U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANTHONY J. LAURENZA and U.S. POSTAL SERVICE,
ROXBURY POST OFFICE, Roxbury, Mass.

Docket No. 96-124; Submitted on the Record;
Issued January 22, 1998

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation for refusal to accept suitable employment.

On August 25, 1992 appellant, then a 22-year-old distribution clerk, was lifting a tub of mail when he felt his left shoulder pop out.[1] He stopped working that day. His position with the employing establishment was terminated in September 1992 for excessive unexcused absences. In a December 16, 1992 letter, the Office informed appellant that his claim was accepted for left shoulder strain. The Office began payment of temporary total disability compensation.

In a May 14, 1993 work restriction evaluation form, Dr. Joel Saperstein, a Board-certified orthopedic surgeon, indicated that appellant could sit or walk eight hours a day and stand, bend, squat, kneel or twist four hours a day. Dr. Saperstein reported that appellant could lift up to 10 pounds. He concluded that appellant could work eight hours a day performing sedentary work with limited use of his left arm.

In a May 11, 1994 letter, the employing establishment offered appellant a position as a clerk, casing mail with both hands with no work required above shoulder level. The employing establishment indicated that the position would require the ability to sit or walk eight hours a day and bend or stand four hours a day. He would be limited to lifting 10 pounds. The employing establishment warned appellant, that if he did not accept the position the Office would be informed of his refusal. It indicated that under the Federal Employees' Compensation Act an employee would not be entitled to compensation if he refused to seek suitable work or refused or neglected suitable work if offered to him. In a May 25, 1994 letter to appellant, the Office noted that he had been offered a position as a clerk at the employing establishment which the Office found to be suitable for his work capabilities. The Office informed appellant that he had 30 days

[1] Appellant had filed a claim for a previous injury to his left shoulder on September 12, 1988. The Office accepted his claim for a left shoulder strain.

from the date of the letter to accept the position or provide his reasons for refusing it. The Office stated that after 30 days, a final decision on the issue would be made and any reasons he offered for refusing the position would be considered at that time. The Office warned appellant that if he failed to accept the offered position and failed to demonstrate that his failure was justified his compensation would be terminated.

In a June 9, 1994 form, the employing establishment indicated that appellant had accepted the position and had returned to work on May 24, 1994 but had again been terminated. The employing establishment submitted dispensary notes for May 27, 1994 which indicated that appellant, on his return to work, had to undergo a complete physical examination which included a drug test. The dispensary note indicated that appellant was uncooperative and belligerent, stating that he had been up from three nights and did not want to give a urine specimen. He initially was unable to provide a specimen and therefore had to drink water. The dispensary note indicated that appellant did produce a specimen that was rejected as below the temperature range for urine specimens. He then screamed obscenities and left the employing establishment.

In a memorandum of a June 24, 1994 telephone conversation, an Office claims examiner related that appellant received and accepted a job offer. He returned to work on May 24, 1994 but his supervisors had no paperwork relating to appellant. Appellant indicated that he was instructed to take a urine test but he refused as by that time he had received a notice from the Office finding that the job offered to him was suitable. Appellant stated that he interpreted the letter to mean that he was being offered another job and had 30 days to accept it. In a June 29, 1994 letter, the Office noted that appellant had returned to work on May 24, 1994, but the employing establishment refused to reinstate him after he refused to take a urinalysis drug screen. It further noted that appellant believed that the Office's May 25, 1994 letter referred to a different job offer and therefore felt that this justified his waiting to see the offer and assumed that he could receive compensation for another 28 days while considering. The Office stated that the job offer made by the employing establishment and the job offer referred to by the Office related to the same job. The Office indicated that it appeared that appellant had abandoned a suitable job without good reason and therefore was not entitled to compensation. The Office offered appellant an opportunity to explain why he left the job offered to him.

In a July 8, 1994 letter, Dr. Richard P. Zimon, an employing establishment physician, indicated that appellant came to the medical unit of the employing establishment on the evening of May 24, 1994 for the required physical examination for reinstatement to the employing establishment. Dr. Zimon stated that since appellant had been terminated from employment and had been out for over a year, he was required to undergo a complete physical examination and would need to undergo a preemployment drug screening test. He indicated that appellant failed to answer some questions on the examination form and did not provide a urine specimen on May 24, 1997. He was given an opportunity to provide a urine sample and then was given another date, May 27, 1997. He reported that appellant was clearly uncooperative even though the procedure had been explained to him. Dr. Zimon indicated that appellant did not want to provide a urine specimen and did provide one that was unacceptable because of the specimen. He was then escorted from the medical unit because of his threatening behavior toward the unit staff.

In an undated letter, received by the Office on August 10, 1994, appellant indicated that he accepted the position offered by the employing establishment on May 24, 1994 and returned to work on the same night. He stated that he was scheduled for a physical examination that night, but the medical unit was unaware that he was to be given an examination and was reluctant to give such an examination. He commented that he gave a urine sample that night in the examination. He indicated that he was instructed to report to the medical unit on May 27, 1994 to give a second urine sample. He stated that he gave his urine sample but the nurse flushed it down the toilet. Appellant related that he was upset over the incident and told the nurse of his reaction. He indicated that the nurse then advised him not to return to work. He noted that prior to going to the medical unit on May 27, 1994 he received in the mail a letter for another job for the employing establishment which he was given 30 days to respond. He stated that he believed the letter he received for what he believed was another job, the instruction from the nurse not to return to work and the problem that his supervisor for the prior few nights was not even sure appellant should be there, led him to believe that he had reported to the wrong job and was suppose to start the new job which he accepted on June 23, 1994. He sent the acceptance to the employing establishment and waited for the employing establishment to inform him of the date of his physical examination and the date of the start of the new job. He then was informed that he was no longer employed.

In an October 7, 1994 decision, the Office terminated appellant's compensation effective May 24, 1994 on the grounds that he abandoned suitable work that had been secured for him.

In an October 25, 1994 letter appellant, through his attorney, requested a hearing before an Office hearing representative. In an April 27, 1995 hearing, appellant repeated the information he had given in his statement on receiving a physical examination on May 24, 1994. He indicated that he worked the night shift from May 24 through 27, 1994 and had trouble getting sleep after work for the first three nights. He stated that for those nights the employing establishment did not have a time card for him and his supervisor indicated that he had not received any information about appellant. He testified that when he received the Office's May 25, 1994 letter, he concluded that this was the authentic job offer which was scheduled to begin on June 25, 1994 because the supervisors at the employing establishment did not know he was supposed to be there. He reported back for his physical examination on May 27, 1994 and was then told that he had to provide another urine sample. He was unable to do so initially so he had to drink water. He stated that he then produce a urine sample but the nurse stated that the sample was no good and dumped it in the toilet. Appellant testified that he protested the nurse's action, stated that he had a copy of the authentic job offer at home, commented that a mistake had been made somewhere and then went home because he was exhausted from working for the three days with little sleep. He then submitted a second acceptance letter. He received a telephone call from an employing establishment official who told him that his position had been terminated.

In a July 10, 1995 decision, the Office hearing representative found that appellant had abandoned suitable work and had not provided an acceptable reason for refusing the offered position. He therefore affirmed the Office's October 7, 1994 decision.

The Board finds that the Office properly terminated appellant's compensation for abandonment of suitable employment.

Section 8106(c)(2) of the Act states: "a partially disabled employee who: (1) refused to seek suitable work; or (2) refuses or neglects to work after suitable work is offered is not entitled to compensation."[2] An employee who refuses or neglects to work after suitable work has been offered to him has the burden of showing that such refusal to work was justified.[3]

In this case, appellant was offered a position as a postal clerk that was within the physical limitations set by his treating physician, Dr. Saperstein. Appellant accepted the position and appeared for work. He left the position three days later after a urine sample he had given the employing establishment for drug screening was rejected. The employing establishment's policy required appellant, who had been terminated from his position at the employing establishment and had been away for over a year, to undergo a drug screening. The employing establishment also set policy on the circumstances under which a urine sample would be accepted or rejected. There is no evidence of record showing that the employing establishment had no right to require a urine sample under these circumstances or that its standards for accepting or rejecting a urine sample were unreasonable. Appellant therefore had no basis for his hesitation to undergo the urinalysis. When he left work after the rejection of his urine, he abandoned the offered position. His reasons for abandoning the position are unavailing. The employing establishment was within its prerogative to require appellant to give a urine specimen for drug testing. Appellant's claim that the May 25, 1994 letter from the employing establishment seemed to be an offer of a second job at the employing establishment is unreasonable. The letter clearly came from the Office, not the employing establishment, and clearly stated that the Office found that the job offered by the employing establishment to be suitable. The letter was a clear, unmistakable reference to the job to appellant offered by the employing establishment and could not be reasonably interpreted as a separate job offer. The confusion in this case arose not from the letters of the employing establishment and the Office but from appellant's acceptance of the job offered by the employing establishment prior to his receipt of the letter from the Office which stated that it found the job offered by the employing establishment to be suitable. Appellant has not given any acceptable reason for abandoning suitable work offered to him by the employing establishment.

[2] 5 U.S.C. § 8106(c)(2).

[3] 20 C.F.R. § 10.124.

The decision of the Office of Workers' Compensation Programs, dated July 10, 1995, is hereby affirmed.

Dated, Washington, D.C.
January 22, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member