

ISSUE

The issue is whether OWCP properly terminated appellant's wage-loss compensation, effective May 3, 2015, pursuant to 20 C.F.R. § 10.500(a).

FACTUAL HISTORY

On November 29, 2012 appellant, then a 62-year-old heavy mobile equipment mechanic, filed a traumatic injury claim (Form CA-1) alleging that he sustained multiple injuries due to his involvement in a motor vehicle accident at work on November 27, 2012. He stopped work on the date of the accident. OWCP accepted appellant's claim for neck sprain, lumbago, aggravation of lumbosacral stenosis, left shoulder impingement, and temporary aggravation of lumbar radiculopathy. Appellant received disability compensation on the daily rolls beginning November 27, 2012 and was placed on the periodic rolls beginning April 7, 2013.

Appellant received treatment for his medical conditions from several attending physicians, including Dr. Anthony G. Hadden, Jr., a Board-certified neurosurgeon.³ To assess appellant's ability to perform physical tasks, appellant underwent a functional capacity evaluation (FCE). The record contains an August 25, 2014 report detailing the findings, which were deemed to be valid, of the FCE carried out on that date.

In an August 29, 2014 report, Dr. Hadden indicated that appellant could perform modified office-type sedentary work on a full-time basis beginning September 2, 2014. He recommended restrictions of lifting no more than 10 pounds, no repetitive climbing, bending, or stooping, and no engaging in any kneeling, squatting, or overhead reaching/lifting. Sitting was limited to 4 to 6 hours a day (10 to 20 minutes at one time) and walking/standing was limited to 4 to 6 hours a day with a cane (10 to 20 minutes at one time). Dr. Hadden noted that appellant could recline for up to three hours at one time, but that he could not work with moving machinery. He referred to an August 25, 2014 FCE and suggested that it should be referenced for other specific restrictions. Dr. Hadden closely patterned the above-described work restrictions on appellant's physical capacities for various activities as demonstrated during the August 25, 2014 FCE.⁴

In an October 20, 2014 letter, the employing establishment wrote to Dr. Hadden and advised him that it intended to offer appellant a temporary modified light-duty assignment on a full-time basis. The duties of the offered assignment involved conducting inventories of parts, tools, equipment, stock, and the contents of flammable lockers; and scribing tools and equipment using an electric scribe tool weighing eight ounces. The job description indicated that appellant might be required to travel to other garages to help conduct inventories within the guidelines of his physical restrictions. The physical duties of the position met the restrictions recommended

³ On April 2, 2014 appellant underwent surgery to repair a rotator cuff tear of his left shoulder. The surgery was not authorized by OWCP as related to the November 27, 2012 work injury.

⁴ In an August 29, 2014 report, Dr. Hadden discussed appellant's medical history and detailed the findings of the physical examination he performed on that date. He indicated that motor tests showed normal bulk and tone in appellant's upper and lower extremities. Dr. Hadden noted that appellant was cleared to return to sedentary work within the parameters of the August 25, 2014 FCE.

by Dr. Hadden in his August 29, 2014 report. The employing establishment requested that he address whether appellant could perform the offered assignment.

In an October 31, 2014 letter, the employing establishment offered appellant a temporary modified light-duty assignment on a full-time basis.⁵ OWCP's October 31, 2014 letter contained the same description of the duties and physical requirements of the offered assignment as the employing establishment's October 20, 2014 letter. It noted that the assignment was based on the work restrictions provided by Dr. Hadden and that appellant was expected to report to work with his regular supervisor on November 17, 2014. OWCP indicated, "In assigning this alternate work assignment, we have followed the provisions of ... 20 C.F.R. § 10.515(d). If you believe [that] you are unable to perform these duties for medical reasons related to your injury, you must provide written medical evidence to this effect from your attending physician, no later than November 17, 2014."

In an October 27, 2014 report received on November 3, 2014, Dr. Hadden provided physical examination findings similar to those contained in his August 29, 2014 report. He indicated that appellant's lumbar magnetic resonance imaging scan showed no explanation for his complaints of numbness in both lower extremities and indicated that he was cleared to return to sedentary work within the parameters of the August 25, 2014 FCE.

In November 7 and 14, 2014 work release forms, Dr. Hadden indicated that appellant was unable to return to regular work from October 27 to December 14, 2014.

Appellant did not accept the temporary light-duty assignment offered by the employing establishment. He submitted a November 7, 2014 statement in which he argued that he was physically unable to perform the duties of that assignment. Appellant asserted that the inventory duties required him to walk beyond the limits of his work restrictions and would require him to bend, stoop, kneel, and squat in counter to his work restrictions. He indicated that the requirement to drive between garages to perform inventories would take two to four hours each way and, therefore, would violate the restriction from sitting more than 10 to 20 minutes at one time.

An employing establishment official responded to appellant's November 7, 2014 letter and indicated that duties of the offered temporary light-duty assignment would be within his physical restrictions. The official noted that the inventory duties could be performed from a sitting or standing position, would only require nonrepetitive climbing, bending, or stooping, and would not require any kneeling or stooping. Accommodations would be made to allow for use of assistive carts, chairs, or other reasonable accommodation methods. The official acknowledged that some garages that had to be inventoried were two to four hours away from appellant's duty station, but indicated that accommodations would be made to allow him to take breaks between 20-minute periods of driving.

Appellant submitted a November 13, 2014 report in which Dr. Robert L. Shannon, an attending orthopedic surgeon, diagnosed status post rotator cuff repair of the left shoulder and

⁵ OWCP indicated that the duties of the offered assignment would remain in effect for 120 days and that the possibility existed to extend the assignment.

indicated that appellant could not lift more than five pounds with his left arm. In December 2 and 18, 2014 reports, Dr. Stephen P. Ireland, an attending Board-certified neurologist, noted that appellant had degenerative disease of the cervical and lumbar spines, but indicated that his complaints of lower extremity pain and numbness were not supported by clinical or diagnostic study findings.⁶ In December 10, 2014 and January 13, 2015 work release forms, Dr. Hadden indicated that appellant was unable to return to regular work from December 14, 2014 to February 14, 2015.

On March 23, 2015 the employing establishment advised OWCP that the temporary light-duty assignment was still available. It noted that the rate of pay for the assignment was \$38.59 per hour, the same as the current rate of pay for appellant's date-of-injury position. The assignment was temporary for 120 days, but could be renewed indefinitely.

In a March 25, 2015 letter, OWCP advised appellant of its determination that the temporary light-duty assignment offered by the employing establishment on October 31, 2014 was suitable. It informed him that the position was vocationally suitable, as well as physically suitable per the work restrictions of Dr. Hadden. It noted that the offered assignment was for 40 hours per week with weekly wages of \$1,548.80, an amount that equaled the wages of appellant's date of injury, and that, therefore, he would not suffer any wage loss if he accepted the assignment. OWCP discussed its regulations at 20 C.F.R. § 10.500(a) and advised that his entitlement to wage-loss compensation would be terminated under 20 C.F.R. § 10.500(a) if he did not accept the offered assignment or provide good cause for not doing so within 30 days of the date of the letter.

Appellant resubmitted the December 18, 2014 report of Dr. Ireland and reports of diagnostic testing from late-2014. On April 27, 2015 the employing establishment advised OWCP that the temporary light-duty assignment it offered appellant on October 31, 2014 was still available. Appellant did not accept the offered assignment within the allotted period.

In an April 29, 2015 decision, OWCP terminated appellant's wage-loss compensation effective May 3, 2015 under 20 C.F.R. § 10.500(a). It noted that he had not accepted the temporary light-duty assignment, which was within his medical restrictions and found that, therefore, the termination of his wage-loss compensation effective May 3, 2015 was justified under 20 C.F.R. § 10.500(a).

LEGAL PRECEDENT

Under FECA, once OWCP has accepted a claim it has the burden of justifying termination or modification of compensation benefits.⁷ OWCP may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.⁸

⁶ Appellant also submitted reports of diagnostic testing from late-2014.

⁷ *I.J.*, 59 ECAB 408 (2008); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

⁸ *Charles E. Minniss*, 40 ECAB 708, 716 (1989).

Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁹

Section 10.500(a) of the Code of Federal Regulations provides:

“(a) Benefits are available only while the effects of a work-related condition continue. Compensation for wage loss due to disability is available only for any periods during which an employee’s work-related medical condition prevents him or her from earning the wages earned before the work-related injury. For example, an employee is not entitled to compensation for any wage-loss claimed on a [Form] CA-7 to the extent that evidence contemporaneous with the period claimed on a [Form] CA-7 establishes that an employee had medical work restrictions in place; that light duty within those work restrictions was available; and that the employee was previously notified in writing that such duty was available. Similarly, an employee receiving continuing periodic payments for disability was not prevented from earning the wages earned before the work-related injury if the evidence establishes that the employing [establishment] had offered, in accordance with OWCP procedures, a temporary light[-]duty assignment within the employee’s work restrictions. (The penalty provision of 5 U.S.C. § 8106(c)(2) will not be imposed on such assignments under this paragraph.)”¹⁰

When it is determined that an employee is no longer totally disabled from work and is on the periodic rolls, OWCP’s procedures state that the claims examiner should determine whether light-duty work was available within the employee’s medical restrictions during the period for which compensation is claimed and a development letter should be sent to appellant setting forth the standards under section 10.500(a) including medical evidence required to establish a claim for wage-loss compensation. The claims examiner should also obtain documentation from the employing establishment that written notification of light-duty work availability was provided to the employee, if not already in the file.¹¹ The claims examiner, when adjudicating the claim for wage-loss compensation, must also determine whether the evidence of record establishes that the employee was provided with written notification of a light-duty job assignment, that the job was within the employee’s restrictions, and that the job was available to the employee during the period wage-loss compensation was claimed.¹²

ANALYSIS

OWCP accepted that on November 27, 2012 appellant sustained neck sprain, lumbago, aggravation of lumbosacral stenosis, left shoulder impingement, and temporary aggravation of

⁹ See *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

¹⁰ 20 C.F.R. § 10.500(a); see also Federal (FECA) Procedure Manual, Part 2 -- Claims, *Job Offers and Return to Work*, Chapter 2.814.9(a) (June 2013).

¹¹ *Id.* at Chapter 2.814.9(b)(2) (June 2013).

¹² *Id.* at Chapter 2.814.9(b)(3).

lumbar radiculopathy. Appellant was receiving disability compensation on the periodic rolls. On October 31, 2014 the employing establishment offered him a temporary light-duty assignment on a full-time basis. The assignment involved conducting inventories of parts, tools, equipment, stock, and the contents of flammable lockers; and scribing tools and equipment using an electric scribe tool weighing eight ounces. The job description indicated that appellant might be required to travel to other garages to help conduct inventories within the guidelines of his physical restrictions. The duties of the position met the restrictions provided by Dr. Hadden. In an August 29, 2014 report, Dr. Hadden had recommended various work restrictions based on August 29, 2014 physical examination findings and the results of an August 25, 2014 FCE.¹³ On October 27, 2014 he reexamined appellant and indicated that the work restrictions provided on August 29, 2014 were still valid. Appellant refused to accept the position and, as a result, in an April 29, 2015 decision, OWCP terminated his wage-loss compensation effective May 3, 2015 under 20 C.F.R. § 10.500(a).

The Board finds that OWCP properly terminated appellant's wage-loss compensation effective May 3, 2015 under 20 C.F.R. § 10.500(a). Appellant did not accept a temporary light-duty assignment offered by the employing establishment, which was within his medical restrictions and his vocational ability. The assignment would have paid wages equal to those paid by his date-of-injury position. Therefore, the termination of his wage-loss compensation effective May 3, 2015 was justified under 20 C.F.R. § 10.500(a).¹⁴

The Board finds that the medical evidence of record shows that appellant could perform the temporary light-duty assignment offered by the employing establishment in November 2014. The physical requirements of the offered temporary light-duty assignment were within his medical restrictions as provided by Dr. Hadden in his August 29 and October 27, 2014 reports. The Board notes that the medical restrictions provided by Dr. Hadden in these reports constitute the best picture of appellant's ability to work around the time that the employing establishment offered him the temporary light-duty assignment.¹⁵

On appeal, counsel argues that appellant was not adequately apprised of how the actual duties of the offered temporary light-duty assignment could be performed within his medical restrictions. In early December 2014, the employing establishment addressed these concerns by

¹³ Dr. Hadden recommended restrictions of lifting no more than 10 pounds; no engaging in repetitive climbing, bending, or stooping; and no engaging in any kneeling, squatting, or overhead reaching/lifting. Sitting was limited to 4 to 6 hours a day (10 to 20 minutes at one time) and walking/standing was limited to 4 to 6 hours a day with a cane (10 to 20 minutes at one time). Dr. Hadden noted that appellant could recline for up to 3 hours at one time, but that he could not work with moving machinery. He closely patterned his work restrictions on appellant's physical capacities for various activities as demonstrated during the August 25, 2014 FCE.

¹⁴ See *supra* note 10.

¹⁵ The record also contains several work release forms in which Dr. Hadden indicated that appellant was unable to return to regular work between late-October 2014 and mid-February 2015, but the forms provided no opinion on appellant's ability to perform light-duty work. In a November 13, 2014 report, Dr. Shannon, an attending physician, diagnosed status post rotator cuff repair of the left shoulder and indicated that appellant could not lift more than five pounds with his left arm. However, this report is of limited probative value regarding appellant's ability to work because Dr. Shannon did not provide any explanation of what specific condition or conditions necessitated the lifting restriction.

explaining in detail how the assignment could be performed within appellant's medical restrictions.¹⁶

Counsel also argues on appeal that appellant was not advised that the temporary light-duty assignment offered by the employing establishment would provide him with wages equal to or greater than the wages he would have earned in his date-of-injury job. However, OWCP advised appellant of this fact in its March 25, 2015 proposed termination letter and the record contains evidence from the employing establishment confirming this fact.

The Board further finds that OWCP complied with its procedural requirements by advising appellant that the offered assignment was suitable, providing him with the opportunity to accept the position or provide reasons for his refusal, and notifying him that his wage-loss compensation would be terminated if he failed to submit sufficient evidence showing such termination was not justified.¹⁷

The evidence of record reflects that appellant did not accept a temporary light-duty assignment offered by the employing establishment which was suitable and which would have paid him wages equal to those of his date-of-injury job and, therefore, OWCP properly terminated his wage-loss compensation effective May 3, 2015 under 20 C.F.R. § 10.500(a).

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that OWCP properly terminated appellant's wage-loss compensation effective May 3, 2015.

¹⁶ For example, the employing establishment noted that inventory duties could be performed from a sitting or standing position, would only require nonrepetitive climbing, bending, or stooping, and would not require any kneeling or stooping. Accommodations would be made to allow for use of assistive carts, chairs, or other reasonable accommodation methods. It was acknowledged that some garages that had to be inventoried were 2 to 4 hours away, but it was noted that accommodations would be made to allow appellant to take breaks between 20-minute periods of driving. The Board notes that he has not alleged that he was vocationally unable to perform the offered temporary assignment.

¹⁷ See *supra* notes 11 and 12.

ORDER

IT IS HEREBY ORDERED THAT the April 29, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 22, 2016
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board