United States Department of Labor
Employees' Compensation Appeals Board

E.G., Appellant	)	
and	)	**Docket No. 06-1787**
	)	**Issued: February 27, 2007**
U.S. POSTAL SERVICE, POST OFFICE, Seaside, CA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On July 31, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' October 24, 2005 and May 17, 2006 merit decisions concerning the termination of his compensation and the July 6, 2006 decision denying his request for merit review of his claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over these decisions.

ISSUES

The issue are: (1) whether the Office properly terminated appellant's compensation effective October 30, 2005 on the grounds that he refused an offer of suitable work; and (2) whether the Office properly denied appellant's request for further review of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On November 12, 1999 appellant, then a 33-year-old letter carrier, filed a traumatic injury claim after he was bitten on his right leg by a dog while he was delivering mail on that

date. He began working in a light-duty position shortly after November 12, 1999. The Office accepted that appellant sustained an open wound of the right hip and thigh, sprains and strains of the right knee and leg, a right medial meniscus tear, joint ankylosis of the right lower leg and reflex sympathetic dystrophy of the right leg. It paid appropriate compensation for periods of disability. On March 2, 2000 appellant underwent a right medial meniscus repair and synovectomy and on April 31, 2000 he had scar tissue from the first surgery removed. Both procedures were authorized by the Office.

In June 2003, appellant advised the Office and the employing establishment that he had moved to Memphis, Tennessee.[1] He continued to receive compensation for employment-related disability.

The Office periodically requested that appellant provide medical evaluations from attending physicians regarding his ability to work. On April 7, 2005 Dr. Steven Richey, an attending Board-certified family practitioner, indicated that appellant could perform light-duty work for eight hours per day. He recommended that appellant be allowed to alternate between sitting and standing and not lift more than 25 pounds.

On June 9, 2005 the employing establishment offered appellant a modified carrier position in Seaside, California. The position involved assisting customers with forms and questions, answering telephone calls and helping customers pick up mail and packages weighing less than 20 pounds. Appellant would be allowed to alternate between sitting and standing. Appellant refused the job offer indicating that he was not physically capable of performing it; that his medications interfered with his ability to work; that his work contract prevented him from accepting the position; and that he was unable to relocate from Memphis to Seaside.

In a July 1, 2005 letter, the Office advised appellant of its determination that the modified carrier position offered by the employing establishment was suitable. It also advised him of its determination that his reasons for refusing the position were not acceptable. The Office informed appellant that his compensation would be terminated if he did not accept the position or provide good cause for not doing so within 30 days.

Appellant again indicated that he was not physically capable of performing the offered position and his work contract prevented him from accepting it. In an August 10, 2005 letter, the Office again advised appellant of its determination that his reasons for refusing the position were not acceptable. It provided him with 15 days to accept the position.[2]

In an October 24, 2005 decision, the Office terminated appellant's compensation effective October 30, 2005 on the grounds that he refused an offer of suitable work.

[1] Appellant last worked for the employing establishment on May 24, 2003 and the Office found that he sustained a recurrence of disability beginning that date. He was not separated from the employing establishment after his relocation.

[2] Appellant submitted additional medical evidence from attending physicians.

Appellant requested a telephone hearing with an Office hearing representative. During the March 6, 2006 telephone conference, appellant repeated his earlier reasons for refusing the offered position. In a decision dated and finalized May 17, 2006, the Office hearing representative affirmed the Office's October 24, 2005 decision.

Appellant submitted additional medical evidence and requested reconsideration of his claim. By decision dated July 6, 2006, the Office denied appellant's request for further review of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

LEGAL PRECEDENT -- ISSUE 1

Section 8106(c)(2) of the Federal Employees' Compensation Act 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 justified.[5]

With regard to relocation, Office regulations provide that the employer, if possible, should offer suitable reemployment in the location where the employee currently resides. If this is not practical, the employer may offer suitable reemployment at the employee's former duty station or other location.[6]

Section 10.516 provides in pertinent part that the Office shall advise the employee that the offered work is suitable and afford the employee 30 days to accept the job or present any reasons to counter the Office's finding of suitability. If the employee presents such reasons and the Office determines that the reasons are unacceptable, it will notify the employee of that determination and that he has 15 days in which to accept the offered work without penalty. At that point in time, the Office's notification need not state the reasons for finding that the employee's reasons are not acceptable.[7]

ANALYSIS -- ISSUE 1

The Office accepted that appellant sustained multiple injuries due to a dog attack on November 12, 1999 and he last worked for the employing establishment in May 2003. He was a resident of California at the time of the attack and worked at the Seaside Post Office. In June 2003, he advised the Office and the employing establishment that he had moved from the Seaside, California area to Memphis, Tennessee. In June 2005, the employing establishment

[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] 20 C.F.R. § 10.508; *Sharon L. Dean*, 56 ECAB ___ (Docket No. 04-1707, issued December 9, 2004).

[7] 20 C.F.R. § 10.516.

offered him a modified carrier position in Seaside. Appellant advised the Office that one of the reasons he could not accept the position was that he was unable to move to California.

As noted above, regulations provide that when an employee would need to move to accept an offer of reemployment, the employing establishment should, if possible, offer suitable reemployment in the location where the employee currently resides. The record contains no evidence that the employing establishment made any effort to determine whether reemployment was possible in the Memphis, Tennessee area. The Office knew that appellant would have to move back to California to accept the modified job offer. It was informed in June 2005 of his intention not to return to California and it should have developed this aspect of the case consistent with its regulations before finding the job offer suitable.

Under the circumstances of this case, where appellant would need to move to accept a position in Seaside, California, the Office should have developed the issue of whether suitable reemployment in or around Memphis, Tennessee was possible. It was reversible error for the Office to terminate his compensation benefits without positive evidence showing that such an offer was not possible or practical.[8]

CONCLUSION

The Board finds that the Office improperly terminated appellant's compensation effective October 30, 2005 on the grounds that he refused an offer of suitable work.

[8] *See Sharon L. Dean, supra* note 6. *Cf. Martin Joseph Ryan*, Docket No. 00-1262 (issued June 14, 2002) (holding that it was proper for the employer to offer a job in New York where the record contained evidence showing that the employer first attempted to assess the practicality of offering suitable reemployment in Clearwater, Florida, the location where the claimant resided). Given the Board's disposition of the merit issue, it is not necessary to consider the nonmerit issue.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' May 17, 2006 and October 24, 2005 decisions are reversed.

Issued: February 27, 2007
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board