

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARY A. PAYNE and U.S. POSTAL SERVICE,
MAIN POST OFFICE, Chicago, IL

*Docket No. 00-1615; Submitted on the Record;
Issued March 15, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
DAVID S. GERSON

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation for refusal to accept suitable work.

On January 7, 1977 appellant, then a 26-year-old letter sorting machine operator, slipped on shredded material on the workroom floor and fell, injuring her right knee. The Office accepted her claim for a torn medial meniscus. Appellant lost intermittent time for work and received continuation of pay and temporary total disability compensation for the periods she did not work. On August 18, 1987 she was riding in an elevator that stopped short of the floor. Appellant tripped as she stepped out of the elevator, injuring both knees. The Office accepted her claim for a torn medial collateral ligament and bilateral chondromalacia of the knees. On November 22, 1989 appellant fell in the lobby of the employing establishment when her right leg gave way, landing on her knee. Her claim was accepted for aggravation of chondromalacia. The Office continued to pay compensation for intermittent periods of temporary total disability and for the hours she did not work in part-time limited duty. On August 16, 1996 appellant stopped working and filed a claim for recurrence of total disability. The Office accepted the claim and paid temporary total disability compensation.

In a November 7, 1998 letter, the employing establishment offered appellant a full-time position as a rehabilitation clerk, with duties of repairing damaged mail and handling color-coded mail. The physical restrictions of the position included standing for 15 minutes at a time, sitting 15 minutes at a time, walking less than 4 blocks a day, no excessive bending or climbing and no lifting or carrying over 10 pounds.¹ In a November 5, 1998 letter, the Office informed appellant that it found the position offered to her to be suitable and currently available. The Office gave appellant 30 days to accept the position or give her reasons for declining the

¹ The record submitted on appeal contains two versions of the November 7, 1998 letter, one containing lifting restrictions of 10 pounds and the other containing lifting restrictions of 25 pounds. The Board cannot determine from the record which letter was sent to appellant.

position. The Office stated that any reasons given for refusing the position would be considered before the Office determined whether her reasons for refusing the position were justified. The Office warned that refusal to accept the position without a justified reason would result in the termination of her compensation.

Appellant accepted the position with the provision that she would work four hours a day. She returned to work on December 4, 1998 with a restriction from Dr. James A. Hill, a Board-certified orthopedic surgeon, limiting her to working four hours a day. In a December 4, 1998 letter, the Office informed appellant that her reasons for returning to work for four hours a day were unacceptable. The Office gave appellant 15 days to return to work full time or it would proceed to a final decision in her case.

In a December 29, 1998 decision, the Office terminated appellant's compensation for refusal to accept suitable work. In a January 5, 1999 decision, appellant requested reconsideration. In a January 22, 1999 decision, the Office found that the evidence submitted by appellant was insufficient to warrant modification of its prior decision. In an April 27, 1999 letter, appellant again requested reconsideration. In a July 16, 1999 merit decision, the Office denied appellant's request for modification of its prior decision. In a September 10, 1999 letter, appellant requested reconsideration. In a December 9, 1999 decision, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was repetitious and therefore insufficient to warrant review of its prior decisions.

The Board finds that the Office improperly terminated appellant's compensation for refusal to accept suitable work.

Section 8106(c)(2) of the Federal Employees' Compensation Act states: "a partially disabled employee who: (1) refused to seek suitable work; or (2) refuses or neglects to work after suitable work is offered is not entitled to compensation."² 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.³

In an April 1, 1997 report, Dr. Hill indicated that appellant was limited in kneeling, bending, squatting, climbing and lifting. He stated that appellant should not do any prolonged standing or walking, limiting each activity to 15 minutes at a time. Dr. Hill restricted appellant to no lifting greater than 10 to 20 pounds and no bending. He concluded that appellant could work four hours a day. Dr. Hill indicated that the restrictions were permanent.

In an August 8, 1997 report to the Office, Dr. Hill stated:

"I received your correspondence ... in regards to [appellant]. You had several questions in regard to her status. One was in regard to increasing her hours to 6 [to] 8 hours, this could be done, but if [appellant] works beyond four hours, then she has to be allowed frequent position changes, meaning going from a sitting to a

² 5 U.S.C. § 8106(c)(2).

³ 20 C.F.R. § 10.124.

standing position for 15 minutes out of every hour. Your second question was in regards to the requirement of a handicapped parking spot. I feel that [appellant] does need this to avoid any prolonged walking which would be detrimental to her knees.”

In a September 17, 1998 note, Dr. Hill listed work restrictions of working four hours a day, no lifting over 10 pounds and avoiding prolonged standing, prolonged sitting, squatting and kneeling. The Office requested Dr. Hill’s comment on the change in the restrictions from his August 8, 1997 report to his September 17, 1998 note. In an October 12, 1998 response, Dr. Hill stated that appellant should avoid prolonged standing, prolonged sitting, squatting, kneeling, climbing or lifting over 10 pounds. He again commented that if appellant worked over four hours a day, she should be allowed frequent position changes.

After the November 7, 1998 offer of suitable work, Dr. Hill, in a November 19, 1998 note, gave work restrictions of no prolonged standing, walking, squatting, kneeling, bending, climbing or lifting over 25 pounds. He restricted appellant to working four hours a day. In a March 8, 1999 report, Dr. Hill repeated those restrictions. In a September 3, 1999 report, he stated:

“I received a correspondence from [an Office claims examiner] in regards to information on why [appellant] is working four hours a day as opposed to 8 hours. Enclosed is a letter that I wrote on August 8, 1997 in response to a correspondence in regards to [appellant]. I was asked if her hours were increased to 6 [to] 8 hours what could be done. I did not state that [appellant] could work 8 hours as you can see from this letter and I just responded to the question that was given me in regards to what would happen if she worked beyond 4 hours. I never cleared [appellant] to work 8 hours.”

The Office based its offer of suitable work on Dr. Hill’s August 8, 1997 report, repeated in his October 12, 1998 report, that appellant could work six to eight hours a day if she was allowed frequent changes in position. Dr. Hill, however, indicated in other reports that appellant could only work four hours a day. In his September 3, 1999 report, Dr. Hill indicated that he regarded the question of appellant’s working six to eight hours a day as a hypothetical question. He stated that he never cleared appellant to work eight hours a day. Dr. Hill’s reports on appellant’s work restrictions, therefore, are internally inconsistent. The Office did not cite any other medical evidence to support the offer of suitable work. The full-time position offered by the employing establishment and found suitable by the Office, cannot be considered suitable work because Dr. Hill’s reports are contradictory on whether appellant can perform the duties of the offered position eight hours a day. The Office therefore has not met its burden of proof in establishing that the full-time position offered to appellant was suitable and that it properly terminated appellant’s compensation for refusing the full-time position.

The decisions of the Office of Workers' Compensation Programs, dated December 9 and July 16, 1999, are hereby reversed.

Dated, Washington, DC
March 15, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

David S. Gerson
Alternate Member