL PRECEDENT

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 it in this case terminated appellant's compensation under 5 U.S.C. § 8106(c),² it must establish that she refused an offer of suitable work. Section 8106(c) of the Federal Employees' Compensation Act³ 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. The Office's regulations provide that 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 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.⁴

ANALYSIS

On October 27, 2008 appellant's attending physician, Dr. Townsend, found that appellant was capable of returning to work with restrictions of no repetitive overhead activities and 15 pounds lifting limit. The employing establishment offered her a limited-duty position with duties within these restrictions. On November 24, 2008 Dr. Townsend reviewed the position and indicated with a checkmark that he found it suitable. The Office issued a letter allowing

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

² 5 U.S.C. §§ 8101-8193, 8106(c).

³ *Id.* at § 8106(c)(2).

⁴ 20 C.F.R. § 10.516.

appellant 30 days to accept the position or offer her reasons for refusal. Dr. Townsend then submitted a report dated December 18, 2008 stating that she was unable to perform the duties of mail truck driving due to the “repetitive activities of opening and closing doors of the mail truck.”

The Board finds that the Office improperly terminated appellant’s compensation benefits. The only medical evidence in the record establishing that the offered position was suitable is Dr. Townsend’s November 24, 2008 note. Dr. Townsend indicated with a checkmark that the offered position was suitable. After discussing the position with appellant, he determined that the position required additional unlisted repetitive activities of opening and closing the mail vehicle doors such that the position was beyond her work abilities. There was no other medical opinion evidence supporting appellant’s ability to perform the offered position. Once Dr. Townsend withdrew his agreement that the position was suitable, based on his determination that additional physical activities were required there was no medical evidence supporting the Office’s determination that the position was suitable work. The Office did not conduct any further investigating or development or seek additional medical opinion regarding the implicit duties of the position and whether the requirement of opening and closing the vehicle door was within appellant’s work abilities such that the offered position was suitable work. It did not provide any additional information from the employing establishment to Dr. Townsend in order to clarify his opinion. The Office has the burden of establishing that the offered position is suitable prior to terminating compensation benefits. In this case, it did not undertake the necessary development to make a suitable work determination prior to terminating appellant’s compensation benefits. For this reason, the Office failed to meet its burden of proof and the Board finds that termination must be reversed.

CONCLUSION

The Board finds that the Office failed to meet its burden of proof to terminate appellant’s compensation benefits on the grounds that she refused an offer of suitable work.

ORDER

IT IS HEREBY ORDERED THAT March 5, 2010 and November 2, 2009 decisions of the Office of Workers' Compensation Programs are reversed.

Issued: December 8, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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