U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RONALD D. CHICO and DEPARTMENT OF THE NAVY, PUGET SOUND NAVAL SHIPYARD, Bremerton, WA

Docket No. 98-1720; Submitted on the Record;
Issued February 16, 2000

DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT, A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation on the grounds that he refused suitable work pursuant to section 8106(c) of the Federal Employees' Compensation Act.

The Board has duly reviewed the case record in this appeal and finds that the Office properly terminated appellant's compensation on the grounds that he refused suitable work pursuant to section 8106(c) of the Act.

On August 28, 1996 appellant, then a 32-year-old police officer, filed a traumatic injury claim (Form CA-1) assigned number A14-316555 alleging that on August 17, 1996 he sustained a right knee injury while exiting a patrol car in response to a service call. By letter dated October 30, 1996, the Office accepted appellant's claim for right knee and right ankle strain and authorized arthroscopy surgery.

On November 21, 1996 appellant filed a Form CA-1 assigned number A14-319588 alleging that on November 6, 1996 he reinjured his right knee when he was descending a handicap access ramp and slipped on an untreated surface which caused a crutch he was using to slip out from under him. Appellant stopped work on November 7, 1996. The Office accepted appellant's claim for right knee strain.

In response to appellant's April 3, 1997 request to double his August 28, 1996 claim assigned number A14-316555 into his November 21, 1996 claim assigned number A14-319588, the Office consolidated these claims under claim number A14-316555 due to similar conditions in both cases.

On May 1, 1997 the employing establishment offered appellant a light-duty police officer position performing desk duties. The physical requirements indicated that no carrying, lifting or pulling over five pounds would be assigned, an ability to change positions (sit, stand, walk) was

permitted and that appellant would not be required to perform any task beyond his physical limitations.[1]

On May 3, 1997 appellant rejected the job offer stating that he was under a physician's care and that he was awaiting authorization from the Office for a claim regarding his hip and left knee. Appellant also stated that the lack of support from the administration and upper management created a hostile work environment. Appellant further stated that the job offer was not or had not been cleared or accepted by the Office or his attending physician.

The Office received a May 16, 1997 medical report from Dr. Kent P. VanBuecken, a Board-certified orthopedic surgeon and appellant's treating physician, in response to its inquiry concerning appellant's ability to return to work. In this medical report, Dr. VanBuecken opined that appellant could work with certain physical restrictions.

By letter dated June 4, 1997, the Office advised appellant that the offered position was suitable for his work capabilities. The Office also advised appellant that he had 30 days in which to accept the offered position or to provide an explanation of the reasons for refusing the job along with relevant medical reports supportive of the refusal. The Office further advised appellant of the penalties for refusing an offer of suitable work under section 8106 of the Act.

On August 2, 1997 appellant rejected the job offer indicating that the offer was not accepted by the Office and that he was unable to perform the work duties due to his condition.

By letter dated August 20, 1997, the Office again advised appellant that the offered position was suitable for his work capabilities. The Office also advised appellant that he had 30 days in which to accept the offered position or to provide an explanation of the reasons for refusing the job along with relevant medical reports supportive of the refusal. The Office further advised appellant of the penalties for refusing an offer of suitable work under section 8106 of the Act.

In an October 1, 1997 letter, the Office advised appellant that he had not submitted a written response to its August 20, 1997 letter. The Office then advised appellant that his verbal arguments for refusing the offered position were not sufficient to establish that the offered position was unsuitable because he had been informed by the employing establishment that the proposed separation had been rescinded.[2] The Office also advised appellant that the position was still available. Additionally, the Office advised appellant that his deadline was extended until October 15, 1997 and the job would remain available to him. Appellant did not respond to the Office's letter.

[1] Prior to its May 1, 1997 job offer, the employing establishment offered appellant the same light-duty position on January 3, 1997. On January 9, 1997 appellant accepted the offered position. The record, however, does not indicate that appellant actually reported to work.

[2] In a July 29, 1997 letter, the employing establishment advised appellant that its July 18, 1997 letter proposing to separate him from its rolls had been canceled.

By decision dated October 15, 1997, the Office terminated appellant's compensation on the grounds that appellant refused suitable work. In so doing, the Office found that appellant had forfeited any continuing wage-loss or schedule award benefits.

It is well settled that once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.[3] This includes cases in which the Office terminates compensation of a partially disabled employee who refuses or neglects to work after suitable work is offered to, procured by, or secured for the employee under section 8106(c)(2).[4] The Board has recognized that section 8106(c) serves as a penalty provision as it may bar an employee's entitlement to compensation based on a refusal to accept a suitable offer of employment and, for this reason, will be narrowly construed.[5] The issue whether an employee has the physical ability to perform a modified position offered by the employing establishment is primarily a medical question that must be resolved by the medical evidence.[6]

Section 10.124(e)[7] of the Office's regulations provides that an employee who refuses or neglects to work after suitable work has been offered or secured 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.[8] To justify termination, the Office must show that the work offered was suitable[9] and must inform appellant of the consequences of refusal to accept such employment.[10] According to Office procedures, certain explanations for refusing an offer of suitable work are considered acceptable.[11]

The Board has stated that the weight of the medical evidence is determined by its reliability, its probative value and its convincing quality. The opportunity for and thoroughness of examination, the accuracy and completeness of the doctor's knowledge of the facts and

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

[4] *Patrick A. Santucci*, 40 ECAB 151 (1988); *Donald M. Parker*, 39 ECAB 289 (1987); *Herman L. Anderson*, 36 ECAB 235 (1984).

[5] *Stephen R. Lubin*, 43 ECAB 564 (1992).

[6] *See John E. Lemker*, 45 ECAB 258 (1993); *Camillo R. DeArcangelis*, 42 ECAB 941 (1991).

[7] 20 C.F.R. § 10.124(e).

[8] *Maggie L. Moore*, 42 ECAB 484, 488 (1991), *reaff'd on recon.*, 43 ECAB 818 (1992).

[9] *See Carl W. Putzier*, 37 ECAB 691 (1986); *Herbert R. Oldham*, 35 ECAB 339 (1983).

[10] *See Maggie L. Moore*, *supra* note 8; *see also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.5(d)(1).

[11] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.5(a)(1)-(5).

medical history, the care of analysis manifested and the medical rationale expressed in support of the doctor's opinion are factors which enter into such evaluation.[12]

In this case, Dr. VanBuecken submitted a May 16, 1997 medical report. In this medical report, Dr. VanBuecken provided appellant's medical history and stated :

> "[Appellant] claims to be disabled at this point but I find [appellant] has more complaints than he has objective findings. [Appellant] is absolutely stable to anterior cruciate ligament examination despite his complaints of instability and need to wear a brace. He needs no further treatment. [Appellant] has [a] diagnosis of anterior cruciate ligament insufficiency and mild degenerative arthritis in his right knee. I expect him to make nearly a full recovery. [Appellant] will always have a significant number of complaints which have now extended to his hips and other knee, none of which I find are at all related to his first injury or subsequent injuries. I think [appellant] will require some permanent restrictions. He probably cann[o]t be a police force officer, requiring a lot of running and prolonged standing but can do moderate work. Lifting limitations should be 75 pounds or less. He should n[o]t have significant prolonged standing greater than probably six hours per shift. I think there are a lot of things that he can do and he certainly is not disabled."

The Board finds that the medical opinion of Dr. VanBuecken, appellant's own treating physician, that appellant could work with certain physical restrictions is rationalized and based on an accurate background.

Appellant's primary reason for declining the light-duty police officer position offered by the employing establishment was his physical inability to perform the position. An employee's contention that the proposed work would aggravate his or her physical condition is of no probative value and will not be deemed a reasonable or justifiable ground for refusing suitable work where the medical evidence of record indicates that the position offered is consistent with appellant's physical limitations.[13] The Board finds that the light-duty police officer position offered by the employing establishment is consistent with appellant's physical limitations as provided by Dr. VanBuecken. Further, appellant did not submit any medical evidence to support his contention that he was unable to perform the duties of the light-duty police officer position. Therefore, the Office met its burden of proof in terminating appellant's compensation on the grounds that appellant refused suitable work.

The Board further finds that the Office properly followed its procedural requirements for termination under section 8106(c). The employing establishment offered appellant the light-duty police officer position on May 1, 1997. As discussed above, Dr. VanBuecken's medical opinion is consistent with the restrictions of the offered position. With respect to the procedural requirements for termination under section 8106(c) of the Act, the Office advised appellant, by

[12] *Melvina Jackson*, 38 ECAB 43 (1987); *Naomi A. Lilly*, 10 ECAB 560 (1959).

[13] *Id.*

letter dated May 1, 1997, that the light-duty police officer position offered by the employing establishment was found to be suitable as it was within the physical requirements set forth by Dr. VanBuecken and that appellant had 30 days to either accept the offer or provide reasons for refusing the offer. Following receipt of appellant's May 3, 1997 refusal, the Office again advised appellant, by letter dated June 4, 1997, that the offered position was found to be suitable and that appellant had 30 days to either accept the offer or provide reasons for refusing the offer. Following receipt of appellant's August 2, 1997 refusal, the Office advised appellant by letter dated August 20, 1997 that his stated reason for refusing the job offer was unacceptable and that appellant had 15 days to either accept the job offer or compensation would be terminated. Therefore, the refusal of the job offer by appellant cannot be deemed reasonable or justified and the Office properly terminated appellant's compensation.

The October 15, 1997 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.
February 16, 2000

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member