U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GAYLE HARRIS and U.S. POSTAL SERVICE,
POST OFFICE, Urbana, IL

Docket No. 99-1172; Submitted on the Record;
Issued March 19, 2001

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers Compensation Programs met its burden of proof to terminate appellant's compensation on the grounds that she refused an offer of suitable work.

Appellant, then a 32-year-old clerk, filed a November 28, 1990 claim for carpal tunnel syndrome which she attributed to factors of her federal employment. The Office accepted her claim for bilateral carpal tunnel syndrome. Appellant underwent several surgeries authorized by the Office. She returned to work intermittently. On July 13, 1995 appellant received schedule awards for 10 percent permanent impairment of both upper extremities.

By decision dated August 4, 1997, the Office terminated appellant's compensation benefits on the basis that she refused an offer of suitable work. Appellant requested an oral hearing before an Office hearing representative that was held on March 27, 1998. By decision dated June 10, 1998, the Office hearing representative affirmed the August 4, 1997 decision.

It is well settled that once the Office accepts a claim, it has the burden of justifying termination or modification on compensation.[1] In this case, the Office terminated appellant's compensation under 5 U.S.C. § 8106(c) on the basis that she refused an offer of suitable work. Section 8106(c) provides that a partially disabled employee who refuses or neglects to work after suitable work is offered to, procured by, or secured for the employee is not entitled to compensation.[2]

The Office's implementing federal regulations provide that an employee who refuses or neglects to work after suitable work has been offered or secured for the employee has the burden of establishing that such refusal or failure to return to work was reasonable or justified and shall

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

[2] 5 U.S.C. § 8106(c).

be provided with the opportunity to make such a showing before a determination is made with respect to termination of entitlement to compensation.[3] To justify termination of compensation, the Office must show that the work offered was suitable and inform the employee of the consequences of refusal to accept such employment.[4]

The Office established that the offered position was suitable. Dr. Craig Weil, appellant's attending Board-certified orthopedic surgeon, provided physical limitations pertaining to her carpal tunnel condition following referral for a functional capacity evaluation. The November 13, 1996 functional capacity evaluation noted that appellant demonstrated "submaximal" effort on testing but found that she could lift 15 pounds frequently and up to 30 pounds on an occasional basis. Dr. Weil reviewed these findings and, in a May 5, 1997 work restriction evaluation, noted appellant could lift up to 30 pounds but should limit repetitive gripping and grasping to no more than 2 hours a day for approximately 8 minutes an hour. He stated that appellant could return to work for eight hours a day with no repetitive wrist motions.

Based on these limitations, the employing establishment offered appellant modified light duty on May 15, 1997, conforming with the restrictions imposed by her attending physician. A copy of the job offer was submitted for review by Dr. Weil, who noted that appellant could perform the job, stating that it "appears acceptable."

By letter dated July 1, 1997, the Office informed appellant that it had reviewed the position description and found the job offer suitable with her physical limitations. Appellant was advised that she had 30 days to accept the position or offer her reasons for refusing. She was apprised of the penalty provisions of the Federal Employees' Compensation Act if she did not return to suitable work. Appellant did not respond to the Office's letter. By decision dated August 4, 1997, the Office terminated appellant's compensation, finding that she refused an offer of suitable work.

The Board finds that the Office complied with its procedural requirements in advising appellant that the position was found suitable and providing her with the opportunity to accept the position or provide her reasons for refusing.[5] The record reflects that appellant did not respond to the Office's notice; therefore, she failed to submit any evidence or argument to show that the offered position was not medically suitable.[6] The issue of 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.[7] In this case, the medical evidence provided from Dr. Weil, appellant's attending physician, establishes the

[3] 20 C.F.R. § 10.124(c).

[4] *Arthur C. Reck*, 47 ECAB 339 (1995).

[5] *See Bruce Sanborn*, 49 ECAB 176 (1997).

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

[7] *See Maurissa Mack*, 50 ECAB ___ (Docket No. 97-821, issued August 2, 1999); *Robert Dickerson*, 46 ECAB 1002 (1995).

suitability of the offered position.[8] The Office met its burden of proof to terminate appellant's compensation based on her refusal of suitable work. Thereafter, the burden shifted to appellant to establish that the refusal of the job offer was justified.[9]

Following the Office's August 4, 1997 decision, appellant submitted an August 2, 1997 note from Dr. Jeffrey H. Klooper, a psychiatrist, which indicated that appellant was unable to work due to emotional stress. The report of Dr. Klooper is insufficient to establish that the position offered appellant was unsuitable as the physician offered no diagnosis or explanation of how or why appellant's emotional condition prevented her from performing the job duties of the selected position at the time it was offered. While it is well established that the Office must consider preexisting and subsequently acquired conditions in the evaluation of suitability of an offered position,[10] the note of Dr. Klooper is of diminished probative value and does not establish that appellant was incapable of performing the offered position.

At the time of oral argument, appellant submitted additional reports from Dr. Weil. In a July 31, 1997 report, he noted that appellant's work restrictions would be lifting 10 pounds frequently and 20 pounds occasionally. On the same day, however, he completed a form report stating that appellant should return to limited duty "according to [the] job description." This evidence does not establish that Dr. Weil changed his opinion as to the suitability of the modified position offered to appellant prior to her rejection and the Office's termination of benefits. On April 23, 1998, some eight months following the termination decision, Dr. Weil completed a report, stating:

> "At this time the patient still would have the restrictions of lifting and grip/grasp, etc. It is difficult to give an absolute finite lifting ability. The functional capacity having said 30 pounds occasional, 20 pounds frequent is acceptable [but] was changed by this physician to 10 pounds frequent and 20 pounds occasional. These types of matters are difficult to assess in the ability to lift certain amounts of weight [and] can vary day to day and week to week. Therefore, the weight restrictions given are of 10 pounds occasional, 20 pounds frequently [sic]. [These] could be done without exception and should be possible regardless of variations and pain and other matters encountered with patients who have had carpal tunnel syndrome."

In this report, Dr. Weil noted that appellant still had lifting and hand restrictions as of his April 23, 1998 examination. His opinion, however, while generally supporting continuing carpal tunnel residuals, does not explain how appellant's condition and residuals prevented her return to work in the modified position as of July 1, 1997 when the Office notified her of the offered position and its finding that it was suitable. Nor did Dr. Weil retract his prior reports indicating his approval of the offered position. Rather, the physician merely noted that it is difficult to set

[8] The record indicates that on August 5, 1997 the Office nurse consultant contacted Dr. Weil's office and was advised that appellant was last seen on July 31, 1997 and cleared for the limited-duty job previously authorized by him.

[9] *See Deborah Hancock*, 49 ECAB 606 (1998); *Henry P. Gilmore*, 46 ECAB 709 (1995).

[10] *See Martha A. McConnell*, 50 ECAB ___ (Docket No. 98-1505, issued November 3, 1998).

physical limitations with absolute certainty and they can vary. The April 23, 1998 report of Dr. Weil is not sufficient to establish that appellant remained totally disabled due to physical limitations on lifting at the time the job was offered or at any time prior to the termination of benefits.

The June 10, 1998 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
March 19, 2001

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member