

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GWENDOLYN GAUSTAD and U.S. POSTAL SERVICE,
MAIN POST OFFICE, Chandler, AZ

*Docket No. 99-2007; Submitted on the Record;
Issued February 22, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation benefits on the grounds that she refused an offer of suitable work.

On December 1, 1997 appellant, then a 49-year-old letter carrier, sustained a left knee strain and patellofemoral chondromalacia of the left knee in the performance of duty.

On November 5, 1998 appellant refused a modified letter carrier position offered by the employing establishment on October 31, 1998.

By letter dated February 5, 1999, the Office advised appellant that it had found the modified letter carrier position to be suitable to appellant's work capabilities and noted that on January 13, 1999 the employing establishment had confirmed that the position remained available. Appellant was advised that she had 30 days in which to accept the position or provide an explanation of her reasons for refusing it.

By letter dated February 22, 1999, appellant stated that she accepted the modified letter carrier position under protest. The letter was addressed to the Office and date stamped by the Office on March 5, 1999.¹

By decision dated March 30, 1999, the Office terminated appellant's compensation benefits on the grounds that she had refused an offer of suitable work.

The Board finds that the Office improperly terminated appellant's compensation benefits on the grounds that she refused an offer of suitable work.

¹ On appeal, appellant has submitted her copy of her February 22, 1999 letter accepting the position and a photocopy of the signed certified mail receipt showing that the Office received her letter on February 25, 1999.

Once the Office accepts a claim it has the burden of justifying termination or modification of compensation benefits and this includes cases in which the Office terminates compensation under section 8106(c) of the Federal Employees' Compensation Act for refusing to accept suitable work or neglecting to perform suitable work.² Section 8106(c)(2) 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."³ However, to justify such termination, the Office must show that the work offered was suitable.⁴ 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 justified⁵ and shall be provided with the opportunity to make such showing before a determination is made with respect to termination of entitlement to compensation.⁶ To justify termination, the Office must show that the work offered was suitable and must inform appellant of the consequences of refusal to accept such employment.⁷

In this case, the Office advised appellant, by letter dated February 5, 1999, that it had found the modified position offered by the employing establishment to be suitable to appellant's work capabilities and advised her that she had 30 days in which to accept the position or provide her reasons for refusing the position. On March 30, 1999 the Office terminated appellant's compensation benefits on the grounds that she had refused an offer of suitable work. However, the record shows that, prior to its March 30, 1999 decision, the Office had received a February 22, 1999 letter from appellant in which she accepted the position. Therefore, the Office improperly terminated appellant's compensation benefits.

² *Shirley B. Livingston*, 42 ECAB 855, 860-61 (1991).

³ 5 U.S.C. § 8106(c)(2).

⁴ *David P. Camacho*, 40 ECAB 267, 275 (1988); *Harry B. Topping, Jr.*, 33 ECAB 341, 345 (1981).

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

⁶ See *Catherine Hammond*, *supra* note 5.

⁷ See *Maggie L. Moore*, 42 ECAB 484, 487-89 (1991), *reaff'd on recon.*, 43 ECAB 818 (1992).

The March 30, 1999 decision of the Office of Workers' Compensation Programs is reversed.

Dated, Washington, D.C.
February 22, 2000

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member