

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

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C.C., Appellant )

and )

U.S. POSTAL SERVICE, POST OFFICE, )  
Glendale, AZ Employer )

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**Docket No. 07-2031  
Issued: April 7, 2008**

*Appearances:*

*Gordon Reiselt, Esq., for the appellant  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On July 27, 2007 appellant filed a timely appeal from a June 21, 2007 merit decision of the Office of Workers' Compensation Programs' hearing representative, who found that no further action should be taken on any claims for wage loss or schedule award as appellant refused suitable work. 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 the Office properly denied appellant's claim for a recurrence of disability on July 21, 2005 after she refused suitable work.

**FACTUAL HISTORY**

This case has previously been on appeal before the Board.<sup>1</sup> In a May 20, 2005 decision, the Board found that appellant did not establish that her September 10, 2002 employment injury

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<sup>1</sup> Docket No. 05-375 (issued May 20, 2005). Appellant sustained injury on September 10, 2002 when she fell down a stairway. The Office accepted her claim for a cervical strain, right shoulder contusion, right arm contusion and right ankle contusion.

caused or contributed to any left shoulder condition, and denied authorization for left shoulder surgery. The facts and history contained in the prior appeal are incorporated by reference. The facts germane to the present issue include the Office's April 18, 2003 decision which terminated appellant's entitlement to monetary compensation as she had refused suitable work.<sup>2</sup>

On February 13, 2007 appellant filed a recurrence of disability claim. She alleged that she was disabled as of July 12, 2005 causally related to her September 10, 2002 employment injury.

By decision dated April 16, 2007, the Office denied appellant's claim for a recurrence, finding that the evidence was insufficient to establish a recurrence of disability on July 12, 2005 causally related to her injury of September 10, 2002. The Office found that the evidence failed to establish that appellant's work stoppage was due to the accepted work-related conditions.

On April 24, 2007 appellant's representative requested a hearing.

By decision dated June 21, 2007, the Office hearing representative found the Office erred by issuing a new decision finding that appellant was not entitled to compensation for wage loss for the recurrence claimed and providing her with new appeal rights. The Office hearing representative found that the April 18, 2003 decision stood as a bar to any subsequent monetary compensation arising out of the September 10, 2002 injury as well as any potential schedule award. He vacated the April 16, 2007 decision and found that no further action should be taken on any claims for wage loss or schedule awards.

### **LEGAL PRECEDENT**

The Office's regulations provide that in termination under section 8106(c) of the Federal Employees' Compensation Act<sup>3</sup> a claimant has no further entitlement to compensation under sections 8105, 8106 and 8107<sup>4</sup> of the Act. However, the claimant remains entitled to medical benefits as provided by 5 U.S.C. § 8103.<sup>5</sup> Section 8106(c) serves as a penalty provision, barring an employee's future entitlement to compensation for the same injury based on a refusal to accept a suitable offer of employment.<sup>6</sup>

Office procedures provide:

“If the claimant does not accept the job, the claims examiner should prepare a formal decision which provides full findings of facts as to why claimant's reasons for refusing the job are deemed unacceptable and terminate compensation under section 8106(c)(2) of the Act as of the end of the roll period. Such a decision

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<sup>2</sup> The claim remained open for medical treatment.

<sup>3</sup> 5 U.S.C. § 8106(c).

<sup>4</sup> 5 U.S.C. §§ 8105, 8106, 8107.

<sup>5</sup> 20 C.F.R. § 10.517.

<sup>6</sup> *Joan F. Burke*, 54 ECAB 406 (2003).

should not be modified even if the claimant's medical condition later deteriorates and he or she claims a recurrence of total disability."<sup>7</sup>

### ANALYSIS

The Office accepted that appellant sustained an employment-related cervical strain, right shoulder contusion, right arm contusion and right ankle contusion. In an April 18, 2003 decision, the Office found that appellant had refused an offer of suitable work. This decision was not subsequently appealed and it remains in force. Appellant filed a claim for a recurrence of disability on July 12, 2005, which she alleged was causally related to her September 10, 2002 employment injury. In its June 21, 2007 decision, the Office denied her claim and indicated that no further action should be taken regarding her claims for wage loss or schedule awards, as the April 18, 2003 decision remained in effect.

The Office properly found that the April 18, 2003 decision serves as a bar to any subsequent monetary compensation as a result of the September 10, 2002 work injury. Section 8106(c) of the Act provides that an employee who refuses suitable work is not entitled to further compensation for total disability or permanent impairment.<sup>8</sup> The Office found that appellant refused suitable work and her refusal serves a bar to her receipt of further wage-loss compensation for disability which may be related to the September 10, 2002 employment injury. As appellant alleged that her recurrence of disability was due to her September 10, 2002 employment injury, the Office properly denied appellant's claim for a recurrence of disability on July 12, 2005, after she refused suitable work.

Because the Office terminated appellant's compensation due to her refusal of an offer of suitable work, under section 8106(c)(2) of the Act, she is barred from future entitlement to wage-loss compensation for her 2002 employment injury, although she may still receive medical benefits for her employment-related condition.<sup>9</sup> Therefore, the Board finds that appellant's recurrence of disability claim is barred.<sup>10</sup>

### CONCLUSION

The Board finds that the Office properly denied appellant's claim for a recurrence of disability on July 12, 2005 after she refused suitable work.

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<sup>7</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.5(d)(1) (July 1997) .

<sup>8</sup> 5 U.S.C. § 8106(c). See also 20 C.F.R. § 10.517(a).

<sup>9</sup> 20 C.F.R. § 10.517.

<sup>10</sup> *Id.*; see *Merlind K. Cannon*, 46 ECAB 517 (1995).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated June 21, 2007 is affirmed.

Issued: April 7, 2008  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

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