

FACTUAL HISTORY

This is the second appeal before the Board. Appellant, then a 57-year-old letter carrier, filed a claim in April 2000, for bilateral carpal tunnel syndrome which the Office accepted. In addition, on April 18, 2002, the Office granted him a schedule award for a 28 percent permanent impairment of the right and left upper extremities. The Office subsequently accepted a September 2002 claim for bilateral shoulder impingement syndrome and administratively combined these claims in November 2002. The Office paid appellant appropriate compensation for total disability and placed him on the periodic rolls. In an Office memorandum dated August 28, 2003, it was noted that appellant had elected to retire on September 1, 2003. On September 11, 2003 the employing establishment offered appellant a job as a modified letter carrier based on the restrictions outlined by Dr. Sanjay Misra, the attending physician. Appellant rejected the modified letter carrier position on the grounds that he was retiring. On September 29, 2003 appellant filed a claim for a schedule award based on a partial loss of use of his upper extremities. By decision dated October 27, 2003, the Office terminated appellant's compensation benefits on the grounds that he refused an offer of suitable work. By decision dated November 5, 2003, the Office denied appellant's request for a schedule award finding that the October 27, 2003 decision terminating compensation pursuant to section 8106(c), precluded appellant from receiving any further compensation under the Federal Employees' Compensation Act. Appellant requested an oral hearing. At the hearing, his representative contended that the Office's October 27, 2003 termination was improper because he had already elected to retire on September 1, 2003 which was 10 days prior to the date he received the employing establishment's job offer. The representative, therefore, contended that appellant should be entitled to a schedule award. By decision dated December 12, 2004, an Office hearing representative affirmed the October 27, 2003 termination decision. The hearing representative further found that appellant's termination precluded him from receiving a schedule award.¹ By nonmerit decision dated April 8, 2005, the Office denied appellant's request for reconsideration. In a September 19, 2005 decision, the Board affirmed the April 5, 2005 and December 12, 2004 decisions. The complete facts of this case are set forth in the Board's May 2, 2005 decision and are herein incorporated by reference.²

Following the Board's decision, appellant requested reconsideration by letter dated December 8, 2005. He contended that his decision to retire as of September 1, 2003 was made prior to the date the employing establishment tendered its suitable job offer; therefore, appellant's entitlement to disability compensation was wrongly terminated. Appellant submitted copies of documents and medical evidence previously considered by the Office and the Board, but did not submit any new factual or medical evidence.

By decision dated January 3, 2006, the Office denied appellant's request for modification of the October 27, 2003 decision.

¹ The hearing representative noted that the employing establishment faxed a copy of the job offer to the Office on September 10, 2003; however, the record contains a letter dated September 11, 2003 to appellant which contains a copy of the job offer. The date on the actual job offer to appellant was listed as September 2, 2003 and signed by a supervisor on September 3, 2003.

² Docket No. 05-1228 (issued September 19, 2005).

By letter dated March 22, 2006, appellant requested reconsideration. He reiterated his previously submitted arguments and did not submit any new, additional factual or medical evidence.

By decision dated April 14, 2006, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions, nor included new and relevant evidence sufficient to require the Office to review its prior decision.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim it has the burden of justifying termination or modification of compensation benefits. Under section 8106(c)(2) of the Act³ the Office may terminate the compensation of an employee who refuses or neglects to work after suitable work is offered to, procured by, or secured for the employee.⁴ Section 10.517 of the Office's regulation provides that an employee who refuses or neglects to work after suitable work has been offered or secured 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 a determination is made with respect to termination of entitlement to compensation.⁵ To justify termination, the Office must show that the work offered was suitable and must inform appellant of the consequences of refusal to accept such employment.⁶ This burden of proof is applicable if the Office terminates compensation under 5 U.S.C. § 8106(c) for refusal to accept suitable work.

ANALYSIS -- ISSUE 1

As the Board found in its September 19, 2005 decision, the employing establishment identified a job as a modified letter carrier for eight hours per day based on restrictions outlined by Dr. Misra. The Office properly found that the weight of the medical evidence rested with Dr. Misra's opinion, who found that appellant was capable of performing the modified job and returning to work within the indicated restrictions. The Board again rejects appellant's contention that he was unable to accept the position because he retired from the employing establishment, pursuant to Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.5(c) (July 1997).⁷ As there was insufficient

³ 5 U.S.C. § 8101 *et. seq.*

⁴ *Patrick A. Santucci*, 40 ECAB 151 (1988); *Donald M. Parker*, 39 ECAB 289 (1987).

⁵ 20 C.F.R. § 10.517; *see also Catherine G. Hammond*, 41 ECAB 375 (1990).

⁶ *See John E. Lemker*, 45 ECAB 258 (1993).

⁷ This section states: "Unacceptable reasons for refusal: Reasons which may be considered acceptable for refusing the offered job include (but are not limited to): the claimant's preference for the area in which he or she currently resides; personal dislike of the position offered or the work hours scheduled; lack of potential for promotion lack of job security; retirement; and previously-issued rating for loss of wage-earning capacity (LWEC) based on a constructed position where the claimant is not already working at a job which fairly and reasonably represents his or her LWEC. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.5(c) (July 1997). *See also Charles E. Nance*, 54 ECAB ____ (Docket No. 01-1923, issued February 28, 2003)

support for appellant's stated reasons in declining the job offer, his refusal of the job offer was neither reasonable nor justified. The Office met its burden of proof in this case to terminate appellant's compensation benefits pursuant to 5 U.S.C. § 8106.

LEGAL PRECEDENT -- ISSUE 2

The Federal (FECA) Procedure Manual explicitly states at Chapter 2.814(c)(6), Claims, *Reemployment: Determining Wage-Earning Capacity*,⁸ that a claimant who unreasonably refuses an offer of suitable employment is not entitled to any further compensation benefits, with the exception of medical expenses for treatment of the accepted condition. In addition, Chapter 2.814(d)(2) states:

*"If no reply is received from the claimant, the CE [claims examiner] should prepare a formal decision which terminates any further compensation for wage loss (effective as of the end of the roll period), as well as compensation for permanent partial impairment to a schedule member, under [s]ection 8106(c)(2) of the Act. The claimant's entitlement to payment of medical expenses for treatment of the accepted condition is not terminated."*⁹

ANALYSIS -- ISSUE 2

In this case, the Office has properly exercised its authority as granted under the Act and implementing federal regulations. Section 8106(c) provides that an employee who refuses suitable work is not entitled to further compensation for total disability or permanent impairment.¹⁰ With regard to schedule awards, the Board has held that monetary compensation payable to an employee under section 8107 are payments made from the Employees' Compensation Fund and are, therefore, subject to the penalty provision of section 8106(c).¹¹ The Board, therefore, reaffirms that appellant's refusal to accept suitable work constitutes a bar to his receipt of a schedule award for any impairment which may be related to the April 10, 2000 and April 18, 2002 employment injuries following the October 27, 2003 termination decision.

LEGAL PRECEDENT -- ISSUE 3

Under 20 C.F.R. § 10.606(b), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law; by advancing a relevant legal argument not previously considered by the Office; or by submitting relevant and pertinent evidence not previously considered by the Office.¹² Evidence that repeats

⁸ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814(c)6.

⁹ Chapter 2.814(d)2.

¹⁰ 20 C.F.R. § 10.124(e).

¹¹ *Stephen R. Lubin*, 43 ECAB 564 (1992).

¹² 20 C.F.R. § 10.606(b)(1); see generally 5 U.S.C. § 8128(a).

or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.¹³

ANALYSIS -- ISSUE 3

In the present case, appellant did not show that the Office erroneously applied or interpreted a specific point of law; he did not advance a relevant legal argument not previously considered by the Office; and he has not submitted relevant and pertinent medical evidence not previously considered by the Office. Appellant reiterated his previously submitted argument that the termination of compensation due to refusal to accept the job offer was not valid because he retired before the offer was made; however, this is an argument appellant presented previously to the Office. Thus, the request did not contain any new and relevant evidence for the Office to review. The Board finds that the Office properly refused to reopen appellant's claim for reconsideration.

CONCLUSION

The Board finds that the Office met its burden to terminate appellant's compensation benefits pursuant to 5 U.S.C. § 8106. The Board finds that the Office found that section 8106(c) of the Act serves as a bar to further compensation for disability arising from the accepted April 10, 2000 and April 18, 2002 employment injuries. The Office properly refused to reopen appellant's case for reconsideration on the merits of his claim under 5 U.S.C. § 8128(a).

¹³ *Howard A. Williams*, 45 ECAB 853 (1994).

ORDER

IT IS HEREBY ORDERED THAT the April 14 and January 3, 2006 decisions of the Office of Workers' Compensation Programs be affirmed.

Issued: June 11, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board