

returned to work in the position of administrative support assistant on October 15, 2007. However, he only worked five and one-half hours and did not return to work.

By letter dated October 17, 2007, OWCP advised appellant that it had received notice that he abandoned the administrative support assistant position. It stated that the position was suitable, informed him of the provisions of 5 U.S.C. § 8106(c)(2) with respect to refusal and abandonment of suitable work, indicated that the position remained available and afforded him 30 days to either accept the position and return to work or provide an explanation justifying his reasons for abandoning the position.

In an October 20, 2007 letter, appellant contended that he did not abandon his position since he did return to work as ordered. He claimed that his physical condition prevented him from completing his first day at work.

In a November 19, 2007 decision, OWCP terminated appellant's wage-loss compensation effective that date under 5 U.S.C. § 8106(c)(2) on the grounds that he abandoned suitable work without a "valid reason." In subsequent decisions dated February 29 and December 18, 2008 and March 23 and September 10, 2009, OWCP denied appellant's requests for modification of its termination decision.

The Board, having duly considered the matter, concludes that OWCP failed to meet its burden of proof in terminating appellant's compensation benefits as it did not comply with its own procedural requirements. Chapter 2.814.10(e) of OWCP's procedures² provides that if the abandonment of the job is not deemed justified, the claims examiner must so advise the claimant and employing agency, and allow him 15 additional days to return to work. If the claimant does not do so, the claims examiner should prepare a formal decision which provides full findings as to why the reasons for the abandonment are deemed unacceptable and terminates compensation under section 8106(c)(2) as of the end of the roll period. Such a decision should not be modified even if the claimant's medical condition later worsens and he claims a recurrence of total disability.³

Following receipt of appellant's October 20, 2007 letter explaining why he stopped work in the administrative support assistant position, OWCP terminated wage-loss benefits on November 17, 2007 without advising appellant that his reasons were unacceptable and that he had 15 days to return to the position.⁴ OWCP did not comply with the proper notice requirements prior to termination. Accordingly, the Board finds that the invocation of section 8106(c) under the facts of this case constituted error. OWCP improperly terminated appellant's compensation, effective November 19, 2007, on the grounds that he abandoned suitable work and, therefore, OWCP's September 10, 2009 decision is reversed.

² Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.10(e) (July 1996).

³ *Id.* See also *Maggie L. Moore*, 42 ECAB 484 (1991); *reaff'd on recon.*, 43 ECAB 818 (1992).

⁴ See *Kenneth R. Love*, 50 ECAB 193 (1998).

IT IS HEREBY ORDERED THAT the September 10, 2009 decision of the Office of Workers' Compensation Programs is reversed.

Issued: August 26, 2011
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