United States Department of Labor
Employees' Compensation Appeals Board

J.C., Appellant	)	
and	)	**Docket No. 13-1980**
	)	**Issued: March 19, 2014**
U.S. POSTAL SERVICE, POST OFFICE, Fort Worth, TX, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 28, 2013 appellant, through his attorney, filed a timely appeal of a July 3, 2013 Office of Workers' Compensation Programs' (OWCP) merit decision terminating compensation benefits for refusing suitable work. Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

ISSUE

The issue is whether OWCP met its burden of proof to terminate appellant's compensation benefits on the grounds that he refused an offer of suitable work.

On appeal appellant's counsel argues that the July 3, 2013 OWCP decision was contrary to fact and law.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On November 20, 2009 appellant, then a 56-year-old mail processing clerk, alleged that he sustained a right knee injury on that date standing in the performance of duty. OWCP accepted appellant's claim for sprain of the right medial collateral ligament and tear of the medial meniscus of the right knee. Appellant underwent right knee arthroscopic medial and lateral partial meniscectomies on November 3, 2011.

In a report dated May 29, 2012, Dr. John W. Ellis, a Board-certified family practitioner, provided appellant's work restrictions. He indicated that appellant could work eight hours a day with restrictions. Appellant could walk and stand for one hour each. He could lift in eight hours 25 pounds continuously and 35 pounds intermittently. Appellant could not squat, kneel or climb.

On July 18, 2012 the employing establishment offered appellant a permanent mail processing clerk position effective September 5, 2012 working from 4:30 p.m. to 1:00 a.m. The position required that appellant lift 25 pounds continuously and 35 pounds intermittently for three hours, sit for seven hours and walk and stand for one hour each. In letters dated July 24, August 24 and September 5, 2012, Denise Heard, health and resource management specialist (A), directed appellant to report to work and to contact her if he had any questions.

In a letter dated November 6, 2012, OWCP stated that the offered position of modified mail processing clerk dated September 5, 2012 was suitable work as it complied with appellant's medical limitations. It informed appellant of his obligations under 5 U.S.C. § 8106(c) to accept the position and arrange for a report date within 30 days of the letter or to provide a written explanation of his reasons for refusal within 30 days.

On November 16, 2012 appellant argued that the offered position was not suitable as it was not for a permanent position but rather one that could be eliminated at any time. He alleged that as a make work job the offered position would not qualify as a suitable work position.

In a letter dated December 13, 2012, OWCP noted appellant's refusal to accept the offered position of September 5, 2012. It stated that his reasons for refusing the position were not valid. OWCP allowed appellant a period of 15 days to accept and make arrangements to return to the suitable work position. It informed him that if he had not accepted the position and arranged for a report date within 15 days of the date of letter his entitlement to wage-loss and schedule award benefits would be terminated.

On December 27, 2012 appellant signed and accepted the limited-duty position. The employing establishment e-mailed OWCP on January 7, 2013 and stated that appellant had not returned to duty. OWCP received confirmation that the position was still available on January 9, 2013.

In a letter dated January 7, 2013, counsel stated that appellant had accepted the job offer on December 27, 2012 and had written the employing establishment asking when and where to report to work.

By decision dated January 11, 2013, OWCP terminated appellant's wage-loss and schedule award compensation benefits effective January 13, 2013 on the grounds that he refused

an offer of suitable work. Counsel requested, before an OWCP hearing representative, an oral hearing on January 18, 2013.

Appellant testified at the oral hearing on April 16, 2013. He stated that he accepted the offered position on December 27, 2012. Appellant stated that he had not received a response from the employing establishment. He did not report to work. Appellant stated that there were many changes at the employing establishment and he was not sure of where and to whom he was to report. Counsel argued that, under a grammatical construction of the 15-day letter provided by OWCP, appellant was only required to accept the position. He argued that the position offered appellant was specially created for him as a rehabilitation employee rather than a bid position and that a rehabilitation job can never be suitable work. Appellant stated that the offered position was limited duty, a temporary position which could be withdrawn at any time.

By decision dated July 3, 2013, the hearing representative affirmed OWCP's January 11, 2012 decision terminating appellant's wage-loss and schedule award compensation benefits on the grounds that he refused suitable work. The hearing representative found that although appellant testified that he accepted the offered position, he did not report to work.

LEGAL PRECEDENT

It is well settled that once OWCP accepts a claim, it has the burden of justifying termination or modification of compensation benefits.[2] As OWCP in this case terminated appellant's compensation under 5 U.S.C. § 8106(c), it must establish that appellant refused an offer of suitable work. Section 8106(c) of FECA[3] 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. Section 10.517 of the applicable regulations[4] provide 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, OWCP must show that the work offered was suitable and must inform appellant of the consequences of refusal to accept such employment.[5]

In determining what constitutes suitable work for a particular disabled employee, OWCP considers the employee's current physical limitations, whether the work is available within the employee's demonstrated commuting area and the employee's qualifications to perform such work.[6] OWCP procedures state that acceptable reasons for refusing an offered position include

[2] *Mohamed Yunis,* 42 ECAB 325, 334 (1991).

[3] 5 U.S.C. § 8106(c)(2).

[4] 20 C.F.R. § 10.517(a).

[5] *Arthur C. Reck,* 47 ECAB 339, 341-42 (1995).

[6] 20 C.F.R. § 10.500(b).

withdrawal of the offer or medical evidence of inability to do the work or travel to the job.[7] Its procedures require that consideration be given to the kind of appointment in determining whether an offered position is suitable. For example, a written offer of modified duty will generally be considered unsuitable if the position is temporary and the claimant did not hold a temporary position at the time of the injury.[8]

ANALYSIS

To justify termination of compensation, OWCP, must show that the work offered was suitable. The Board finds that it properly terminated appellant's compensation on the grounds that he refused suitable work under 5 U.S.C. § 8106(c)(2).

Appellant's attending physician, Dr. Ellis, indicated that appellant could work eight hours a day with restrictions including walking and standing for one hour each. Appellant could lift in eight hours 25 pounds continuously and 35 pounds intermittently. He could not squat, kneel or climb. The permanent mail processing clerk position offered by the employing establishment required that appellant lift 25 pounds continuously and 35 pounds intermittently for three hours, sit for seven hours and walk and stand for one hour each. The Board finds that the offered modified mail processing clerk position was within appellant's physical limitations. The Board further notes that OWCP complied with its procedural requirements in advising appellant that the position was found suitable, providing him with the opportunity to accept the position or provide his reasons for refusing the job offer and notifying him of the penalty provision of section 8106(c).[9] There is no dispute that appellant meets the qualifications of the position and the offered job is located at the same facility as appellant's date-of-injury job.

Appellant argued that he had accepted the position, but had not returned to work because the employing establishment had not provided the necessary details of where at the employing establishment and to whom to report. The Board notes that the employing establishment provided appellant with the location, the time and the schedule for the offered position. The employing establishment also contacted appellant by letter on three occasions and provided him with additional contact information. The Board finds that appellant failed to provide an acceptable reason for neglecting to work in the suitable work position.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

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[7] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Job Offers and Return to Work*, Chapter 2.814.5a (June 2013); *see E.B.*, Docket No. 13-319 (issued May 14, 2013).

[8] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Job Offers and Return to Work*, Chapters 2.814.4, 2.814.9 (June 2013). *C.L.,* Docket No. 12-1610 (issued May 9, 2013).

[9] *See Bruce Sanborn*, 49 ECAB 176 (1997).

CONCLUSION

The Board finds that OWCP met its burden of proof to terminate appellant's compensation benefits effective January 13, 2013 on the grounds that he refused a suitable work position.

ORDER

IT IS HEREBY ORDERED THAT the July 3, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 19, 2014
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

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

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