

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANNIE B. WATTS and U.S. POSTAL SERVICE,
POST OFFICE, Atlanta, GA

*Docket No. 98-1609; Submitted on the Record;
Issued March 14, 2001*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
VALERIE D. EVANS-HARRELL

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation benefits effective March 31, 1996 on the grounds that she refused an offer of suitable work.

On September 30, 1988 appellant, then a 48-year-old keyboard operator, filed an occupational disease claim contending that her keying responsibilities resulted in carpal tunnel syndrome. Appellant stopped work on that date. The Office accepted her claim for bilateral carpal tunnel syndrome and she received appropriate benefits. Appellant underwent surgery for right carpal tunnel decompression on March 7, 1989.

Dr. Jimmy Graham, an attending Board-certified internist specializing in rheumatology, treated appellant. In an August 3, 1992 report, he noted that appellant's findings included persistent pain in the hands with a positive Tinel's sign and electrodiagnostic studies consistent with bilateral carpal tunnel syndrome. Dr. Graham found that appellant remained disabled for work and noted that "[s]he has also developed a chronic pain syndrome with secondary depression." He recommended rehabilitation counseling. In an attached work restriction evaluation, Dr. Graham noted that appellant had not reached maximum improvement and she could not work eight hours a day.

On January 16, 1995 Dr. Graham completed a work restriction evaluation at the request of the Office. He noted that appellant had reached maximum improvement and that she could work from two to four hours a day. Dr. Graham listed physical limitations on intermittent walking and standing for four hours a day, intermittent sitting, bending, climbing, squatting, twisting and kneeling for two hours a day and lifting restricted from zero to ten pounds.

On February 23, 1995 the employing establishment offered a limited-duty assignment to appellant as a modified telephone receptionist. The job offer involved working four hours a day, subject to sitting, with intermittent standing and walking and lifting restricted from zero to ten pounds.

On March 8, 1995 appellant advised the employing establishment that she would not accept the position based on continuing symptoms of carpal tunnel syndrome.

By letter dated June 16, 1995, the Office notified appellant that it had reviewed the telephone receptionist job offer and found it suitable with her work capabilities. Appellant was advised that she had 30 days in which to accept the job offer or provide reasons for refusing it. She was informed that failure to accept the position could result in the termination of her compensation benefits.

By letter dated July 1, 1995, appellant declined the job offer, indicating that she remained disabled due to her accepted condition. Appellant submitted a June 28, 1995 work status report from Dr. Graham which checked marked and noted: "May return to work on -- permanently disabled."

By letter dated July 19, 1995, the Office requested that Dr. Graham clarify his opinion as to appellant's medical status. On August 2, 1995 Dr. Graham noted that he sent the June 28, 1995 form report indicating that appellant was permanently disabled, stating:

"This assessment was made based on the patient's mental condition and not necessarily on the chronic carpal tunnel. I believe that the patient has reached maximum medical benefit, as I mentioned in the report of February 23, 1995. However, the patient is adamant about her fear of returning to the work force.

"Even though I am not a psychiatrist, I believe that the patient is permanently disabled secondary to bilateral carpal tunnel syndrome and chronic depressive neurosis...."

The record reflects that no further action was taken on the claim, until January 17, 1996, when the employing establishment inquired as to appellant's reasons for declining the job offer. By letter dated March 6, 1996, the Office advised appellant that it found her reasons for refusing the job to be unacceptable.¹ Appellant was given 15 days to accept the job offer. Appellant did not respond and the Office terminated her wage-loss benefits by decision dated April 8, 1996.

On April 15, 1996 appellant requested an oral hearing before an Office hearing representative that was held on January 28, 1997. Appellant testified at the hearing concerning her accepted condition and medical treatment. She submitted a March 12, 1996 report from Dr. Graham, who stated that he found appellant permanently disabled secondary to chronic bilateral carpal tunnel syndrome. He noted that appellant's status was post-surgical intervention, which resulted in a chronic pain syndrome and the inability to use her hands and fingers on a repetitive basis. Dr. Graham stated that appellant had depression secondary to the chronic pain syndrome which also disabled her from work. He opined that appellant's carpal tunnel syndrome had worsened over the years, which incapacitated appellant for work.

¹ The Office noted, "If you have a psychiatric condition that prevents you from performing the duties of a telephone receptionist, you must submit it within the 15-day time frame."

By decision dated April 8, 1997, the Office hearing representative affirmed the April 8, 1996 decision.

The Board finds that the Office did not meet its burden of proof to terminate appellant's compensation on the grounds that she refused an offer of suitable work.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits by establishing that the accepted disability has ceased or that it is no longer related to the employment.² This burden of proof is applicable when the Office terminates compensation under 5 U.S.C. § 8106(c) for refusal to accept suitable work. Under this section of the Federal Employees' Compensation Act, 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.³ 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.⁴

The issue of whether an employee has the physical ability to perform a modified limited-duty position offered by the employing establishment is primarily a medical question and must be resolved by the medical evidence.⁵ In this case, the medical evidence concerning appellant's ability to perform the selected position comes from her attending physician, Dr. Graham. Although he noted appellant's capacity to perform modified limited duty from two to four hours a day in a January 16, 1995 work limitation evaluation form, he submitted subsequent medical reports in which he found appellant remained disabled for work. In the June 28, 1995 work status report form, Dr. Graham indicated appellant was "permanently disabled" for work. On July 19, 1995 the Office specifically asked the physician to clarify his medical opinion regarding appellant's ability to work. In the August 2, 1995 response, Dr. Graham advised the Office of his assessment that she remained totally disabled based on her chronic bilateral carpal tunnel syndrome and a chronic depressive neurosis secondary to her accepted condition. The Board finds that the reports from Dr. Graham do not "clearly and unequivocally" establish that appellant was capable of performing the duties of the selected position.⁶

Further, Office procedures provide that if medical reports of record document a condition which has arisen since the compensable injury and this condition disables the claimant from the offered job, the job will not be considered suitable even if the subsequently-acquired condition is not employment related.⁷ Dr. Graham advised the Office that he also found appellant to be disabled due to chronic depression which he attributed to her accepted carpal tunnel syndrome. While the Office has not accepted this condition as employment related, it does not mean that

² *H. Adrian Osborne*, 48 ECAB 556 (1997).

³ 5 U.S.C. § 8106(c)(2).

⁴ *See Susan L. Dunnigan*, 49 ECAB 267 (1998); *Stephen R. Lubin*, 43 ECAB 564 (1992).

⁵ *See John E. Lemker*, 45 ECAB 258 (1993); *Camillo R. DeArcangelis*, 42 ECAB 941 (1991).

⁶ *See Annette Quimby*, 49 ECAB 304 (1998).

⁷ *See Edward J. Stabell*, 49 ECAB 566 (1998).

Dr. Graham's diagnosis and conclusion that appellant was disabled due to this condition can be disregarded in the suitable work assessment. The record reflects that, by August 1992, Dr. Graham noted appellant had developed a chronic pain syndrome with secondary depression. In response to the Office's inquiry concerning the suitability of the offered position, he found appellant disabled due to chronic pain and depression. For these reasons, the Board finds that the Office did not meet its burden of proof in terminating appellant's benefits based on her refusal to accept the modified telephone receptionist position.

The April 8, 1997 decision of the Office of Workers' Compensation Programs is hereby reversed.

Dated, Washington, DC
March 14, 2001

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

Valerie D. Evans-Harrell
Alternate Member