

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EDWARD W. WHITEHEAD and U.S. POSTAL SERVICE,
POST OFFICE, Orlando, Fla.

*Docket No. 96-983; Submitted on the Record;
Issued June 29, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective November 11, 1995 on the grounds that he refused an offer of suitable work.

The Board finds that the Office properly terminated appellant's compensation effective November 11, 1995 on the grounds that he refused an offer of suitable work.

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."¹ However, to justify such termination, the Office must show that the work offered was suitable.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 the present case, the Office accepted that appellant sustained an employment-related right shoulder strain, right shoulder impingement syndrome with mild rotator cuff tendinitis, acute gastroenterocolitis and chronic lymphocytic colitis and paid appellant compensation for periods of disability.⁴ By decision dated November 15, 1995, the Office terminated appellant's compensation effective November 11, 1995 on the grounds that he refused an offer of suitable work.

¹ 5 U.S.C. § 8106(c)(2).

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

³ 20 C.F.R. § 10.124; *see Catherine G. Hammond*, 41 ECAB 375, 385 (1990).

⁴ The Office also authorized arthroscopy with decompression of the right shoulder.

The evidence of record shows that appellant is capable of performing the modified city carrier position offered by the employing establishment in May 1995 and determined to be suitable by the Office in a September 5, 1995 letter. The position is essentially clerical in nature with some sorting duties and did not require lifting more than 20 pounds, pushing, pulling, reaching above the shoulder, stooping, climbing or kneeling. The Office properly determined that appellant is vocationally and educationally capable of performing the position in that he had previously worked as a letter carrier.

In determining that appellant is physically capable of performing the file clerk position, the Office properly relied on the opinion of Dr. J. Darrell Shea, a Board-certified orthopedic surgeon, to whom the Office referred appellant for a second opinion. In a report dated January 30, 1995, Dr. Shea evaluated appellant's condition and indicated, without elaboration, that appellant was "unable to work." The Office requested that Dr. Shea clarify his opinion regarding appellant's ability to work and provided him with the description of the modified city carrier position. The Office also asked Dr. Shea whether he agreed with the May 31, 1994 assessment of Dr. Thomas Winters, Jr., an attending Board-certified orthopedic surgeon, that appellant could return to work with a lifting restriction of 20 pounds to the chest level and 5 pounds overhead. In a report dated August 7, 1995, Dr. Shea indicated that he agreed with Dr. Winters' assessment of appellant's ability to work and noted that appellant could perform the position offered to him by the employing establishment.⁵

The Board notes that, therefore, the Office has established that the modified city carrier position offered by the employing establishment is suitable. As noted above, 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 him has the burden of showing that such refusal to work was justified. The Board has carefully reviewed the argument submitted by appellant in support of his refusal of the modified city carrier position and notes that it is not sufficient to justify his refusal of the position.⁶ Appellant alleged that the Office did not adequately consider certain medical evidence and that Drs. Winters' and Shea's reports contained misrepresentations and inaccuracies, but he did not adequately articulate this argument or present sufficient evidence in support thereof. Appellant claimed that the modified city carrier position required the performance of duties similar to those required by his regular carrier position, but a review of the duties of the modified city carrier position does not support appellant's contention.

For these reasons, the Office properly terminated appellant compensation effective November 11, 1995 on the grounds that he refused an offer of suitable work.⁷

⁵ It should be noted that the restrictions recommended by Dr. Winters would be within the requirements of the modified city carrier position.

⁶ Appellant did not submit probative medical evidence supporting his claim that he was not physically able to perform the offered position.

⁷ 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 modified city carrier position after informing him that his reasons for initially refusing the position were not valid; *see generally Maggie L. Moore*, 42 ECAB 484 (1991); *reaff'd on recon.*, 43 ECAB 818 (1992).

The decision of the Office of Workers' Compensation Programs dated November 15, 1995 is affirmed.

Dated, Washington, D.C.
June 29, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member