

File Number:
HR13-D-H

RECEIVED DEC 27 2016

U.S. DEPARTMENT OF LABOR

OFFICE OF WORKERS' COMP PROGRAMS
PO BOX 8300 DISTRICT 50
LONDON, KY 40742-8300
Phone: (202) 693-0045

Date of Injury:
Employee:

Dear

This is in reference to your workers' compensation claim. Pursuant to your request for a hearing, the case file was transferred to the Branch of Hearings and Review.

A preliminary review was completed on the case. Based upon that review, it has been determined that the decision of the District Office should be reversed as outlined in the attached decision.

Your case file has been returned to the Jacksonville District Office. You may contact that office by writing to our Central Mail Room at the following address:

US DEPARTMENT OF LABOR
OFFICE OF WORKERS' COMP PROGRAMS
PO BOX 8300 DISTRICT 6 JAC
LONDON, KY 40742-8300

Sincerely,

Branch of Hearings & Review

PAUL FELSER
ATTORNEY AT LAW
7393 HODGSON MEMORIAL DRIVE
SUITE 102
SAVANNAH, GA 31406

If you have a disability (a substantially limiting physical or mental impairment), please contact our office/claims examiner for information about the kinds of help available, such as communication assistance (alternate formats or sign language interpretation), accommodations and modifications.

Washington DC, December 22, 2016

U.S. DEPARTMENT OF LABOR
Office of Workers' Compensation Programs

DECISION OF THE HEARING REPRESENTATIVE

In the matter of the claim for compensation under Title 5, U.S. Code 8101 et. seq. of
Claimant; Employed by the _____ Case No. _____

Merit consideration of this claim was completed in Washington, D.C. Based on this review, the District Office's decision dated _____ has been reversed for the reasons below.

The issue for determination is whether the Office properly terminated the claimant's compensation benefits under Section 8106(c)(2) of the Federal Employees' Compensation Act.

The claimant, born _____ was employed as a _____ for the _____. The claimant timely filed a form CA-1, Notice of Traumatic Injury, claiming on _____ she sustained a work injury in the performance of her federal duties. The District Office accepted the claim for a right medial collateral ligament strain and medial meniscus tear and a lumbosacral strain. The Office authorized the claimant to undergo right knee surgery in _____ and they subsequently placed the claimant on the periodic compensation rolls for her total disability from work.

On _____ the employing agency offered the claimant a permanent, full-time modified duty job offer, as her treating physician, _____ M.D. had released the claimant to a sedentary duty position with the use of a wheelchair.

On _____ the claimant requested to be taken off the periodic roll compensation rolls, as she elected her annuity with the Office of Personnel Management (OPM). The claimant declined the job offer on _____. She acknowledged that Dr. _____ is one of her physicians, but she explained she has syringomyelia, which she claimed her work injury extremely aggravated. She stated her neurologists, Drs. _____ and _____ determined she is permanently disabled and cannot work. The claimant indicated she had statements from Drs. _____ as well as from her internal medicine physicians, Drs. _____ and _____ as well as from another neurologist, Dr. _____ who she stated found her unable to work.

By letter dated _____ the District Office advised the claimant that they found the job offered to her on _____ suitable to the work restrictions from Dr. _____. The Office noted the employing agency confirmed on _____ that the job remained available. The Office advised under 5 USC 8106(c)(2), a partially disabled employee who refuses to accept suitable work is not entitled to wage loss and schedule award compensation. The Office gave the claimant 30 days to accept the job offer, or to provide a valid reason for not doing so.

By memorandum to the file dated _____ the District Office indicated they terminated the claimant's compensation benefits effective the date of her _____ election of benefits with OPM.

On _____ the District Office received the statements from the physicians the claimant referenced in her _____ letter. However, the majority of these statements are not current, they ranged in date from _____ to _____ however, the statements from Drs. _____ are dated _____. None of these statements provided any medical examination findings.

The claimant continued to refuse the modified duty job offer in her letter of _____. She again referenced the physician's statements noted above for the reason she could not accept the job offered to her.

On _____ the employing agency advised the District Office that the modified duty job offer was still available, but she had she had elected to receive benefits from OPM.

By decision dated _____ the District Office terminated the claimant's compensation under 5 U.S.C. 8106(c)(2) for the reason that she refused to accept suitable employment. The Office noted the statements from Drs. _____ had been received, but syringomyelia is not an accepted condition in the claim, and neither physician provided a rationalized explanation based on a complete history and objective findings to refute Dr. _____ opinion.

The claimant disagreed with the _____ decision, and requested an oral hearing before an OWCP representative. I find the case is not in posture for a hearing. Based on my review of the file, the decision of the District Office dated _____ should be reversed.

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.¹ This includes cases in which the Office terminates compensation under section 8106(c)(2) of the Act for refusal to accept suitable work.² Section 8106(c)(2) of the Federal Employees' Compensation Act (FECA) provides that a partially disabled employee who: (1) refuses to seek suitable work; or (2) refuses or neglects to work after suitable work is offered is not entitled to compensation. 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

Prior to terminating compensation under 5 U.S.C. § 8106(c)(2), the Office must first inform the claimant of the consequences of refusal to accept suitable work and allow the claimant an opportunity to provide reasons for refusing the offered position.⁴ If the claimant presents reasons for refusing the offered position, it must inform the claimant if it finds the reasons inadequate to justify the refusal of the offered position and afford the claimant a final opportunity to accept the position.⁵

¹*Bettye F. Wade*, 37 ECAB 556 (1986)

²*Shirley B. Livingston*, 42 ECAB (Docket No. 91-0553, issued August 21, 1991).

³*Edward P. Carroll*, 44 ECAB (Docket No. 91-1323, issued December 29, 1992); *Charlene R. Herrera*, 44 ECAB (Docket No. 92-152, issued January 7, 1993); *Patsy R. Tatum*, 44 ECAB (Docket No. 91-1422, issued February 19, 1993); *Bradley L. Mattern*, 44 ECAB (Docket No. 92-2132, issued July 6, 1993).

⁴*C.G.*, 61 ECAB (Docket No. 09-247, issued January 26, 2010); see *Maggie L. Moore*, 42 ECAB 484 (1991), reaff'd on recon., 43 ECAB 818 (1992).

⁵Chapter 2-0814(3) of the Federal Employees' Compensation Act *Procedure Manual* states: If the claimant's refusal of the offered job is not deemed justified, the CE must advise the claimant and allow 15 additional days for him or her to accept the job. See *Maggie L. Moore*, Docket No. 90-1291, issued March 8, 1991.

If the Office fails to inform the claimant of whether or not the reasons offered were sufficient to justify refusal of the suitable work position, it has failed to meet the procedural requirements of section 8106(c)(2).⁶

In the present claim, I do not find that the District Office met its burden of proof to terminate the claimant's compensation benefits under the provisions of Section 8106(c)(2) of the FECA. The Office failed to provide the claimant the proper due process before they terminated her monetary compensation benefits.

The District Office initially provided the claimant with a 30-day notice advising the claimant that they found the job offered to him suitable. In response to this notice, the claimant provided her reasons that she felt unable to accept the job offered to her. However, the District Office did not provide the claimant the required notice giving her an additional 15 days to accept the position in accordance with Office procedure. Therefore, the District Office did not comply with the proper notice requirements prior to termination. The Office's invocation of 5 U.S.C. § 8106(c)(2) of FECA constitutes error. As such, the Office improperly terminated the claimant's monetary compensation benefits under the provisions of 8106(c)(2) and did not meet its burden of proof to terminate compensation for wage loss.

Although the District Office did not meet its burden of proof in terminating wage-loss benefits, the claimant was not in receipt of wage-loss compensation at the time of the termination, as she had already elected retirement benefits with OPM and the Office had stopped her compensation benefits pursuant to her August 22, 2016 election. The claim remains open for medical benefits of the accepted work injury.

Consistent with the above findings, the decision of the District Office dated _____ is REVERSED, and the case file is returned for routine maintenance.

Issued:
Washington, D.C.

Electronically Signed

Hearing Representative
for
Director, Office of Workers'
Compensation Programs

⁶Howard Y. Miyashiro, 51 ECAB 253 (1999); Maggie L. Moore, 43 ECAB 818 (1992).