United States Department of Labor
Employees' Compensation Appeals Board

CAROLYN B. STOKES, Appellant	)	
and	)	**Docket No. 06-760**
U.S. POSTAL SERVICE, POST OFFICE, Theodore, AL, Employer	)	**Issued: July 18, 2006**

Appearances:
Jeffrey N. Gale, Esq., for the appellant
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 February 13, 2006 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated November 16, 2005 terminating her compensation for refusal of suitable work. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether the Office properly terminated compensation benefits under 5 U.S.C. § 8106(c) on the grounds that appellant refused an offer of suitable work.

FACTUAL HISTORY

On October 30, 2000 appellant, then a 54-year-old rural letter carrier, filed a traumatic injury claim alleging that on October 28, 2000 her postal delivery vehicle was struck by another motor vehicle and she sustained an injury to her neck. The Office accepted her claim for neck sprain/strain. Appellant returned to light duty on a full-time basis on February 20, 2001 which

was reduced to part time on July 16, 2001. She stopped work on July 30, 2001 and has not returned. Appellant retired on disability in February 2002.

In a report dated August 7, 2001, Dr. William Shepherd Fleet, a treating physician Board-certified in psychiatry and neurology, stated that appellant's cervical sprain was unresolved and her preexisting cervical degenerative disc disease may have been aggravated permanently by the October 28, 2000 work-related injury. He added that appellant would not be medically released for light duty until at least a year from the date of injury and would probably not return to full duty. On October 16, 2001 the Office placed her on the periodic rolls.

On May 22, 2003 the Office referred appellant to Dr. Raymond Fletcher, a Board-certified orthopedic surgeon, for a second opinion. In a report dated June 11, 2003, he determined that she had residuals of the October 28, 2000 cervical sprain, bilateral trapezius muscle strain and permanent aggravation of cervical spondylosis. Dr. Fletcher stated that appellant could work up to 4 hours daily in a sedentary position with a lifting maximum of 10 pounds intermittently. He restricted her from any climbing. In a work capacity evaluation that date, Dr. Fletcher released appellant to return to restricted work up to four hours daily and stated that she had reached maximum medical improvement on that date.

The Office found a conflict in medical opinion between Dr. Fleet and Dr. Fletcher as to the nature and extent of appellant's disability for work.

On August 25, 2003 the Office referred appellant to Dr. William A. Crotwell, III, a Board-certified orthopedic surgeon, for an impartial medical examination. In a report dated October 2, 2003, he reviewed her history and opined that her cervical strain had resolved. Dr. Crotwell stated that appellant had a chronic cervical degenerative disc disease with some pain and spurring. He added that she had no radiculopathy and that there was no need for surgical intervention. Dr. Crotwell stated that appellant could return to work for 4 hours a day with a lifting limit of 10 pounds and no ladder climbing. In a supplemental report dated November 24, 2003, he stated that she could start working four hours daily and increase her hours of work to six hours a day, with restrictions, in about four to six weeks.[1]

On December 11, 2003 the employing establishment offered appellant a job as a modified sales & service /distribution associate in Theodore, Alabama, with restrictions consistent with those recommended by Dr. Crotwell.

In a letter dated January 3, 2004 and received by the Office on January 9, 2004, appellant advised the Office that she was in the process of relocating to Detroit, Michigan, but that the Office could write to her at her Alabama address as her son was handling her mail until she had a permanent address in Michigan.

On January 6, 2003 the Office's rehabilitation specialist noted that the job offer was unclear with respect to the amount of sitting, walking and standing that would be required of

[1] The Office, in a November 13, 2003 letter, asked Dr. Crotwell to clarify the number of hours that appellant could work.

appellant. Since Dr. Crotwell had recommended a mostly sedentary position, the rehabilitation specialist advised that the employing establishment clarify that its job offer was mostly sedentary.

In a letter dated January 8, 2004 and mailed to appellant's Alabama address, the employing establishment clarified that she would be expected to stand no more than one hour a day and walk no more than two hours a day in her modified position consistent with medical restrictions.

In a report dated December 16, 2003 and received by the Office on January 21, 2004, the vocational rehabilitation counselor stated that appellant advised him on January 5, 2004 that she was relocating to Detroit, Michigan on January 9, 2004.[2]

On January 8, 2004 the employing establishment sent appellant a modified limited-duty job offer. On January 23, 2004 the employing establishment advised the Office that it had provided her with a modified job offer on December 11, 2003 and asked the Office to review it for suitability.

On January 23, 2004 Dr. Fleet requested authorization for diagnostic testing. In a report dated December 23, 2003, he stated that appellant's cervical degenerative disc disease may have been permanently aggravated by her work-related injury of October 28, 2000. Dr. Fleet listed restrictions of no overhead work and no casing mail, no lifting over 15 pounds and limited neck movement, as well as turning, tilting and twisting. He opined that her ruptured disc in her back at L5-S1 was either exacerbated or caused by her work injury.

By letter dated February 9, 2004 and mailed to appellant's Alabama address, the Office notified her that the employing establishment's offer of work as a modified sales and service/distribution associate in Theodore, Alabama, was suitable to her work capabilities. The Office advised that a partially disabled employee who refused suitable work was not entitled to compensation and that she had 30 days either to accept the offer or to provide an explanation of the reasons for refusing it.

By letter dated March 8, 2004, appellant informed the Office that she had received the February 9, 2004 letter on March 5, 2004 as she had moved to Michigan. She stated that she had informed the Office on January 5, 2004 that she had relocated to Michigan and, therefore, was unable to accept the modified job offer.[3]

On March 9, 2004 the employing establishment sent appellant a copy of the January 11, 2004 job offer to her Michigan address.

On March 10, 2004 the employing establishment advised the Office that appellant was no longer on their payroll. The Office advised the employing establishment to offer to pay for

[2] The vocational rehabilitation counselor dated his report December 16, 2003, but it included a chronology of events from January 5 to 20, 2004.

[3] Appellant advised the vocational rehabilitation counselor on January 5, 2004 that she was moving on January 9, 2004.

appellant's relocation expenses as she was currently residing in Michigan. On that day the employing establishment advised her in a letter mailed to her Clinton Township, Michigan[4] address that it would pay relocation expenses pursuant to her acceptance of the job offer as she was "not a current postal employee and currently reside out of state."

On April 6, 2004 the Office advised appellant that her March 8, 2004 letter rejecting the job offer was insufficient to establish that the modified job was unsuitable because she had relocated to Michigan. It advised her that the employing establishment based the job offer on the opinion of the impartial medical examiner. The Office further noted that the employing establishment offered to pay relocation expenses because she was not a current employing establishment employee and lived out of state. The Office informed appellant that she had 15 days to accept the job offer or it would issue a final decision on the matter.

By letter dated April 14, 2004, appellant stated that she was not refusing the job, but noted that, since she resided in Michigan, she would undergo hardship to relocate to Alabama. She stated that she "would be glad to be offered a job of this nature with same restrictions and conditions in the area in which I now live."

In a decision dated April 29, 2004, the Office terminated appellant's monetary compensation benefits effective May 15, 2004 for refusing an offer of suitable work. The Office determined her reason for refusing the offer, that she would undergo hardship to relocate to Alabama, was not valid. The Office also noted that the job offer was consistent with limitations recommended by Dr. Crotwell, the impartial medical examiner.

In a letter postmarked May 3, 2004, appellant requested review of the written record. On September 17, 2004 an Office hearing representative affirmed the April 29, 2004 decision. The hearing representative stated that appellant's relocation to Michigan was an unacceptable reason for refusing a suitable job offer.

On September 16, 2005 appellant requested reconsideration and submitted a magnetic resonance imaging (MRI) scan dated February 16, 2005 and a report from Dr. Crotwell dated September 18, 2005.

By decision dated November 16, 2005, the Office denied modification of its previous decision denying benefits on the grounds that the medical evidence failed to establish that she was unable to perform the job requirements of the modified-duty job offer.

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.[5] As the Office in this case terminated appellant's compensation under 5 U.S.C. § 8106(c), the Office must establish that appellant

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[4] Clinton Township is a suburb about 20 miles north of Detroit, MI.

[5] *Cary S. Brenner*, 55 ECAB ___ (Docket No. 04-1117, issued September 30, 2004); *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

refused to work after suitable work was found for her. Section 8106(c) of the Federal Employees' Compensation Act[6] 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.

Under section 8106(c)(2), the Office may terminate the compensation of an employee who refuses or neglects to work after suitable work is offered to, procured by or secured for the employee. To justify termination of compensation, the Office must establish that the work offered was suitable.[7] Once the Office establishes that the work offered was suitable, the burden of proof shifts to the employee who refuses to work to show that such refusal was reasonable or justified.[8]

With regard to relocation, Office regulations provide that the employer, if possible, 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.[9]

Section 10.516 provides in pertinent part that the Office shall advise the employee that the offered work is suitable and afford the employee 30 days to accept the job or present any reasons to counter the Office's 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. At that point in time, the Office's notification need not state the reasons for finding that the employee's reasons are not acceptable.[10]

ANALYSIS

The issue is whether the Office properly found that appellant refused an offer of suitable work. Appellant was a resident of Alabama at the time of her accepted injury and when she began receiving wage-loss compensation. On January 3, 2004 she notified the Office that she was in the process of relocating to Michigan. On January 5, 2004 the Office's vocational rehabilitation counselor noted that appellant informed him that she was relocating to the Detroit, Michigan area on January 9, 2004. The modified job offered to her was located in Alabama. On February 9, 2004 the Office advised appellant that the employing establishment's job offer was suitable based on job restrictions established by the impartial medical examiner. She replied on March 8, 2004 that she had received the Office's letter on March 5, 2004 in Michigan, as she had

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[6] 5 U.S.C. § 8106(c)(2).

[7] *Mary E. Woodard*, 57 ECAB ___ (Docket No. 05-1023, issued November 14, 2005).

[8] *Bryan O. Crane*, 56 ECAB ___ (Docket No. 05-232, issued September 2, 2005); *Bryant F. Blackmon*, 56 ECAB ___ (Docket No. 04-564, issued September 23, 2005).

[9] 20 C.F.R. § 508; *Sharon L. Dean*, 56 ECAB ___ (Docket No. 04-1707, issued December 9, 2004).

[10] 20 C.F.R. § 10.516.

relocated there. On March 10, 2004 the employing establishment confirmed that appellant was no longer on its roll of employees and that she was living in Michigan.

By regulation, when an employee would need to move to accept an offer of reemployment, the employing establishment should, if possible, offer suitable reemployment in the location where the employee currently resides.[11] The record contains no evidence that the employing establishment made any effort to determine whether reemployment was possible in the Detroit, Michigan area. The Office, knowing that appellant would have to move back to Alabama to accept the modified job offer as it was informed of her intentions on January 3, 2004, should have developed this aspect of the case consistent with its regulations before finding the job offer suitable.

Under the circumstances of this case, where appellant would need to move to accept a position in Theodore, Alabama, the Office should have developed the issue of whether suitable reemployment in or around Detroit, Michigan was possible. It was reversible error for the Office to terminate her compensation benefits without positive evidence showing that such an offer was not possible or practical.[12]

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.

[11] 20 C.F.R. § 10.508.

[12] *See Sharon L. Dean*, *supra* note 9. *Cf. Martin Joseph Ryan*, Docket No. 00-1262 (issued June 14, 2002) (holding that it was proper for the employer to offer a job in New York where the record contained evidence showing that the employer first attempted to assess the practicality of offering suitable reemployment in Clearwater, Florida, the location where the claimant resided).

ORDER

IT IS HEREBY ORDERED THAT the November 16, 2005 decision of the Office of Workers' Compensation Programs be reversed.

Issued: July 18, 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