

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLA HARRIS-OWENS and U.S. POSTAL SERVICE,
PROCESSING & DISTRIBUTION CENTER, Oakland, CA

*Docket No. 03-1609; Submitted on the Record;
Issued September 22, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits on June 19, 2002 on the grounds that she refused an offer of suitable work.

On February 16, 2000 appellant, then a 60-year-old distribution clerk, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that she sustained tendinitis in her right shoulder and left and right side and carpal tunnel syndrome in her hands as a result of her federal employment. On April 24, 2000 appellant's claim was accepted for bilateral carpal tunnel syndrome and approved carpal tunnel releases. In May 2000, appellant started working reduced hours (four hours per day, five days a week) and in June 2000, she stopped work altogether. Appellant underwent a left carpal tunnel decompression on September 26, 2000 and a right carpal tunnel decompression on March 19, 2001.

In a medical report dated August 7, 2001, Dr. Mathias Masem, appellant's treating Board-certified orthopedic surgeon, noted that appellant's symptoms were "low grade and stable." Dr. Masem indicated that appellant could return to work with restrictions. He further indicated: "She should have permanent work modifications and should be precluded from repetitive manual activities as well as position where she must sit with her head in one position for a sustained period." On August 17, 2001 Dr. Masem completed a duty status report (Form CA-17) wherein he indicated that appellant was limited to intermittent lifting of five pounds and minimal pulling/pushing, simple grasping, fine manipulation and reaching above the shoulder.

On January 17, 2002 the Office referred appellant to Dr. Thomas Schmitz, a Board-certified orthopedic surgeon, for a second opinion.

On January 29, 2002 the employing establishment offered appellant a position as a modified distribution clerk/video coding system technician. The duties of this position would involve appellant reading addresses into a headset microphone as individual pieces of mail were

displayed on a computer screen. It was noted that appellant could sit or stand as needed and that the work duties did not require any use of the hands.

By letter to appellant dated January 31, 2002, the Office advised that the offered position of video coding system technician was suitable to her work capabilities, and that she had 30 days from the date of the letter to accept the position or provide an explanation of the reasons for refusing it. The Office further informed appellant that, at the expiration of 30 days, a final decision on the issue would be made. Finally, the Office informed appellant that, if she refused this employment without reasonable cause, her compensation benefits for wage loss would be terminated.

On March 1, 2002 a conference was held at which appellant indicated that she would not be accepting the job because she was retired. She further indicated that she had deteriorating eyesight and could not read a computer screen. Finally she indicated that she had an emotional condition which prevented her from working for the employing establishment. Appellant was provided the opportunity to submit medical evidence in support of her allegations.

In a medical report dated March 26, 2002, Dr. Schmidt listed his diagnosis as status post bilateral carpal tunnel syndrome and surgical releases with residual dysesthesias, right hand. He did not recommend further treatment. He indicated that appellant "very definitely could be doing nixie work which she was doing prior to her retirement." Dr. Schmidt completed a work capacity evaluation form indicating that appellant was limited in her repetitive wrist and elbow movements and that he had a five-pound push/pull/lift limitation.

Appellant submitted an April 3, 2002 note by Dr. L. Schiffman, a Board-certified internist, wherein he indicated that appellant had been treated for hypertension and diabetes mellitus. She also submitted reports by her clinical psychologist, Dr. James C. Wilson, dated June 27 and July 27, 2000. Dr. Wilson indicated that he was treating appellant for a recurrence of stress-related symptoms, anxiety and panic, depressed mood and difficulty with sleep. He recommended that appellant not work until her surgeries were complete and her surgeon has deemed her able to return to work.

By letter dated May 17, 2002, the Office informed appellant that her reasons for not accepting the position were not justified, and that she had 15 days to accept the position without penalty. She was further reminded that 5 U.S.C. § 8106(c) provided that a partially disabled employee who refuses to work after suitable work is offered is not entitled to compensation.

By letter dated June 16, 2002, the Office asked the employing establishment whether the position of video coding system technician was still available. By facsimile dated June 17, 2002, the employing establishment responded that the position was still available.

On June 19, 2002 the Office issued a decision terminating appellant's compensation, effective that date, as she has refused suitable work.

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits as she refused an offer of suitable work.

It is well settled that once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.¹ As the Office in this case terminated appellant's compensation under 5 U.S.C. § 8106(c), the Office must establish that appellant refused an offer of suitable work. Section 8106(c) of the Act² 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. Section 10.517 of the applicable regulations³ provides that an employee who refuses or neglects to work after suitable work has been offered or secured for the employee 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. To justify termination of compensation, the Office must show that the work offered was suitable and must inform appellant of the consequences of refusal to accept such employment.⁴

In this case, the Office properly followed its procedures in reaching its June 19, 2002, decision. It notified appellant by letter dated January 31, 2002 of the consequences of her failure to accept suitable employment, and gave her an opportunity to respond. Further evidence was submitted, and by letter dated May 17, 2002 the Office informed appellant that her reasons for not accepting the position were not justified, and that she had 15 days to accept the position without penalty. The Office again noted the consequences of appellant's failure to accept the position. The Office determined that the position of video coding system technician was still available as of June 17, 2002. Accordingly, all procedures were properly followed prior to the Office terminating appellant's compensation benefits effective June 19, 2002.

Appellant's treating physician, Dr. Masem, indicated that appellant's symptoms were "low grade and stable." Dr. Masem indicated that appellant should be precluded from repetitive manual activities and was limited to intermittent lifting of five pounds and minimal pulling, pushing, grasping, fine manipulation and reaching above the shoulder. Dr. Schmidt also noted that appellant was limited in her repetitive wrist and elbow movements and had a five-pound push/pull/lift limitation. Neither physician precluded appellant from returning to work.

The offered position of video coding system technician involved appellant reading addresses into a headset microphone. The employing establishment noted that this position allowed appellant to sit or stand as needed, and that the work duties did not require any use of the hands. This position was within the limits set forth by Drs. Masem and Schmidt.

The Office properly evaluated the reasons appellant submitted for refusing the position and found that those reasons were unacceptable. Although appellant claims that her ability to perform the proffered position was adversely affected by her failing eyesight, she submitted no medical reports in support of this proposition. The psychological reports appellant submitted

¹ *Mohamed Yunus*, 42 ECAB 325, 334 (1991).

² 5 U.S.C. § 8106(c)(2).

³ 20 C.F.R. § 10.517(a).

⁴ *Arthur C. Reck*, 47 ECAB 339, 341-43 (1995).

indicated that she was unable to perform her duties before her carpal tunnel surgeries. There is no opinion by a psychologist that she was unable to perform her duties after the surgeries. Dr. Wilson recommended in the July 27, 2000 report that appellant not return to work until her surgeries were complete and her surgeon had deemed her able to return to work. Accordingly, there is no medical evidence in the record that appellant is unable to return to the employing establishment for emotion reasons.

As the medical evidence included in the record establishes that the position offered was suitable and as appellant has failed to provide an acceptable reason for refusing the offered position, the Board finds that the Office met its burden of proof to terminate appellant's compensation benefits as she refused a suitable work position.

The decision of the Office of Workers' Compensation Programs dated June 19, 2002 is hereby affirmed.

Dated, Washington, DC
September 22, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member