

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

L.C., Appellant)	
)	
and)	Docket No. 14-1712
)	Issued: June 9, 2016
U.S. POSTAL SERVICE, POST OFFICE,)	
Eatontown, NJ, Employer)	
)	

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On August 26, 2014 appellant, through counsel, filed a timely appeal from May 9 and July 15, 2014 merit decisions of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant met her burden of proof to establish that she sustained an aggravation of her left elbow condition causally related to factors of her federal employment between June 10 and 13, 2013; and (2) whether OWCP properly terminated appellant's wage-loss compensation under 5 U.S.C. § 8106(c) for abandonment of suitable work.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On May 4, 2011 appellant, then a 40-year-old rural carrier, filed a recurrence claim (Form CA-2a) alleging that upon returning to work she experienced slight pain, tightness, numbness, and swelling in and around her elbow after picking up trays at the end of her route on April 5, 2011. By letter dated May 23, 2011, OWCP informed appellant that it had administratively converted this claim for recurrence to a claim for a new traumatic injury because the circumstances described on her claim form indicated that she had experienced a new injury, rather than a spontaneous worsening of her work-related condition without new injury or exposure to work factors. The new claim was opened under file number xxxxxx726. Appellant stopped work on April 6, 2011. OWCP accepted her claim for left lateral epicondylitis on July 1, 2011. She underwent a left lateral epicondyle release surgical procedure on January 27, 2012.

In a functional capacity evaluation dated November 2, 2011, physical therapists recommended that appellant had the ability to perform light work, including occasional lifting and working up to 20 pounds, with precautions on activities involving her left upper extremity. Additional recommended restrictions included no reaching above shoulder level; allowed changes to her duties involving her left upper extremity during prolonged or repetitive activities for durations longer than 10 minutes including pushing/pulling, lifting, gripping/grasping, reaching, typing, and pinching; and use of a step stool to keep her work load at shoulder level or below.

In reports dated August 28, 2012, Dr. Franklin Chen, a Board-certified orthopedist, stated that appellant could return to work with permanent light-duty restrictions as outlined in the functional capacity evaluation of November 2, 2011.

On April 4, 2013 the employing establishment made an offer of modified assignment (limited duty) for a position as a modified clerk. The duties of the assignment were described as “duties of a sales and service associate” (or “window job”) for 8 hours per day. The physical requirements of the modified assignment were standing for up to eight hours daily; lifting 20 pounds occasionally for up to 2.6 hours daily; pushing, pulling, and gripping occasionally on the left for up to 2.6 hours daily; and reaching occasionally to shoulder level on the left side for up to 2.6 hours daily. Appellant accepted this modified job offer on April 30, 2013. She resumed full-time, limited duty on May 28, 2013.

In a report dated June 17, 2013, a vocational rehabilitation counselor noted that, on June 11, 2013, appellant informed her she had been sent home after 3.5 hours because her manager had not issued a notification of personnel action form indicating a change in craft, and that she could therefore not work the “window job.” The form still had not been issued as of June 13, 2013. On June 14, 2013 appellant reported that her supervisor had asked her to work outside of her restrictions. The counselor contacted this supervisor on the same date, who contended that she had not asked appellant to work outside of her restrictions, that she was trying to accommodate appellant, and that she advised appellant to go home if she could not work. The rehabilitation counselor advised appellant to report for work on her next scheduled workday and to show her supervisor her job offer if she is asked to do anything outside of her restrictions.

In an attending physician's report dated June 18, 2013, Dr. Chen noted that appellant was currently unable to perform the modified duty activities of her position. He recommended an independent medical examination. In a narrative report of the same date, Dr. Chen noted that appellant came to visit for a follow up of "left elbow lateral epicondylitis s/p release on January 27, 2012" and that "the patient reports since returning to work with the light-duty restrictions she has had increased left elbow pain with recurring swelling. She was performing repetitive activities at work. The patient describes her pain as aching with associated spasms to the left upper arm which is worse with her work activities." He opined that appellant was unable to perform modified duty and that "it is within medical probability that the current orthopedic complaints are causally related to the patient's work injury."

By letter dated June 25, 2013, Dr. Chen noted that "Based on the exam[ination] of the patient, there is no objective finding that would [necessarily] prohibit her from working with the outlined restrictions. She has subjective complaints of spasm, fatigue and pain with those activities which she feels makes it unable for her to perform such activities. I received her [impartial medical examination] for a second opinion and I have no other treatment recommendations and feel that she is at [m]aximum medical improvement."

In a record of a telephone conversation dated July 11, 2013, the employing establishment confirmed that appellant's modified job offer was still available.

By letter dated July 11, 2013, OWCP stated that it had reviewed the modified job offer of April 4, 2013 and found it suitable in accordance with her medical limitations based on the report of Dr. Chen dated August 28, 2012. It noted that she returned to work on May 28, 2013, but stopped on June 19, 2013, and that Dr. Chen had advised by letter dated June 25, 2013 that there was no objective finding that would prohibit her from working the limited-duty position. OWCP afforded appellant 30 days either to submit a statement explaining why she had stopped work or to return to work.

In reports dated July 9, 2013, Dr. Mark A. Filippone, Board-certified in physical medicine and rehabilitation, noted that appellant was totally disabled beginning June 13, 2013. He diagnosed her with a status post fracture of the left proximal radius at the elbow; suspect reflex sympathetic dystrophy of the left upper extremity; and internal derangement of the left shoulder. Dr. Filippone examined her, noting pain on palpation over the medial more than the lateral left humeral epicondyle; diminished pinprick sensations; no definite motor deficits of the abductor pollicis brevis, ulnar nerve intrinsics, extensor indicis proprius, or extensor hallucis longus; and pain on reaching from above and behind from below with her left arm. He stated that his diagnoses were directly and solely the result of a slip and fall accident at work.

In a report dated July 25, 2013, Dr. Filippone examined the results of an electromyography/nerve conduction velocity (EMG/NCV) study, and diagnosed appellant with left C5-6 cervical radiculopathy and bilateral carpal tunnel syndrome, worse on the left. He noted that these diagnoses were directly and solely the result of injuries sustained while working for the employing establishment.

On July 31, 2013 appellant filed a recurrence claim (Form CA-2a) alleging that on June 13, 2013, she was filling boxes with mail in the post office box section for approximately 2

hours when sharp pains began to radiate up and down her left arm. She noted that after returning to work following the original injury of April 5, 2011, she was put on permanent restrictions and then moved to the position of a modified window clerk. A supervisor noted that the duty alleged to have caused her injury was within her restrictions.

By letter dated August 1, 2013, OWCP informed appellant that it had administratively converted this claim for recurrence to a claim for traumatic injury because the circumstances described on her claim form indicated that she had experienced a new injury, rather than a spontaneous worsening of her work-related condition without new injury or exposure to work factors. The new claim was opened under file number xxxxxx401.

By letter dated August 12, 2013, OWCP informed appellant that the evidence of record was insufficient to support her claim for compensation under file number xxxxxx401. It requested that she respond to a questionnaire and afforded her 30 days to submit additional evidence.

The employing establishment challenged appellant's claim by letter dated August 23, 2013. It stated that appellant was assigned to duties within her limitations and that she was given mainly post office box duties. The employing establishment noted that the duties in that capacity were to case letters and flats, which were ounces in weight. It contended that these duties would not have caused her to have the type of injury that she claims, and stated that she only worked minimal hours per day. The employing establishment also noted that her injury occurred over a period of time, from May 28 through June 13, 2013.

On August 28, 2013 appellant responded to OWCP's inquiries. She stated that on June 13, 2013, she was working in the post office box section of the employing establishment when she noticed her left arm starting to swell and then experienced sharp shooting pains from her elbow radiating up to her shoulder and down to her fingertips. Appellant noted that before this injury, she had a slip and fall on the job while delivering mail on January 4, 2011, which resulted in a fractured radius and constant pain of her left arm and shoulder. She noted that she returned to work on March 26, 2011, which was diagnosed by Dr. Chen as lateral epicondylitis. Appellant stated that on April 4, 2013 she was given a modified job offer as a sales and service associate, and that she began window training on May 28, 2013. She noted that up until the date of injury she continued to have pain, swelling, numbness, and tingling of her left arm. Appellant stated that she was claiming a traumatic injury due to the stress and strain of the job functions she performed.

In a narrative report dated August 30, 2013, Dr. Filippone reported that appellant informed him that on April 5, 2011 she slipped and fell landing on her flexed left elbow and fractured her proximal left radial bone, requiring surgery on January 27, 2012. He noted that she continued to be symptomatic for left lateral humeral epicondylitis. Dr. Filippone examined appellant but did not make findings on examination regarding her left upper extremity. He concluded that she was totally disabled. Dr. Filippone diagnosed appellant with left epicondylitis, status post fracture of the left proximal radius at the elbow, and internal derangement of the left shoulder. He opined that all of appellant's abnormalities were directly and solely the result of the injury of April 5, 2011.

In a decision dated September 17, 2013, OWCP denied appellant's claim for compensation for traumatic injury under file number xxxxxx401. It reviewed evidence under both this file number and file number xxxxxx726 in the adjudication of her claim. OWCP found that appellant had not submitted a diagnosis in connection with the event of June 13, 2013, noting that her physicians did not describe this incident and did not indicate that her diagnosis of lateral epicondylitis had been caused or aggravated by this incident, but instead indicated that it had been caused by the injuries of January 4 and April 5, 2011. OWCP accepted that appellant was a federal civilian employee who filed a timely claim and that the evidence supported that the incident occurred as described.

In a decision dated September 17, 2013, OWCP determined that appellant's reasons for abandonment of her position were not valid. It afforded her a period of 15 additional days to report to her position.

On September 23, 2013 appellant, through counsel, requested a hearing before an OWCP hearing representative on the issue of her claim for a June 13, 2013 traumatic injury.

In an attending physician's report dated September 27, 2013, Dr. Filippone noted that appellant continued to be totally disabled and that she needed a magnetic resonance imaging (MRI) scan of her left shoulder.

By decision dated November 1, 2013, OWCP terminated appellant's wage-loss and schedule award benefits as she abandoned suitable employment upon her failure to report to duty.

On November 8, 2013 appellant, through counsel, requested a hearing before an OWCP hearing representative on the issue of her abandonment of suitable work.

By letter dated November 11, 2013, OWCP referred appellant to Dr. Kenneth Heist, a Board-certified orthopedic surgeon, for a second opinion evaluation. It requested an opinion on whether appellant continued to suffer disability as a result of her injury of April 5, 2011, whether appellant was capable of returning to her job, and any recommended work restrictions.

In a report dated November 25, 2013, Dr. Heist noted that appellant began training in May 2013 to be a window clerk, but that occupation was not available, and so she was "casing mail" when her symptoms reoccurred. He examined appellant and found that her "current restrictions, or disability, are directly related to the job injury of April 5, 2011." Dr. Heist noted that appellant had tenderness over the elbow joint and restriction of motion of the left elbow, and that due to her symptoms she was unable to perform repetitive tasks or lift heavy articles. He noted that appellant was not capable of performing her job as a letter carrier, but that she was capable of working a full day in a less strenuous position such as a light-duty window clerk. Dr. Heist reviewed a functional capacity evaluation dated January 7, 2014, and noted that its conclusion that appellant was capable of performing light-duty work was congruent with his evaluation.² He recommended work restrictions of no more than two hours per day of pushing,

² While Dr. Heist stated that his report was signed on November 25, 2013, the evaluation of a January 7, 2014 functional capacity evaluation in the body of the report reveals that Dr. Heist composed the report at a later date.

pulling, or lifting per day of over 20 pounds; no more than two hours per day of repetitive movements involving the wrists; no more than one hour per day of repetitive movements involving the elbow; and breaks of five minutes every hour.

In a functional capacity evaluation dated January 7, 2014, a physical therapist found that appellant was capable of working a full eight-hour workday on light duty.

On February 4, 2014 Dr. Filippone noted that he had discussed the events of June 10 through 13, 2013 with appellant. Appellant told him that on June 10, 2013, her supervisor advised appellant that because there was no Notification of Personnel Action form showing her new position she could not give her a cash drawer or have her work the front window. She was brought to the post office box section of the office and told to fill the boxes with mail and flyers. After two hours of performing this duty, she felt sharp shooting pains along with numbness and tingling about her left arm and fingers. Appellant was given a short break to rest and sent home. She reported to duty the next day, where she once again filled post office boxes and felt pain in her left arm with swelling. Appellant stated that she was then sent to the parcel area, where she lifted and placed parcels to scan and placed them in a hamper, then was sent home after about an hour. On June 12, 2013 she worked the post office box section, and after about an hour and a half, her arm swelled and began to throb. Appellant stated that she told her supervisor, who gave her a short break and sent her home. On June 13, 2013 she worked the post office box section and her arm began to swell again, causing pain significant enough to bring her to tears. Appellant reported to her supervisor and was advised to go home and contact her physician. Dr. Filippone noted that he found that these work duties would aggravate her preexisting left elbow injury. He noted subjective complaints of constant pain in the radial aspect of her left forearm; pain in the left fingers; burning sensations in the left hand, shoulder, and neck; and numbness and tingling in the thumb, index, and middle fingers of both hands.

In an attending physician's report dated February 4, 2014, Dr. Filippone noted that appellant continued to be totally disabled.

A hearing before an OWCP hearing representative on the issue of appellant's claim for traumatic injury based upon a traumatic incident of June 13, 2013 was held on February 18, 2014. At the hearing, appellant stated that she began working for the employing establishment in August 1995. She noted that on January 4, 2011 she injured herself when she slipped on black ice, and that OWCP accepted her claim for fracture of the left radius neck, closed. Appellant returned to work in March 2011 and later stopped work in April 2011 due to an elbow injury, which was accepted for left lateral epicondylitis. She returned to work again on May 28, 2013 for training after being offered a modified clerk position. Appellant stated that on June 10, 2013 she returned to work thinking that she would be performing a modified clerk job, but that on that day a supervisor told her that her paperwork was not finished, and so she was stuck in the post office box section. She noted that this position involving taking mail out of buckets and trays and putting them in post office boxes, which was a repetitive task involving reaching, twisting, and lifting. Appellant stated that she never had to reach above her shoulder in this position. On June 10, 2013 she began experiencing pain and swelling in her left elbow that radiated from her shoulders to her fingers. Appellant continued performing these duties until June 13, 2013, at which point the pain made her unable to move her arm. She noted that Dr. Chen thought her injury was a recurrence of her prior elbow injury, and he told her that he

thought this because she had been performing repetitive activities. Appellant stated that she had “maxed out” her visits with Dr. Chen, so he released her that day to see another physician for a second opinion. She explained that, because OWCP denied payment to check her shoulder, Dr. Chen told her that there was nothing more he could do for her, and referred her to Dr. Filippone. Appellant had been out of work since that time under Dr. Filippone’s care. Appellant’s counsel contended that appellant’s claim under file number xxxxxx401 was an aggravation of her previous work injury of left epicondylitis due to new exposure from June 10 through 13, 2013.

A hearing before an OWCP hearing representative on the issue of appellant’s abandonment of suitable work was held on April 28, 2014. Appellant’s counsel contended that upon appellant’s return to work on June 10, 2013, her work restrictions of occasional left-sided pushing, pulling, and gripping were not honored when she was put to work in the post office box section. He noted that Dr. Chen had noted in his report of June 18, 2013 that appellant was doing repetitive activities at work. Counsel contended that appellant was not performing the duties outlined in the April 4, 2013 modified job offer when she returned to work, but instead she was working in the post office box area, and that as such, Dr. Chen’s June 25, 2013 opinion that there were no objective findings that would prohibit her from working with the outlined restrictions was irrelevant. He stated that Dr. Filippone’s opinion regarding appellant’s disability outweighed that of Dr. Chen due to these deficiencies, and that at the very least, there was a conflict of medical opinion between the two physicians of equal weight, requiring referral to an impartial medical examiner. Counsel noted that appellant suffered a new traumatic injury on June 13, 2013 as a result of the post office box duties, and that as such, the issue of appellant’s abandonment of suitable work was not in posture for decision.

In an attending physician’s report dated May 6, 2014, Dr. Filippone again noted that appellant continued to be totally disabled.

By decision dated May 9, 2014, the hearing representative affirmed OWCP’s decision of September 17, 2013. She found that the factual evidence did not support that appellant sustained a traumatic injury, noting that she attributed her elbow condition to duties over the course of three days, and as such, analyzed appellant’s claim as an occupational disease. The hearing representative further found that Dr. Chen, in his June 18, 2013 report, noted that appellant reported increased pain upon a return to work, but also noted that there were no objective findings on examination to support that appellant could not perform her modified duties. She found that Dr. Filippone’s reports were of diminished probative value because he failed to provide a specific diagnosis or well-reasoned medical opinion on the relationship between her conditions and the events of June 13, 2013.

By decision dated July 15, 2014, the hearing representative affirmed OWCP’s decision of November 1, 2013 finding that appellant had abandoned suitable work. She noted that Dr. Chen had indicated that appellant could work within certain medical restrictions, and that the employing establishment had offered a position within those restrictions, which OWCP found suitable. The hearing representative found that the medical records received subsequent to Dr. Chen’s June 25, 2013 report were not sufficient to shift the weight of the medical evidence or to require further development of the claim.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA; that the claim was filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged; and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.³ These are the essential elements of every compensation claim regardless of whether the claim is predicated on a traumatic injury or occupational disease.⁴

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.

The claimant has the burden of establishing by the weight of reliable, probative, and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.⁵ An award of compensation may not be based on appellant's belief of causal relationship. Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.⁶

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.⁷ Rationalized medical opinion evidence is medical evidence which includes a physician's reasoned opinion on whether there is a causal relationship between the claimant's diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁸ The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the

³ *Gary J. Watling*, 52 ECAB 278, 279 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ *Michael E. Smith*, 50 ECAB 313, 315 (1999).

⁵ *Roma A. Mortenson-Kindschi*, 57 ECAB 418, 428 n.37 (2006); *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

⁶ *P.K.*, Docket No. 08-2551 (issued June 2, 2009); *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

⁷ *Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117, 123 (2005).

⁸ *Leslie C. Moore*, 52 ECAB 132, 134 (2000).

care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁹

ANALYSIS -- ISSUE 1

Appellant alleged that between June 10 and 13, 2013, she aggravated an injury to her elbow in the performance of duty while working in the post office box section of the employing establishment.¹⁰ OWCP accepted that the employment factors alleged, that of taking mail out of buckets and trays and putting them in post office boxes, occurred as described. The issue, consequently, is whether the medical evidence establishes that she sustained an injury as a result of these factors. The Board finds that appellant has established the existence of the condition claimed, but has not met her burden of proof to establish a causal relationship between factors of her federal employment and her diagnosed conditions.

In reports dated July 9, 2013, Dr. Filippone noted that appellant was totally disabled beginning June 13, 2013. He diagnosed her with a status post fracture of the left proximal radius at the elbow; suspect reflex sympathetic dystrophy of the left upper extremity; and internal derangement of the left shoulder. Dr. Filippone examined her, noting pain on palpation over the medial more than the lateral left humeral epicondyle; diminished pinprick sensations; no definite motor deficits of the abductor pollicis brevis, ulnar nerve intrinsics, extensor indicis proprius, or extensor hallucis longus; and pain on reaching from above and behind from below with her left arm. He opined that his diagnoses were directly and solely the result of a slip and fall accident at work.

In a report dated July 25, 2013, Dr. Filippone examined the results of an electromyography/nerve conduction study, and diagnosed appellant with left C5-6 cervical radiculopathy and bilateral carpal tunnel syndrome, worse on the left. He again opined that these diagnoses were directly and solely the result of injuries sustained while working for the employing establishment.

On February 4, 2014 Dr. Filippone noted that he had discussed the events of June 10 through 13, 2013 with appellant. After reviewing the events of those dates, he determined that he found that these events would aggravate her preexisting left elbow injury. Dr. Filippone noted subjective complaints of constant pain in the radial aspect of her left forearm; pain in the left fingers; burning sensations in the left hand, shoulder, and neck; and numbness and tingling in the thumb, index, and middle fingers of both hands.

⁹ *Jennifer Atkerson*, 55 ECAB 317, 319 (2004); *Naomi A. Lilly*, 10 ECAB 560, 573 (1959).

¹⁰ The Board notes that in her initial filing of a Form CA-2a for recurrence and in her reply to OWCP's inquiries, appellant stated that her injury occurred on June 13, 2013. OWCP's regulations define a traumatic injury as a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. 20 C.F.R. § 10.5(ee). These regulations define an occupational disease or illness as a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q). However, at the February 14, 2013 hearing, appellant alleged that her injury occurred as a result of duties of her federal employment between June 10 and 13, 2013. Hence, initially, OWCP properly converted appellant's claim for recurrence to a traumatic injury claim rather than an occupational disease claim. Subsequently, based upon appellant's new testimony, the hearing representative properly analyzed appellant's injury as an occupational disease.

The Board finds that Dr. Filippone's reports are sufficient to establish the medical component of fact of injury, as he diagnosed her with a status post fracture of the left proximal radius at the elbow. However, his reports are not sufficiently rationalized to establish a causal relationship between factors of appellant's federal employment and her diagnosed conditions. Dr. Filippone noted that the events of June 10 through 13, 2013 would aggravate her preexisting left elbow injury. However, he did not provide a pathophysiological explanation as to how the duties she performed on these dates would result in or aggravate her elbow conditions, nor did he explain how appellant's similar conditions prior to June 10, 2013 were aggravated by this incident. Thus, Dr. Filippone's opinion on causal relationship was of diminished probative value, and as such, his reports are insufficient to establish appellant's claim.

Dr. Chen's June 18, 2013 report indicates that appellant came to visit for a follow up of "left elbow lateral epicondylitis s/p release on January 27, 2012" and that "the patient reports since returning to work with the light-duty restrictions she has had increased left elbow pain with recurring swelling. She was doing repetitive activities at work. The patient describes her pain as aching with associated spasms to the left upper arm which is worse with her work activities." He noted that appellant was currently unable to perform modified duty and that "it is within medical probability that the current orthopedic complaints are causally related to the patient's work injury." As Dr. Chen's report does not specify which work injury he referred to, and as he did not provide a detailed pathophysiological explanation as to how the duties she performed between June 10 and 13, 2013 would result in or aggravate her elbow conditions, his report is also of diminished probative value and is insufficient to establish appellant's claim. The remaining medical evidence of record is similarly deficient.

As such, the Board finds that there is insufficient rationalized medical evidence of record to establish an aggravation of appellant's elbow condition as a result of factors of her federal employment.

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.

LEGAL PRECEDENT -- ISSUE 2

Section 8106(c) of FECA 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."¹¹ It is OWCP's burden to terminate compensation under section 8106(c) for refusing to accept suitable work or neglecting to perform suitable work.¹² The implementing regulations provide that an employee who refuses or neglects to work after suitable work has been offered or secured for the employee has the burden of showing that such refusal or failure to work was reasonable or justified and shall be provided with the opportunity to make such a showing before entitlement to compensation is terminated.¹³ To justify termination, OWCP must show that the

¹¹ 5 U.S.C. § 8106(c).

¹² *Joyce M. Doll*, 53 ECAB 790 (2002).

¹³ 20 C.F.R. § 10.517(a).

work offered was suitable and that appellant was informed of the consequences of her refusal to accept such employment.¹⁴ In determining what constitutes suitable work for a particular disabled employee, OWCP considers the employee's current physical limitations, whether the work is available within the employee's demonstrated commuting area, the employee's qualifications to perform such work and other relevant factors.¹⁵ Once OWCP establishes that offered work is suitable, the burden of proof shifts to appellant to show that her abandonment of the position was reasonable or justified.¹⁶ Section 8106(c) will be narrowly construed as it serves as a penalty provision which may bar an employee's entitlement to compensation based on a refusal to accept a suitable offer of employment.¹⁷

ANALYSIS -- ISSUE 2

OWCP terminated appellant's wage-loss and schedule award compensation effective November 1, 2013 finding that she abandoned suitable work. It found that the weight of medical evidence established that the modified clerk position was within the physical restrictions set forth by Dr. Chen in his report dated August 28, 2012. The restrictions were incorporated into the April 4, 2013 job offer, noting physical requirements of lifting less than 20 pounds no more than 2.6 hours per day; pushing, pulling, and gripping occasionally with the left side for no more than 2.6 hours per day; and reaching occasionally to shoulder level with the left side for no more than 2.6 hours per day. The duties of the position were described as "duties of a sales and service associate." OWCP determined, based on the medical evidence of record, that the job offered to appellant on April 4, 2013 was suitable and within her physical capabilities. Appellant accepted this job offer on April 30, 2013.

On appeal, appellant asserted that the position she worked upon returning to the employing establishment on June 10, 2013 was not the one detailed in the April 4, 2013 job offer, in that she was supposed to be working as a window clerk or sales and service associate according to the job offer, but was assigned to put mail into post office boxes instead. The job offer of April 4, 2013 stated that the duties of her modified assignment were the "duties of a sales and service associate" for eight hours per day, and appellant was supposed to be working in this position as of June 13, 2013. Pursuant to OWCP's procedures, an acceptable reason for refusing to perform in a position offered as suitable work is that the offered position has been withdrawn.¹⁸

The suitable work position offered to appellant was a modified clerk position with the "duties of a sales and service associate." Appellant returned to work on May 28, 2013, but

¹⁴ *Linda Hilton*, 52 ECAB 476 (2001); *Maggie L. Moore*, 42 ECAB 484 (1991), *reaff'd on recon.*, 43 ECAB 818 (1992).

¹⁵ 20 C.F.R. § 10.500(b); *see Ozine J. Hagan*, 55 ECAB 681 (2004).

¹⁶ *M.S.*, Docket No. 06-797 (issued January 31, 2007).

¹⁷ *Gloria G. Godfrey*, 52 ECAB 486 (2001).

¹⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Job Offers and Return to Work, Job Offer Refusal*, Chapter 2.814.5.a (June 2013).

stopped work on June 19, 2013 for an alleged recurrence of disability, after working in the box section, filling boxes with mail. The employing establishment confirmed by letter on August 23, 2013 that at the time of appellant's recurrence of disability she was given mainly post office box duties, which required that she case letters and flats which were light in weight. It posited that this type of work would not have caused her to suffer the injury claimed.

The Board finds that OWCP failed to meet its burden of proof to establish that the job offer was suitable. The job offer of April 4, 2013 did not contain a description of the duties to be performed as required by OWCP's procedures;¹⁹ the case record did not contain a job description for the "sales and service associate" position; and the Department of Labor's *Dictionary of Occupational Titles* does not contain a description of the duties of a "sales and service associate." The Board has explained that it is impossible for the Board to make an informed decision as to the suitability of a position without knowing the nature of the duties.²⁰ The Board finds that the reference to "duties of a sales and service associate" was not sufficient, without additional information of record, to meet its burden of proof to show that the position offered to appellant was suitable, because the record did not contain an actual description of the duties to be performed. Without such a description of the actual duties to be performed in the job offer, the Board is unable to determine whether the duties appellant was performing at the time she allegedly abandoned work, *i.e.*, putting mail into post office boxes and casing mail would fall within the scope of duties for a sales and service associate.

For these reasons, OWCP did not establish the suitability of the modified clerk position on which the offer of suitable work was based. Therefore, it improperly terminated her compensation effective November 1, 2013.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained an aggravation of a left elbow condition causally related to factors of her federal employment between June 10 and 13, 2013. The Board further finds that OWCP did not meet its burden of proof to terminate appellant's wage-loss compensation effective November 1, 2013 on the ground that she abandoned suitable work.

¹⁹ *Id.* at Chapter 2.814.4.a.1.a (June 2013).

²⁰ *See L.C.*, Docket No. 11-422 (issued October 5, 2011).

ORDER

IT IS HEREBY ORDERED THAT the May 9, 2014 decision of the Office of Workers' Compensation Programs is affirmed and the July 15, 2014 decision of OWCP is reversed.

Issued: June 9, 2016
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

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