

**United States Department of Labor
Employees' Compensation Appeals Board**

B.F., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Houston, TX, Employer**

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**Docket No. 07-815
Issued: July 9, 2007**

Appearances:
Monica Evans, for the appellant
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 February 5, 2007 appellant, through his representative, filed a timely appeal from a December 11, 2006 merit decision of the Office of Workers' Compensation Programs denying his claim for a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant is entitled to a schedule award after abandoning suitable employment under 5 U.S.C. § 8106(c).

FACTUAL HISTORY

On June 24, 1995 appellant, then a 33-year-old custodian, filed a claim for a traumatic injury occurring on that date when he slipped on a wet floor. The Office accepted the claim for a strain of the low back and right shoulder and a herniated lumbosacral disc. The Office placed him on the periodic rolls effective August 9, 1995.

Appellant returned to work on March 21, 1996 for four hours per day. He stopped work on May 18, 1996 and did not return. By decision dated December 16, 1996, the Office terminated appellant's entitlement to compensation and a schedule award effective January 4, 1997 on the grounds that he abandoned suitable work as a modified custodian.¹

In a letter dated November 12, 2003, appellant requested that the Office review his case and "reinstate his position." On November 12, 2003 he filed a recurrence of disability claim from the time of his June 24, 1995 employment injury onward. On December 26, 2003 appellant filed a claim for a schedule award. He submitted an impairment evaluation dated April 22, 2003 from his attending physician Dr. B.T. Wright, Jr., a Board-certified orthopedic surgeon, who indicated that appellant reached maximum medical improvement on June 28, 1998.

By decision dated January 12, 2004, the Office found that the medical evidence was insufficient to show that appellant sustained a recurrence of disability. In a decision dated April 5, 2004, the Office denied his claim for a schedule award on the grounds that the medical evidence did not support a finding that he sustained a permanent impairment of a scheduled member or function.

On April 20, 2004 appellant requested an oral hearing on the denial of his schedule award claim, which was held on February 16, 2005. In a decision dated April 21, 2005, the Office hearing representative affirmed the April 5, 2004 decision.² The Office hearing representative found that, as the Office previously terminated appellant's compensation based on his refusal of suitable work, he was not entitled to a schedule award.

By letter dated August 20, 2005, appellant, through his representative, requested that the Office pay for medical treatment of his psychological condition, which he attributed to his employment injury. He submitted medical reports relevant to his treatment for a psychiatric condition. On March 13, 2006 appellant, through his representative, requested reconsideration of the April 21, 2005 hearing representative's decision. The representative challenged the validity of the termination of his compensation under section 8106 and argued that he sustained an emotional condition due to his accepted employment injury.

By decision dated December 11, 2006, the Office denied modification of its April 21, 2005 decision. The Office indicated that appellant had submitted evidence relevant to an emotional condition due to his employment injury and medical evidence supporting that he was disabled due to his back condition. The Office noted that he had not appealed the December 16, 1996 suitable work termination. The Office found that the only issue was the denial of his claim for a schedule award.

¹ The cover letter to the decision is dated December 13, 1996.

² The hearing representative indicated that she was affirming a decision dated October 19, 2002; however, it appears that this is a typographical error.

LEGAL PRECEDENT

The Office regulation provides that in termination under section 8106(c) of the Federal Employees' Compensation Act³ a claimant has no further entitlement to compensation under sections 8105, 8106 and 8107⁴ of the Act, which includes payment of continuing compensation for permanent impairment of a scheduled member.⁵ The Board has found that a refusal to accept suitable work constitutes a bar to the receipt of a schedule award for any impairment which may be related to the accepted employment injury.⁶

ANALYSIS

By decision dated December 16, 1996, the Office terminated appellant's compensation effective January 4, 1997 on the grounds that he abandoned suitable work under section 8106. On December 26, 2003 he filed a claim for a schedule award. The Office initially developed appellant's schedule award claim and, by decision dated April 5, 2004, denied his claim for a schedule award based on the medical evidence. Following an oral hearing, by decision dated April 21, 2005, an Office hearing representative determined that appellant was not entitled to a schedule award as he abandoned suitable work under section 8106 of the Act. On December 11, 2006 the Office denied modification of the April 21, 2005 decision.

The Board has held that termination of compensation under section 8106 of the Act, for refusal of suitable work, serves as a bar to receipt of schedule award compensation for any period after the termination decision has been reached.⁷ As the Office terminated appellant's compensation on the grounds that he refused an offer of suitable work, he is not entitled to a schedule award.⁸

On appeal, appellant's representative argues that he submitted medical evidence showing that he is disabled from work due to his employment injury. The Board's jurisdiction is limited to reviewing final decisions of the Office.⁹ The Office has not issued a final decision on either appellant's claim for medical benefits for a consequential emotional condition or his contention

³ 5 U.S.C. § 8106(c).

⁴ 5 U.S.C. §§ 8105, 8106, 8107.

⁵ 20 C.F.R. § 10.517.

⁶ See *Sandra A. Sutphen*, 49 ECAB 174 (1997); *Stephen R. Lubin*, 43 ECAB 564, 573 (1992).

⁷ *Id.*

⁸ Although section 8106(c) of the Act may serve as a bar to compensation for the period after the termination of compensation for refusal of suitable work, if appellant reached maximum medical improvement prior to the refusal of suitable employment, he would be entitled to payment of any portion of a schedule award due prior to the termination of monetary compensation benefits. *Id.* The Board notes that the evidence of record indicates that appellant reached maximum medical improvement on June 28, 1998, subsequent to the effective date of the Office's termination of his compensation for abandoning suitable work.

⁹ 20 C.F.R. § 501.2(c).

that he was unable to perform the job duties of his abandoned position. Thus, these issues are not before the Board at this time.

CONCLUSION

The Board finds that appellant is not entitled to a schedule award based on the Office's finding that he abandoned suitable employment under section 8106(c) of the Act.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 11, 2006 is affirmed.

Issued: July 9, 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