

percent impairment of his left upper extremity on September 19, 1983 and for an additional 38 percent impairment of the left upper extremity on September 18, 1986.

In a letter dated February 4, 1998, the Office informed appellant that the employing establishment had provided him with a suitable work position as a modified mail distribution clerk. Appellant had 30 days to accept the position and was advised that, under section 8106(c) of the Federal Employees' Compensation Act, if he refused this position "his compensation benefits for wage loss or schedule award will be terminated." By decision dated March 12, 1998, the Office terminated appellant's compensation benefits effective that date on the grounds that he refused a suitable work position. The Branch of Hearings and Review affirmed this decision on August 17, 1998.

Appellant underwent a total left wrist fusion on January 25, 2000. The Office authorized compensation for the period January 29 to March 31, 2000. By decision dated December 3, 2001, the Office found that appellant had received an overpayment in the amount of \$6,680.23 as he was not entitled to further compensation benefits after March 12, 1998 and that appellant was at fault in the creation of the overpayment. Appellant requested an appeal. By decision dated October 2, 2002, the Board affirmed the Office's December 3, 2001 decision.¹ The facts and the circumstances of the case as set out in the Board's prior decision are adopted herein by reference.²

Appellant requested an additional schedule award on March 1, 2004 and submitted medical evidence. By decision dated August 16, 2007, the Office denied appellant's request for a schedule award finding that the medical evidence did not establish more than 50 percent impairment of his left upper extremity for which he had previously received schedule awards.

Appellant requested an oral hearing on August 27, 2007. He testified on March 26, 2008 that he had never refused a position at the employing establishment. By decision dated May 8, 2008, the hearing representative found that, due to his refusal of an offer of suitable work in contravention of section 8106(c)(2) of the Act, appellant was not entitled to further compensation for his accepted left wrist conditions including an additional schedule award.³

LEGAL PRECEDENT

Section 8106(c) of the Act⁴ provides that a partially disabled employee who refuses or neglects to work after suitable work is offered to, procured by, or secured for the employee is not

¹ Docket No.02-904 (issued October 2, 2002).

² In his June 11, 2008 appeal letter, appellant disagreed with this overpayment decision. The Board issued a final decision on the fact, amount and fault issues regarding this overpayment on October 2, 2002. This decision became final on November 1, 2002. 20 C.F.R. § 501.6(d). This decision is not subject to further review.

³ Following appellant's June 20, 2008 appeal to the Board, the Branch of Hearings and Review issued a decision on August 20, 2008 denying appellant's request for a second oral hearing. As this decision was issued after the date of appellant's appeal to the Board and as it does not address the merit issue before the Board, the Board will not address this decision in this appeal. 20 C.F.R. § 501.2(c).

⁴ 5 U.S.C. § 8106(c)(2).

entitled to compensation. The Office's regulations further provide that, after the Office has provided an employee with the appropriate two notices, then the Office "will terminate the employee's entitlement to further compensation under 5 U.S.C. [§§] 8105,⁵ 8106⁶ and 8107,⁷ as provided by 5 U.S.C. [§] 8106(c)(2). However, the employee remains entitled to medical benefits as provided by 5 U.S.C. [§] 8103."⁸ The Board has affirmed these determinations beginning in *Stephen R. Lubin*.⁹ The Board has found that a refusal to accept suitable work constitutes a bar to receipt of a schedule award for any impairment which may be related to the accepted employment injury.¹⁰

ANALYSIS

The Office accepted that appellant sustained a fracture of the left wrist, styloidectomy, radial grafting nonunion corpeal navicular and left wrist surgery, Darrach procedure due to his August 15, 1980 employment injury. Appellant received a schedule award for 12 percent impairment of his left upper extremity on September 19, 1983 and a schedule award for an additional 38 percent impairment of the left upper extremity on September 18, 1986. The Office terminated his compensation benefits on March 12, 1998 on the basis that he refused a suitable work position.

Appellant filed a claim for an additional schedule award on March 1, 2004. By decision dated May 8, 2008, the hearing representative found that the Office's March 12, 1988 termination decision under section 8106(c)(2) of the Act, precluded appellant from further schedule award compensation for his accepted left wrist conditions. The Board finds that this decision is appropriate. As appellant underwent additional left wrist surgery in 2000, it is clear that he reached maximum medical improvement after March 12, 1998, the date on which his compensation benefits were terminated. Based on his refusal of suitable work, the Act and its implementing regulations bar appellant from receiving further monetary benefits, including compensation granted under 5 U.S.C. § 8107 for a schedule award.

CONCLUSION

The Board finds that appellant is not entitled to an additional schedule award as his date of maximum medical improvement occurred after his compensation benefits were terminated in 1988 in accordance with section 8106(c) of the Act.

⁵ This section of the Act addresses claims for total disability.

⁶ This section of the Act addresses claims for partial disability.

⁷ This section of the Act addresses claims for schedule awards.

⁸ 20 C.F.R. § 10.517(b).

⁹ 43 ECAB 564 (1992).

¹⁰ *D.S.*, 60 ECAB ____ (Docket No. 08-885, issued March 27, 2009); *Lizzie M. Greer*, 49 ECAB 681 (1998); *Sandra A. Sutphen*, 49 ECAB 174 (1997).

ORDER

IT IS HEREBY ORDERED THAT the May 8, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 15, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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